



Neutral Citation Number: [2021] EWHC 186 (QB)

Case No. QB-2019-000569

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice,
Strand, London WC2A 2LL

Date: 5 February 2021

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

Between :

LONDON BOROUGH OF LAMBETH

Claimant

- and -

A.M.

Defendant

Judgment No. 2

Julian Milford QC (instructed by **Browne Jacobson LLP**) for the **Claimant**
The Defendant appeared in person.

Hearing dates: 29 & 30 June, 1,2, 28, 29 & 30 July 2020

Approved judgment

I direct that no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. LM was born on 4 July 2016. On 6 January 2018, the girl's aunt, HJ, made a confidential report to the Children's Services department at the London Borough of Lambeth purporting to report her concerns about LM's development. LM was then 18 months old and HJ reported, among other matters, that she was underweight, that her diet remained too dependent on breastfed milk rather than solids and that she was not being properly encouraged to walk or crawl.
2. Lambeth contacted the parents in order to discuss the reported concerns. The child's father, AM, declined to engage with the authority and the case was swiftly closed. Subsequently, the father made a subject access request for copies of the files held by Lambeth. On 29 November 2018, Lambeth provided AM with a copy of its file in respect of LM. Mindful of its duty to maintain the confidentiality of the referral, Lambeth attempted to redact any details that would reveal HJ's identity. It did so electronically without realising that anyone reasonably proficient in the use of Adobe would be able to defeat the redaction and restore the original text. AM did so and used the documents obtained from Lambeth to write a letter before action accusing HJ of malicious defamation, breach of confidence and harassment.
3. Upon discovering that AM had been able to circumvent the redaction of the file, Lambeth issued this claim seeking injunctive relief to protect the alleged confidentiality of its file and orders requiring him to destroy all copies of the unredacted information. On 26 February 2019, Her Honour Judge Collins Rice (as she then was) granted an interim injunction preventing the further use or disclosure of the unredacted data pending trial.
4. The unchallenged evidence before me is that HJ was not acting alone. She was supported in making the referral by her parents. I have heard from both of the child's paternal grandparents and from the aunt, each of whom insist that they acted out of love and deep concern for LM's well-being. AM, however, argues that, following an argument between the siblings at the time of LM's first birthday party in July 2017, his sister was motivated by malice to make a knowingly false referral to the local authority. While he contends that his sister was the ringleader who manipulated their parents, he also accuses his own mother of deceit. He is, however, more circumspect in his criticism of his father who, he says, is a follower rather than a leader.
5. AM therefore argues that even if he would otherwise owe a duty of confidentiality, such claim is defeated by reason of HJ's malice. His actions were, he contends, in the public interest.

THE ISSUES

6. Lambeth asserts that AM owes an equitable duty of confidence to the authority in respect of information as to HJ's identity. In support of such duty, it pleads that the referral was made in strict confidence and under conditions of anonymity. Further,

it pleads that when the file was disclosed to AM on 29 November 2018, he knew, or ought to have known, that the identity of the informant was confidential to the authority. It relies on four matters:

- 6.1 First, that redactions had been made with the obvious intention of withholding the informant's identity.
 - 6.2 Secondly, there were numerous unredacted references within the file to the fact that the informant made the referral upon condition of anonymity.
 - 6.3 Thirdly, the covering letter stated that information had been withheld to protect third party and social work data.
 - 6.4 Fourthly, there were references in the file to the fact that the referral was confidential.
7. Lambeth pleads that AM has breached such duty of confidence by:
- 7.1 removing the redactions and examining the redacted information in circumstances where he knew or ought to have known that he was not entitled to do so;
 - 7.2 retaining an unredacted copy of the file and refusing to return or destroy the information as to HJ's identity as Lambeth's informant; and
 - 7.3 using such information to write a pre-action letter to HJ threatening proceedings for alleged defamation and other torts.

Further, Lambeth alleges that AM threatens further to breach the duty of confidence by bringing proceedings against HJ in reliance on the information as to the identity of the council's informant.

8. Lambeth accordingly seeks orders for the destruction of the unredacted copies of the file held by AM and permitting the inspection of his electronic devices to confirm such deletion, injunctive relief to prevent further use of information as to the informant's identity, and damages.
9. AM originally filed an extensive Defence and Counterclaim. That pleading was considered in detail by His Honour Judge Freedman QC, sitting as a High Court Judge, at a hearing on 26 November 2019. The judge struck out large swathes of the Defence and the entirety of the Counterclaim. AM's principal defence is that HJ made false and malicious allegations against him and his wife. He alleges that HJ's actions themselves constituted a breach of confidence, a campaign of harassment contrary to s.1 of the Protection from Harassment Act 1997, and defamation. At paragraph 41 of his Defence, he argues that the confidential information provided by HJ was overwhelmingly and unambiguously false, obviously fabricated and unambiguously reckless, deceptive, malicious, defamatory and the cause of serious emotional, financial and reputational harm to the parties and AM's wife. He asserts malice on the basis that HJ had "piled on" a considerable number of allegations, the evidence of prior estrangement and her "emphatic and unbalanced" presentation of her allegations.

10. AM clarified by his Defence that he became aware of HJ's identity on reviewing the documents disclosed on 29 November 2018 and well before his letter of 18 December 2018. He explains that he withheld this discovery from the council because of his belief that Lambeth was a "bad actor" and would not act in accordance either with AM's interests or its statutory obligations. Further, he denies that his actions in obtaining, retaining and using the redacted information as to HJ's identity caused any harm to the public interest or to either the council or HJ because:
 - 10.1 "there is no public interest harm in upholding the law with respect to the disclosure of confidential information of false and malicious referrers in relation to criminal offences";
 - 10.2 Lambeth's conduct fell far below acceptable standards for a public body and any harm caused to the council was entirely due to its gross failures; and
 - 10.3 any harm caused to HJ was entirely due to her illegal and immoral conduct.

11. Accordingly, AM denied any duty of confidence. Further, he asserted that a "significant proportion" of the confidential information was also his own personal data. He complains that Lambeth remains in breach of its obligations under the Data Protection Act 2018.

12. AM does not quarrel with the public interest in maintaining the confidentiality of genuine disclosures of child protection concerns but distinguishes the position where someone makes a "substantially false, reckless, criminal or maliciously motivated" referral to a local authority. In such cases, he argues that the public interest does not favour confidentiality. Further, he argues that Lambeth should not be permitted knowingly to enter into, or uphold, confidentiality agreements with malicious informants because Children's Services would:
 - 12.1 by definition, have no legitimate child protection duty in such cases;
 - 12.2 be knowingly conducting its investigation on the basis of false information, thereby acting in breach of Art. 8 of the European Convention on Human Rights, the General Data Protection Regulation 2016 and the Protection from Harassment Act 1997;
 - 12.3 not be "inclined" to act transparently or with any accountability;
 - 12.4 not be securing the best use of public resources by investigating false allegations;
 - 12.5 be knowingly neglecting its primary statutory obligation to protect genuinely at-risk children by such diversion of resources;
 - 12.6 be knowingly disrupting the peace and privacy of healthy and functioning families and thereby putting their children at risk; and
 - 12.7 be actively encouraging false and malicious referrals, and the erosion of public morals.

13. Thus, AM argues:

"Where the Claimant's Children's Services enters into a formal or implied duty of confidentiality under false pretences, i.e., with a malicious referrer, the

Claimant has an ethical and legal obligation in respect of the subject of the referral (and their lawful rights) to annul and rescind that duty of confidentiality, upon discovery of wrongdoing. No duty of confidentiality to a malicious referrer can be lawfully maintained.”

14. Julian Milford QC, who appears for Lambeth, identified four key issues in this case:
 - 14.1 First, was the redacted information confidential?
 - 14.2 Secondly, did AM receive the information in circumstances of confidentiality?
 - 14.3 Thirdly, did AM use the information in breach of confidence by, for example, sending a pre-action letter to HJ?
 - 14.4 Fourthly, if so, were AM’s actions in the public interest because HJ’s identity was not in fact confidential and/or because her allegations were made maliciously and in bad faith?

15. At a hearing shortly before trial, AM argued that his Defence also raises a number of other issues:
 - 15.1 That Lambeth’s investigation of his sister’s allegations was unlawful because “it failed in numerous and significant ways to comply with the relevant Government guidance in the London Child Protection Procedure.”
 - 15.2 That the authority’s social workers engaged in unlawful conduct by the falsification of his records.
 - 15.3 That Lambeth failed to comply with its statutory duties to investigate his complaint in respect of the conduct of its employees.
 - 15.4 That Lambeth unlawfully withheld subject data to which he was entitled.
 - 15.5 That Lambeth unlawfully refused to respond to or investigate his complaint of data breach made on 18 December 2018 and, further, that it refused to comply with the Information Commissioner’s instructions and its own statutory obligations.

16. Mr Milford challenged AM’s insistence that any such issues as to the authority’s own conduct were before the court and submitted that the original case as to such issues had been struck out. As I explained in my earlier judgment, which can be found at [2020] EWHC 1680 (QB), I accepted Mr Milford’s argument that a number of the issues relied upon by AM were pleaded at paragraphs 31.1(d)-(h) of the original Defence and Counterclaim but were struck out by Judge Freedman QC. Accordingly, they are no longer in issue in these proceedings.

17. There remains an allegation, at paragraph 30.4, as to AM’s belief that Lambeth was “a ‘bad actor’, and would not act in [his] best interests, nor in accordance with its statutory obligation.” He adds that such belief was justified given the unresolved grievances and “on the basis of the gross misconduct and incompetence by [Lambeth’s] social workers” as evidenced in the subject access request disclosure. As I explained in my earlier judgment, paragraph 30.4 was not, however, some freestanding complaint against Lambeth but rather a supposed particular of the

father's denial that he was unaware of or had not obtained the confidential information in the disclosure prior to his letter of 18 December 2018. It was therefore part of his explanation for why his letter appeared to indicate that he then believed that the referral had been made by a statutory organisation.

18. Further, AM pleads, at paragraph 33.2, as a particular of his denial that Lambeth has suffered any harm:

“The Defendant submits that any harm which may have been incurred by ‘the Council’ would be entirely due to its gross, several and manifest failures as alleged by the Defendant in this defence. The Defendant maintains that the Claimant’s conduct falls far below the acceptable standards for public bodies and these failures represent a danger to the public interest. The Defendant also submits that the Claimant has had multiple opportunities, sign-posted by the Defendant, to mitigate its liabilities, but has and continues to respond in an unethical and unlawful manner.”

19. As I explain below, the key issue in respect of harm in this case is, however, whether the threatened disclosure of any confidential information is in the public interest. Accordingly, the pleaded criticisms of the authority’s conduct are not in point and the court can safely focus on the true issue – namely the public interest defence.

THE TORT OF BREACH OF CONFIDENCE

20. The essential ingredients of the tort of breach of confidence were identified by Megarry J (as he then was) in Coco v. A.N. Clark (Engineers) Ltd [1968] F.S.R. 415:

20.1 First, the information must be of a confidential nature.

20.2 Secondly, it must have been communicated in circumstances importing an obligation of confidence.

20.3 Thirdly, there must be an unauthorised use of the information to the detriment of the party communicating it, although Megarry J left open the possibility of detriment to another.

21. Even if the tort is otherwise made out, AM relies on the public interest defence of iniquity.

IS THE INFORMATION OF A CONFIDENTIAL NATURE?

22. The information in the referral about LM’s development is obviously confidential information (whether it be true or not) about a child’s care, health and development. The information sought to be protected by these proceedings is much more limited. It is defined in the Particulars of Claim as HJ’s identity and the redacted data in the file. Since the redactions were all made in order to protect HJ’s identity while ensuring that the substance of the referral was still disclosed to the father, the relevant information for this claim is simply the aunt’s identity as the informant.

23. In Re A (A Child) (Family Proceedings: Disclosure of Information) [2012] UKSC 60, [2013] 2 A.C. 66, Baroness Hale observed, at [29]:

“There is an important public interest in preserving the confidence of people who come forward with allegations of child abuse. The system depends upon the public as its eyes and ears. The social workers cannot be everywhere. The public should be encouraged to take an interest in the welfare of the children in their neighbourhoods. It is part of responsible citizenship to do so.”

24. Thus, local authorities may resist disclosure of such records by claiming public interest immunity: D v. National Society for the Prevention of Cruelty to Children [1978] AC 171. Such immunity arises from the public interest in maintaining the confidentiality of information given to public authorities responsible for protecting children from abuse. As Baroness Hale explained in Re A, at [15], it is not the fact that the information was communicated in confidence which attracts the immunity but rather the wider public interest in encouraging members of the public to come forward to help the authorities to protect children. Of course, the immunity is not absolute, and the public interest must be balanced against other competing rights, such as the right to a fair hearing of the family law proceedings in respect of the child in Re A and the countervailing rights of the informant.

25. This case does not involve any suggestion of abuse, but rather that LM’s proper development had been neglected through the parents’ ignorance, inexperience, distrust of professionals and misplaced self-assurance. Nevertheless, in my judgment, Baroness Hale’s observation applies equally to such a case and there is an important public interest in preserving the confidence of anyone who reports their concerns about a child’s care, health or development to Children’s Services.

26. AM does not seek to challenge such general proposition but argues that the information in this case is not confidential to Lambeth but to him because it was his personal data. Secondly, he argues that the information is no longer confidential once Lambeth’s legitimate interest in its engagement with the family came to an end. Thirdly, he argues that HJ’s identity was not confidential because he already knew her identity.

(i) Not confidential to Lambeth

27. This argument is plainly untenable. Re A concerned the tension between the rights of the informant and the subject of the information. Baroness Hale acknowledged, at [1]:

“We are asked in this case to reconcile the irreconcilable. On the one hand, there is the interest of a vulnerable young woman (X) who made an allegation in confidence to the authorities that while she was a child she had been seriously sexually abused by the father of a little girl (A) who is now aged ten. On the other hand we have the interests of that little girl, her mother (M) and her father (F), in having that allegation properly investigated and tested. These interests are not only private to the people involved. There are also public interests, on the one hand, in maintaining the confidentiality of this kind of

communication, and, on the other, in the fair and open conduct of legal disputes. On both sides there is a public interest in protecting both children and vulnerable young adults from the risk of harm.”

28. Equally in this case, HJ’s referral contained confidential information about her as the informant, LM as the subject-matter of the referral and AM and his wife as the parents and carers of LM. I am, however, satisfied that the confidential information as to the aunt’s identity was not the father’s confidential information; rather it was confidential to Lambeth and the aunt. Indeed, if such information was the father’s confidential information then there was nothing for the Supreme Court to decide in Re A since it would have followed that the parents in that case would automatically have been entitled to know X’s identity.

(ii) No longer confidential

29. This argument fails to recognise the purpose of protecting the confidentiality of informants reporting their concerns to the appropriate public authority about the care and abuse of children. The identity of an informant is not confidential merely to protect the integrity of any investigation by the local authority, but in order to encourage members of the public to come forward and report their concerns about children who may be at risk. Such public interest cannot be protected merely by keeping the informant’s identity confidential until the local authority has concluded any investigation.

(iii) Not confidential because the father already knew the identity of the informant

30. This argument fails upon the evidence since the father accepted in both cross-examination and his own further statements in re-examination that he had not known the informant’s identity before receipt of the redacted file. Indeed, his suspicions originally fell on the health visitor who had seen his daughter immediately before the referral. As he explained to me in re-examination, it did not cross his mind at that time that his own family could have been responsible for the referral.

COMMUNICATED IN CIRCUMSTANCES IMPORTING AN OBLIGATION OF CONFIDENCE

31. Information may be expressly or implicitly imparted in confidence. Even where it is not, the law will impose a duty of confidence where obviously confidential information is obtained whether by:

31.1 design, such as where someone obtains the information improperly or surreptitiously (Lord Ashburton v. Pape [1913] 2 Ch 469), or deliberately and without authorisation takes steps to obtain the confidential information (Inerman v. Tchenguiz [2010] EWCA Civ 908, [2011] 2 W.L.R. 592, at [68]); or

31.2 chance, such as where the document is wafted by an electric fan out of a window or dropped in a public place and then picked up by a passer-by (per Lord Goff in Attorney General v. Guardian Newspapers Ltd (No. 2) (“Spycatcher”) [1990] 1 AC 109, at p281; see also Nourse LJ in Goddard v.

Nationwide Building Society [1986] 3 W.L.R. 734, at p745 and Browne-Wilkinson LJ, as he then was, in English & American Insurance Ltd v. Herbert Smith [1988] F.S.R. 232, at p.237).

32. In Inerman v. Tchenguiz, the Court of Appeal put the matter broadly, at [69]:

“In our view, it would be a breach of confidence for a defendant, without the authority of the claimant, to examine, or to make, retain, or supply copies to a third party of, a document whose contents are, and were (or ought to have been) appreciated by the defendant to be, confidential to the claimant. It is of the essence of the claimant’s right to confidentiality that he can choose whether, and, if so, to whom and in what circumstances and on what terms, to reveal the information which has the protection of the confidence. It seems to us, as a matter of principle, that, again in the absence of any defence on the particular facts, a claimant who establishes a right of confidence in certain information contained in a document should be able to restrain any threat by an unauthorised defendant to look at, copy, distribute any copies of, or to communicate, or utilise the contents of the document (or any copy), and also be able to enforce the return (or destruction) of any such document or copy. Without the court having the power to grant such relief, the information will, through the unauthorised act of the defendant, either lose its confidential character, or will at least be at risk of doing so. The claimant should not be at risk, through the unauthorised act of the defendant, of having the confidentiality of the information lost, or even potentially lost.”

33. Here, there can be no doubt that the information as to the aunt’s identity was both confidential and that Lambeth clearly did not intend to disclose her identity to the father. This was made clear both by the heavy redactions in the copy file provided to AM in response to his subject access request and the authority’s covering letter of 29 November 2018 that explained that redactions had been made to remove third party information. I am satisfied upon his own evidence that AM appreciated that Lambeth intended to keep the informant’s identity confidential. It is in any event beyond argument that he ought to have appreciated that such information was confidential. Yet AM deliberately and without authorisation took simple steps to discover the informant’s identity.

UNAUTHORISED & DETRIMENTAL USE OF THE INFORMATION

34. AM explains that he discovered his sister’s identity as the informant without any specialist software. Rather, he simply copied and pasted the redacted file into Word. Unbeknown to Lambeth, such a simple step was all that was required to reveal the redacted data. Plainly, AM was not authorised to copy and paste the file in this way in order to defeat the authority’s attempt to redact the file. Further, he was not authorised to look at, copy, retain or otherwise use the confidential information as to the informant’s identity.
35. In the Tchenguiz Case, the confidential documents were taken from the claimant’s computer in order to ensure that he could not conceal the true extent of his assets in ancillary relief proceedings with the defendant’s sister. While recognising the

problem of wealthy spouses dishonestly hiding assets from the Family Courts, the Court of Appeal decisively rejected arguments that such self-help could be condoned by the courts or that the defendant's good intentions in seeking to ensure that his sister achieved a fair divorce settlement prevented the court from granting an injunction to restrain use of the documents: see [106]-[140].

36. In my judgment, and subject only to the public interest defence, the father's quest for the identity of the informant in order to pursue proceedings against such person is likewise no justification for examining (by copying and pasting the redacted data into Word and then reading such information in unredacted form), retaining, copying or using the obviously confidential information in this case.

37. I noted above that Megarry J's formulation of the tort in Coco v. Clark focused on detriment to the party communicating the confidential information. In Spycatcher, Lord Griffiths explained, at p.270, that detriment to the confider is required in a claim by a private litigant. As he observed, at p.270F:

“The remedy has been fashioned to protect the confider not to punish the confidant, and there seems little point in extending it to a confider who has no need of the protection.”

38. The position of public authorities is, however, different. Lord Griffiths added, at p.270F-G:

“But whatever may be the position between private litigants, we have in this litigation to consider the position when it is the Government that seeks the remedy. In my view, for reasons so cogently stated by Mason J in Commonwealth of Australia v. John Fairfax & Sons Ltd (1980) 147 C.L.R. 39, ... a government that wishes to enforce silence through an action for breach of confidence must establish that it is in the public interest to do so. This is but another way of saying that the Government must establish, as an essential element of the right to the remedy, that the public interest will suffer detriment if an injunction is not granted.”

[See also Lord Keith at p.258H and Lord Goff at p.282B.]

39. In my judgment, there can be no doubt that it is in the public interest to enforce the obvious confidentiality of the identity of an informant who reports his or her concerns about the care, health and development of a child to the relevant local authority. Indeed, a failure to do so would undermine public trust in Lambeth's ability to protect the confidentiality of future informants and therefore put at risk the authority's effectiveness in protecting the children within its area.

THE PUBLIC INTEREST DEFENCE

40. Here, AM argues that the referral was made maliciously and without belief in the truth of its contents. While he accepts the general public interest in preserving the confidentiality of such referrals to a local authority, he contends that such interest

must be subordinated to the public interest in exposing those who make malicious reports.

41. Malice is not an answer to a claim that a public authority can withhold disclosure on the grounds of public interest immunity. Indeed, in Re A, Baroness Hale observed at [15]:

“It is not the fact that the information is communicated in confidence which attracts the immunity, but the public interest in encouraging members of the public to come forward to help the authorities to protect children. That this may also protect an untruthful or malicious informant is the necessary price to be paid.”

42. Fraud, criminal or other reprehensible conduct may, however, provide a defence to a claim framed in the tort of breach of confidence. Lord Goff explained the public interest defence in Spycatcher, at pp.282-283:

“...although the basis of the law’s protection of confidence is that there is a public interest that confidences should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure... It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure.

Embraced within this limiting principle is, of course, the so-called defence of iniquity. In origin, this principle was narrowly stated, on the basis that a man cannot be made ‘the confidant of a crime or a fraud’: see Gartside v. Outram (1857) LJ Ch 113, 114...But it is now clear that the principle extends to matters of which disclosure is required in the public interest: see Beloff v. Pressdram Ltd [1973] 1 All E.R. 241 at 260, per Ungood-Thomas J and Lion Laboratories v. Evans [1985] Q.B. 526 at 550 per Griffiths LJ.”

43. In Beloff v. Pressdram Ltd [1973] 1 All E.R. 241, Ungood-Thomas J said, at p.260:

“The defence of public interest clearly covers and, in the authorities does not extend beyond, disclosure, which... must be disclosure justified in the public interest, of matters carried out or contemplated, in breach of the country’s security, or in breach of law, including statutory duty, fraud, or otherwise destructive of the country or its people, including matters medically dangerous to the public, and doubtless other misdeeds of similar gravity.”

44. In Lion Laboratories Ltd v. Evans [1985] Q.B. 526, Griffiths LJ (as he then was) said, at p.550, that the defence applies where “the plaintiff had behaved so disgracefully or criminally that it was judged in the public interest that his behaviour should be exposed.”

45. Accordingly, proof of the aunt’s malice on the facts of this case would be necessary, but not of itself sufficient, to establish a public interest defence. Whether the defence

is established will depend upon (1) the nature and degree of the iniquitous conduct established; and (2) whether such conduct outweighs the powerful public interest in respecting the confidence of those who make anonymous referrals to a local authority.

46. Consideration of the public interest defence will therefore depend first upon my findings of fact as to the aunt's conduct and then upon an evaluation of such conduct and the balancing of any adverse findings against the public interest in maintaining confidentiality. It is, however, important to identify the limits of the factual enquiry:
- 46.1 My task is not to undertake the child-centred enquiry that would be undertaken by a family judge seeking to make findings of fact as to the care of LM. Instead, the focus of my enquiry is upon the aunt's conduct and upon what she knew or believed in January 2018.
- 46.2 While the central issue is not therefore the quality of the parents' care or the true position in respect of LM's care, health and development:
- a) evidence that there was some objective basis for having concerns about the child's care, health and development, or that the concerns expressed by the aunt were shared by others, may tend to tell against a finding of malice;
 - b) equally, the absence of any such objective basis, or the existence of evidence that gainsays such concerns, may tend to support an inference of malice.

THE EVIDENCE

THE REFERRAL

47. On 6 January 2018, the aunt sent her email to Lambeth purportedly reporting her serious concerns about her niece. It is fundamental to this claim and I therefore set it out in full:

“Dear Sir/Madam,

I am writing to follow up a phone call I made yesterday to express serious concerns I have about my niece, [LM], who lives within Lambeth Council. I was asked to send this email which I wrote prior to the phone call.

My name is Mrs [HJ]. I am an Optometrist I wish to keep my identity and this email entirely confidential from my brother and his wife. I would greatly appreciate your confirmation that you will progress this matter without revealing me as the individual who notified you of the concerns regarding [LM's] care.

Child: [LM]

DOB: 4th July 2016

Address: London ...

Father: ...

Mother: ...

I have no doubt that my brother ... and his wife ... both love and adore [LM] but their care for her is eccentric to the point of inhibiting her development. As a family my parents ... and I have tried to advise and support them in how to correctly nurture and stimulate [LM] but they refuse to accept guidance. We have visited their home and they have come to stay with us in 2017 to observe their care and decision making.

At my visit to [LM's] home in July 2017 I sought professional physiotherapy advice which I conveyed to her mother.... I advised [the mother] to make an urgent paediatrician appointment for [LM] because [LM] was operating as a functional paraplegic (sic) and not using her legs at all. I advised them that if [LM] does not weight bear through her legs by 18 months of age this may lead to permanent problems with her hips. I urged them to take her to a paediatrician which they eventually did. Unfortunately the paediatrician is not aware of the background to [LM's] condition and the role that her parents are playing in her developmental delay. [LM] is a child lacking opportunity and stimulation to develop normally. Her parents have now decided to stop engaging with medical professionals and not allow [LM] to attend paediatrician/neurology appointments. That is what has prompted me to refer this to social services.

Sadly even where parents are intelligent and very loving the effects of inadequate care are the same. In this case it is not a substance but possibly ignorance and arrogance that may be contributing to [LM's] health problems. As a family we have tried for almost a year to advise and support [my brother] and [his wife] but unfortunately they have not yet accepted advice or help. We now feel that it is time to seek intervention by social services to ensure [LM] has access to professional care and that her parents accept advice on parenting and child development from medical professionals.

[LM's] health observations;

- significantly lagging behind in her developmental milestones
- very underweight and was losing weight in July 2017
- poor appetite
- fed mainly breast milk
- frequently constipated (bowel movement only every 3-4 days)
- dehydrated (mother decided to cease offering water a few months ago because [LM] wasn't interested in drinking)
- appears weak overall and sleeps a lot
- low muscle tone
- cannot walk or stand and was operating as a functional paraplegic (sic) in August 2017 - still moderately delayed motor skills but now bum shuffles slowly
- neglects her legs

Contributing Factors to [LM's] Development Problems

- lack of stimulation

- parents leaving her on the couch for most of the day, lack of opportunity to develop motor skills
- father considering toys a waste of time (luckily others have given learning toys as gifts, especially my parents and I)
- not allowing [LM] to go on the house floor since birth (they believe the floor is not 'clean enough' and only a 2m x 1m playmat provided for an hour each day)
- lack of appropriate home/floor cleanliness for a baby or toddler to crawl around at all visits by relative in 2017
- lack of organisation with her food and drink, claiming to feed on demand but frequently going out with (sic) carrying suitable baby food and not providing water
- over protective parenting (e.g. if [LM] cries when standing for 10 seconds they discontinue that or any other such activity)
- eccentric parenting ([LM] not allowed on the garden grass)
- parents being belittling, suspicious of and derisive of healthcare professionals (when [LM] was found to be losing weight in summer 2017 [her mother] stated there was not (sic) point in going back to the health visitor because she could weigh [LM] herself at home anyway and they may not have permitted [LM] to have any immunisations to date)
- parents not taking advice on how to improve [LM's] health e.g. exercises for leg strength, muscle tone, mobility and overall development
- parents (sic) poor understanding of NHS and referral protocols (e.g. believing a paediatrician is incompetent because they don't know exactly what is wrong with [LM] and referred her to neurology)
- parents not being aware of their actions contributing to [LM's] developmental delay or how to help her appropriately
- parents being in denial about [LM's] developmental delay
- parents repeatedly saying [LM] is 'lazy' and that is why she cannot walk yet (or even hold her bottle when she was 12 months old)
- parents withdrawing [LM] from healthcare professionals and appointments

Having taken advice on the parenting style of [the parents] I feel it is detrimental to [LM] at this time. I am aware that [LM's] clinical picture is not dissimilar to a child who genuinely has an underlying health condition e.g. genetic abnormality. This may be the true reason for her health issues but in order to differentiate between neglect secondary to unorthodox/eccentric parenting and a genuine health concern [LM] must have access to healthcare professionals. It is not so much eccentric parenting but rather the impact and consequences for [LM] that instigates this referral.

I disagree with her parents' decision to isolate [LM] at this vulnerable, undiagnosed time and with their eccentric parenting methods. I request that social services intervene on [LM's] behalf to insist on her access to healthcare professionals and to support her parents to improve their parenting methods. I concede that I only have part of the story and do not know exactly what has transpired between [LM's] parents and healthcare professionals. I only get sporadic information each time I try to chase up on [LM's] health and development. If since sending this email they have decided to respect the opinion of and engage with healthcare professionals then I apologise if I have wasted any of your time and resources. If they uptake the advice of professionals then we would be delighted and at peace as a family.

Please note that [the family] are travelling on holiday for 1 week. They return on the 13th of January. As such you may not be able to contact them at home until after this date.

Please keep my identity confidential as this is a sensitive matter and I do not want them to know the source of the (sic)

Kind regards
[HJ]"

THE FALL-OUT FROM THE REFERRAL

48. Once AM had identified that the anonymous referral was made by his sister, he summoned his family to a meeting in a hotel on 5 January 2019. His email was sent to his brother-in-law who was required both to attend the meeting himself and arrange for his wife and parents-in-law to attend. Asked about the curious formality with which he summoned family members, AM explained in his evidence that "these people are dead to me." When asked about the more friendly tone of his sister's reply, AM described her email as sociopathic. He added that she was scared to death and "so manipulative."
49. At the meeting, AM played his family a video from Russia Today about the removal of children in the UK by local authorities, and explained that he would take legal action against his sister. HJ and her husband each said in evidence that they found the video insensitive to them as adoptive parents. In any event, they left the meeting early, which AM said in evidence was "very uncivilised" given how far he had travelled.
50. On 1 February 2019, AM emailed a letter before action to his sister. He alleged that she had made statements about his family that were "false, intentionally distorted and misleading, defamatory, entirely fabricated and [which had] caused serious harm in various forms to [him] and his wife." He asserted that his sister's actions were intentionally made to "a statutory organisation with enforcement powers to seize and remove [his child] without the due process ... afforded by the common law." She was, he asserted, motivated by malice resulting from "a prior dispute and an acrimonious estrangement following that dispute." This was, he alleged, a systematic

and persistent campaign of harassment by repeatedly calling for and urging the council to force him to take actions that he was not lawfully required to take. Further, he alleged that his sister had encouraged at least one other person who had his confidence to report on his private activities.

51. His letter explained that he would be seeking an order requiring his sister to issue a full retraction; an injunction restraining any further representations in the matter; damages of at least £100,000; and legal costs. He offered, however, settlement terms:

51.1 A full retraction in the form of a signed affidavit or witness statement.

51.2 Damages of £55,000, although such sum might be reduced to a minimum of £50,000 in the event that the aunt undertook 20 hours of accredited data protection training and 40 hours of “counselling of a kind ... appropriate to her religious beliefs.”

51.3 Undertakings:

- a) to make no further statements about AM and his family;
- b) to remain, with limited exceptions, at least one kilometre from the homes and business premises of AM, his wife, his immediate family and his known associates; and
- c) to make every reasonable effort to ensure that third parties, including her husband, children, relatives and friends, complied with the terms of settlement.

51.4 Payment of unspecified legal costs.

52. In cross-examination, AM insisted that his offer was the “pinnacle of geniality” after what his sister had done. In any event, HJ responded on 12 February 2019. She sought to be conciliatory. Her letter explained:

“You are my brother whom I love. I hold no malice towards you and I never have.”

53. HJ explained that while the incident on LM’s birthday weekend had been “unpleasant”, she had remained calm and would always be happy to speak to her brother again. Her door, she said, was always open to him. She added:

“I am keen to see us back in right relationship before God and for our own good. I am happy to meet with you and restore our relationship whenever you feel ready. As a Christian I happily hold no malice or resentment to any individual.”

54. Anticipating that her brother’s reference to encouraging at least one other person to report on him might be a reference to their parents, she insisted:

“... [our parents] love you and care for the well-being of [LM]. Time spent visiting and hosting you in recent years was because they love you and not as part of an organised spying campaign.”

55. This letter was, AM told me, propaganda rather than a genuine attempt to repair relationships. He replied on 14 February 2019. As well as pressing his sister to reconsider his settlement proposals, he lectured her on their shared Christian faith. Specifically, he wrote:

“Since you have indicated that you are a Christian and wish to rely on that identification, [AM] would like to advise you of the following verses, which should have bounded your conduct:

Exodus 20:16

Galatians 3:10-12

Proverbs 3:29-30

Matthew 5:25

Matthew 18:15-16

... [AM] is concerned that you have chosen a course of conduct which is primarily bounded by what is rashly considered legal, rather than what Christian faith prescribes as good and moral conduct. And that in choosing to live on the boundaries of what is considered permissible by the law, rather than by your professed faith, you have exceeded and breached the bounds of what is lawful. That is the substance of this claim ...

Since you have indicated that you are a Christian and you are confident that your conduct was lawful, [AM] suggests that you seek the advice of your Pastor or Priest on the question of whether your conduct was moral and right. [AM] feels that your decision respecting settlement would be better informed if you disclosed the entire contents of this letter and the Notice to your Pastor/Priest and seek advice on if he views your actions as moral and right, according to the tenets of your Christian faith.”

56. Meanwhile, HJ forwarded a copy of her brother’s letter to Lambeth and asked that they investigate how he managed to obtain unredacted copies of the file. This prompted Lambeth to write its own pre-action letter to AM on 15 February 2019 in which the council explained that it now appreciated that the copy file had been provided in an “insecure format” that was capable of being “manipulated.” It alleged, correctly, that AM had unredacted the file and demanded that he desisted from further processing such data.
57. On the same day, AM wrote to his sister. He complained that she had again contacted Lambeth and alleged that, by such action, she had continued in her “injurious and malicious conduct.” He then explained his intention to bring proceedings against Lambeth for “their failures respecting the protection and handling of [his] data, the manifest breach of his human rights and for their continued harassment of him.” Given his sister’s further contact with Lambeth and her “bad faith and outright rejection of the settlement agreement”, AM rescinded his offer of time to reach settlement and demanded her immediate agreement to his terms of settlement. Failing her agreement, AM indicated his intention to commence legal proceedings against his sister. He closed his letter:

“[AM] wishes to reiterate his recommendation that you disclose the entire and complete substance of this dispute with your Pastor/Priest ..., in order that you can obtain independent moral instruction and in order to get a more objective view of the seriousness of your actions.”

THE HEALTH RECORDS

58. LM's early medical records show a baby whose weight was consistently at or about the 50th centile. In other words, she was precisely of average weight for a little baby girl of her age.
59. On 24 January 2017, the health visitor gave some advice about weaning and noted the mother's concern about LM's weight. The health visitor saw LM again on 30 March 2017 when she was nearly 9 months old. Her weight was noted to be steady on the 9th centile. Weaning had commenced but LM was still taking a lot of breastmilk. The mother was advised to increase the amount of solid food.
60. LM was next seen by a health visitor on 24 April 2017. The health visitor noted the mother's concern as to LM's weight and recommended that she should be reviewed in a further month to ensure that the child was then gaining weight.
61. The last note of a GP attendance was on 20 September 2017. The doctor noted that the parents had sought private medical advice because of concern that LM was not walking. The child was said to be bottom shuffling and pulling herself up on furniture to stand but not cruising yet. AM told the GP that he thought his brother had walked late at around 18 months. Bloods were taken and the GP noted that LM should be reviewed in another three months if she was still not walking. The record also records a question being raised as to a possible paediatric referral.
62. LM was seen by a health visitor on 4 January 2018, just two days before the aunt made her anonymous referral to Lambeth. The health visitor noted that LM was seen in the clinic with her mother. She recorded:

“[LM]’s growth has slowed – she weighed 8kgs today (2nd centile – previous weight at 1 year was around the 9th centile).

[LM] breastfeeds regularly throughout the day and night – Mum advised to reduce the breastfeeding so that [LM]’s appetite for solid food increases; Mum reports that [LM] eats a wide range of food, although she has been unwell recently and was off her food for a few days. Her appetite for solid food is increasing again now.

Mum has decided not to immunise [LM] at present – she is aware of the imms schedule and that if she changes her mind she should make an appointment with the practice nurse.

[LM] is not yet walking unaided – she pulls herself to stand and has started cruising around the furniture; she will take a few steps when [her] hands are held.

Mum informed me that [LM]’s development is being monitored by her GP and she has also been seen by a Private Paediatrician. HV offered to refer [LM] to the physio team; Mum declined and said that she has a letter re physio referral from the Paediatrician that she is going to discuss with the GP. HV advised Mum to see the GP as soon as possible as [LM] would benefit from a physio assessment as she is now 18 months old and not walking unaided.

Plan 1 – review weight in 4-6 weeks’ time; 2. See GP with any concerns; 3. Notify ... HV team.”

63. In evidence, AM confirmed that LM had not seen an NHS doctor since September 2017. He explained that he would not allow her to do so until her medical records had been cleaned to remove references to the local authority referral. Meanwhile, LM has seen a doctor in France and a couple of paediatricians on a private basis.

THE CLAIMANT’S CASE

Lisa Marie Alexander

64. Ms Alexander is a social worker employed in Lambeth’s Children’s Services Department. She explained the policies and procedures operated by Lambeth to assess and investigate referrals received by the social work team. She stressed the importance of confidentiality so that informants can come forward and disclose their concerns with complete candour and without fearing that what they say might be disclosed to a child’s parents. She insisted that a social worker’s job is to make enquiries, to be interested, to gather information and to engage with a family. Social work involving children is and must be child-centred, holistic and approached with an open mind.
65. Another social worker, Shannel Foster, contacted AM’s wife on 9 January 2018 and was given authority to speak to the health visitors. Subsequently, AM spoke to Ms Foster on 19 and 24 January 2018. His sole focus was on challenging the propriety of relying on his wife’s authority to contact the health visitors and his assertion that the health visitors must have breached the family’s confidentiality by making an anonymous referral to Children’s Services. He refused to discuss the issues of concern, threatened legal action and made clear that he would not be allowing the health visitor to come to his home. Following this contact, Ms Foster concluded that the case merited a Child & Family Assessment. It was then referred to Ms Alexander.
66. Ms Alexander attempted to engage the family, but AM vehemently refused to engage and was instead focused on finding out who had contacted Lambeth. She tried further contact at which AM accused the council of harassment. The case was closed in May 2018 as attempts to engage the family had been unsuccessful and there was insufficient evidence to meet the threshold for instituting a Child Protection inquiry.

HJ

67. Like her father before her, HJ is an optometrist. At the time of these events, she lived a considerable distance from AM together with her husband and son, who is

almost three years older than his cousin, LM. In August 2016, she asked LM's parents about the lack of baby toys and a mobile and expressed the opinion that toys were crucial for the development of hand-eye coordination and perception. She recalled that AM said that toys were "unnecessary commercial gimmicks."

68. The aunt said that in June 2017 her mother phoned to discuss her concerns about LM. The grandmother explained that she had recently visited and that the girl appeared "gaunt, underweight and not thriving." She said that LM had very poor mobility, sat constantly on the sofa and was not put on the floor. She said that AM and his wife explained that LM did not like to be on the floor and that in any event the floor was not clean enough.
69. The aunt added that her mother had spoken to LM's mother about the fact that the child was mainly fed on breastmilk at 11 months instead of more solid foods. Her mother suggested that they should feed age-appropriate solid foods and develop a more structured feeding routine.
70. The aunt visited her brother and sister-in-law in London over the weekend of 7-9 July 2017. Her visit coincided with LM's first birthday party. She said that LM looked "terribly gaunt and underweight." She was not very energetic or mobile and her legs appeared very weak. The aunt said that LM could not bounce on her lap, stand, straighten her legs or crawl. She barely moved her legs and they collapsed under her when the aunt tried to get LM down on all fours. The aunt said that over the next two days she mentioned some of these issues to her brother and his wife. They were not receptive and AM insisted that there was no problem and that LM would develop in her own time.
71. HJ tried to demonstrate to her sister-in-law what she considered to be a significant developmental disparity between LM and other children of her age. Her sister-in-law explained that LM was not allowed on the floor because they felt that it was not clean, but LM was put on a playmat for a brief time each day. The aunt was told that the parents did not take LM to soft play centres because they were "full of germs" and LM had not had her immunisations.
72. The aunt was told that LM could not hold her own milk bottle. When she suggested that this was highly unusual at 12 months, she was told that LM was lazy. Yet the aunt said that when alone with LM she was able to get her to hold her bottle. She also questioned why LM could not straighten and use her legs and was again told that she was lazy.
73. The aunt said that she emphasised the seriousness of the situation to the child's mother and recommended a referral to a paediatric physiotherapist. The two women also discussed feeding and the aunt commented that breast feeding was unreliable in quantifying the child's calorie intake. LM's mother explained that a health visitor had recently found that the child was losing weight and asked to review her again in two weeks. The mother explained that she had not gone back because all the health

visitor did was weigh LM. HJ stressed the knowledge, training and skills of healthcare professionals and urged her sister-in-law to take LM back for further assessment. She added that she was concerned that there was no highchair. In fact, in cross-examination she was shown some photographs of LM in a highchair. She explained that she did not remember seeing a highchair set up in the house when LM was feeding. This was, I suspect, because as the photographs show, it was set up in the garden during LM's party.

74. HJ said that her brother did not appear concerned about LM's health. She mentioned a few things to him, such as her shock that LM was not allowed to touch the grass at 12 months, but generally she elected not to antagonise him because "he does not change his mind easily and can become angry if his views are challenged." Instead, HJ spoke to her sister-in-law who seemed more receptive.
75. As to the argument with her brother, HJ recalled a few disagreements about the food, recycling and other matters over the course of the birthday weekend. She said that AM spoke rudely to her and a few other people helping out with the party. She objected to being spoken to in that way at which, she said, he shouted at her in front of his friends. HJ insisted that she spoke calmly and continued to help with the food.
76. HJ said that the following morning her brother spoke critically about the friends who had helped out and complained that someone had squashed a whisk. Without perhaps properly reading her brother's mood, she retorted that he was not recognising the huge effort they had made. She then said that AM became very angry and started shouting at her in the kitchen. HJ's three-year-old son became upset and began crying. She asked her brother to stop shouting and speak to her at a normal volume. AM was crying, shaking and shouting. He was complaining that HJ was disrespecting him in his own house. HJ accepted in cross-examination that she had said something cheeky at which one of AM's friends remarked that he would not let his sister speak to him like that.
77. HJ described her brother as very agitated and nearly hysterical. HJ said that she stayed calm and continued to clean the dishes with her back to her brother. One of her brother's friends tried to calm him but to no avail. Meanwhile, her sister-in-law took HJ's son away from the kitchen. Notwithstanding the argument, HJ attended church later that morning with AM's family and stayed for lunch.
78. HJ said that her brother was extremely insulting but accepts that he was "upset, embarrassed and hysterical." She explained that she was not unfamiliar with heated exchanges with her brother. She said that he seemed frustrated by his inability to upset her. He said that their relationship was over, to which HJ responded that she was happy to speak to him anytime. She added:

"I love him as my brother to this day. I am honest and brave enough to disagree with him but love him still."

79. On leaving, HJ said that she set about trying to get more family support for her sister-in-law and LM from the child's grandmothers. On 12 July, she had a Facebook exchange with LM's maternal grandmother that I deal with below. The following day, she texted her own mother relaying a conversation that she had had with a physiotherapist about LM. The physiotherapist was "very concerned" and HJ texted that she had passed on her advice to AM's wife who agreed that the child should see a paediatrician. HJ texted that she thought that her sister-in-law would respect the professional advice. She added:

"She now knows how serious this is and is beginning to work on [LM]'s physical and mental stimulation."

At this news, HJ's mother responded positively.

80. HJ's mother visited AM, his wife and LM in August 2017. She reported to HJ that she had frequently seen the child without a water bottle or any planned solid foods. The grandmother reported that LM was still unable to crawl or stand and that the little girl cried inordinately and slept more than she would have expected at 13 months.
81. HJ next saw LM when AM's wife visited her in late September 2017. She said that LM looked a little weak and underweight but that she was beginning to bottom shuffle slightly when put down. The grandmother reported that her daughter-in-law was still sporadic in her organisation of the baby's food.
82. Following her mother's visit to London in October 2017, she reported to HJ that a paediatrician had been unable to work out why LM could not stand or walk. The paediatrician had referred LM to a neurologist but her parents would not be taking her. HJ next saw LM and the child's mother in early December. HJ said that LM had made progress but that she still appeared underweight and was not walking, crawling or weight-bearing. Her legs still appeared to be extremely weak but she was beginning to bottom shuffle. On trips out, HJ was concerned that LM did not have a water bottle and that food was carried sporadically. AM's wife mentioned the neurological referral but said that they would not be taking LM.
83. On 4 January 2018, HJ was contacted by her mother who was concerned after seeing on a videocall that LM was still not gaining weight and seemed lethargic. The grandmother suggested that it was time to seek additional support. HJ said that she thought that she should first check for one final time whether her sister-in-law would take LM to see the neurologist. She sent a text that day but received no answer.
84. HJ was concerned that there might be some underlying health condition and that her brother and sister-in-law were not seeking appropriate medical advice. She added that her father was particularly concerned as to the possible consequences if LM fell seriously ill while any underlying health condition remained undiagnosed, the child remained underweight and not immunised and her parents failed to seek professional advice.

85. HJ explained how she and her parents concluded that AM and his wife were more likely to listen objectively to qualified professionals. On 5 January 2018, they drafted the referral letter. HJ then submitted it by email on 6 January 2018. A social worker contacted HJ on 12 January 2018 to acknowledge the referral and confirm that the health professionals were already aware of some of the concerns raised. HJ was then told that a health visitor was due to see LM the following week. Shortly after this, there was the following exchange between HJ and her mother:

“HJ: Please pray with me that [AM] and [AM’s wife] treat the Health Visitor with respect and allow her to come to the house the first time she requests to visit. I am bit concerned that they will not co-operate initially. That would make the situation worse for them.

HJ’s mother: Yes. We agree in Jesus name. Amen. Always praying for them.

HJ’s mother: I dreamt [LM] was walking. Amen.

HJ: Amen”

86. In May 2018, a social worker called HJ to explain that AM had not co-operated with the authority and that the case was being closed. HJ explained this in a text to her mother. There was then the following exchange:

“HJ’s mother: Ok. So long as they don’t take her away.

HJ: No. They will close the case and not do anymore!

HJ’s mother: Ok, it was worth the try for the sake of our conscience.”

87. HJ was asked in cross-examination about various later conversations with the social workers. Two exchanges were particularly important:

87.1 On 10 May 2018, she spoke to Lisa-Marie Alexander. She updated Ms Alexander that LM was now able to stand aided but still had no speech. HJ felt that the parents were in denial that their daughter had a disability. The child had a highchair and her eating had improved, but she remained a picky eater and her parents tended to remove food when they thought that she was playing with it. HJ described the events of the birthday weekend in July 2018 as horrendous and her brother as rude, arrogant, ignorant, obnoxious and a conspiracy theorist. His wife must be, she said, very submissive to be in a relationship with him. Asked whether the parents were seeking medical advice, HJ said that they had tried to get medication from a private paediatrician as LM had a cold and were upset when he refused. Challenged in cross-examination about her language in describing AM, she said that she was at that stage exasperated that AM had frustrated Lambeth’s enquiries.

87.2 On 10 January 2019, she spoke to Julia Barrett about the family meeting in the hotel, the fact that AM had received a copy of the referral email and his threat to sue her, Lambeth and the NHS. She updated Ms Barrett that LM was then on her feet and walking holding hands, although a physiotherapist friend had expressed concerns about the underdevelopment of her thighs. HJ reported

that no one could get through to her brother. She added that AM's wife doesn't stand up to him and believed that in the UK you only need to study for two years to become a doctor. The note records that HJ said that she had contacted AM's mother-in-law who agreed with her concerns and advised her daughter that LM probably had a disability and that they needed help. In cross-examination, HJ said that this was inaccurately recorded and that the conversation that she relayed had been between the two grandmothers. Ms Barrett asked whether AM had any mental health issues to which HJ replied that everyone asks that but, while she had her concerns, she was not aware of any diagnosis. The note recorded HJ saying that her brother was "domineering and controlling" while his wife was submissive. In cross-examination, HJ corrected the record and said that AM's wife had actually believed that one could train as a doctor within two weeks. She agreed that this was bizarre and that she had been astounded, but insisted it is what AM's wife had said. Further, she thought that her word had been "submissive" and that "domineering and controlling" was the social worker's language.

THE DEFENCE CASE

88. AM called a number of witnesses blind in that he did not have the benefit of witness statements. I cautioned him to consider carefully the wisdom of such course and pointed out that he would not be able to cross-examine his own witnesses unless he could demonstrate that any particular witness was hostile and he had the benefit of some earlier contradictory statement. Notwithstanding my warning, AM called his parents and his brother-in-law; witnesses who he might reasonably have anticipated would not support his case and without apparently having any potentially contradictory statements up his sleeve to support any application that he might have made to treat such witnesses as hostile. I gave AM considerable latitude in allowing substantial and wide-ranging examinations-in-chief but prevented him from cross-examining his own witnesses without properly laying the foundation for such course.

AM's mother

89. Given that AM's own case is that his mother was party to what he contends was a malicious referral, it was a particularly curious decision to call her to give evidence in his defence. She explained that she had concerns as to LM's health because of the child's failure to gain weight, her poor appetite, the parents' failure to feed age-appropriate solid foods, a lack of organisation in taking food and drink out on trips, the fact that she was not walking at an appropriate age and the weakness of her legs. She recalled the child often being tired. She was occasionally excited but mostly slept and cried. She was not, the grandmother explained, thriving. The word "gaunt" came from her. It had first been used by a friend who asked in June 2017 why the child looked gaunt. The grandmother remembered the conversation because she subsequently had to look up the word in a dictionary. She also mentioned the conversation to her husband who used the word "emaciated."
90. The grandmother tried to raise her concerns carefully with AM's wife by giving her advice from time to time in the course of friendly conversations. She saw the parents supplementing breastfed milk by feeding a little puréed food, rusks and some of their own food. She noted that the food was a bit too rough for a child of her age. She

advised the use of vitamin supplements to increase LM's appetite and the feeding of age-appropriate bottled foods and fruit juices. On a visit in the autumn of 2017, she noticed the feeding of prepared food in a tube and commented that her daughter-in-law appeared to be taking advice. She recalled her son insisting that they would only give foods with no preservatives. At that she responded that that was fine provided the child was fed sufficient food. She recalled her concern that insufficient water was offered to the child. Her daughter-in-law told her that LM didn't like water. She was trying to give water in an adult cup and so the grandmother recommended offering water in a baby bottle. The grandmother added that just because a baby doesn't take water, you don't just leave it but find other ways to offer water.

91. The grandmother also raised her concerns that LM sat in a chair for most of the time. Incidentally, she confirmed that she had seen a highchair when visiting AM's house. She recalled her daughter-in-law seeking to prevent her from putting the child on the grass and the parents having a problem with germs. The grandmother subscribed to the view that the parents belittled and were suspicious and derisive of health professionals. She cited, among other matters, their rejection of vaccinations, their view that health professionals did not know what they were doing and the failure to seek the recommended neurological assessment. Rather the parents took the view that LM would grow in her own time and was just lazy.
92. She confirmed that the concern about overprotective parenting came from her and insisted that sometimes children need to be left rather than the parents dropping everything as soon as they cry.
93. As an experienced mother of eight children and grandmother of ten, she considered that LM was not hitting the usual developmental milestones. She had particular experience of other children who had bottom shuffled but who had nevertheless walked by 10 months of age. AM sought to suggest that he and his seven siblings had been raised by maids in Nigeria. The suggestion was met by some amusement by his mother who said that she had not worked, that she had needed some additional help given the size of her family but that the children were not predominantly raised by "helps."
94. The grandmother recalled a conversation in a café when her daughter-in-law told her that LM was seen by a paediatrician who did not know what was wrong with her and recommended referral to a neurologist. The daughter-in-law then said that there was no point in going to the neurologist. She did not, however, remember any conversation about the daughter-in-law having taken LM to a private paediatrician because of a cold.
95. Asked about her relationship with AM, his mother recalled his saying that he felt that he wasn't liked. She responded that he teaches too much and that he is opinionated. She insisted that she did not reject her son, but simply rejected his wanting to teach her. He would put on videos for her to watch. She particularly mentioned an occasion in June 2017 when, she said, AM was "preaching" and trying

to “teach” her. She confirmed that the description of AM as eccentric came from her. She explained that she meant that he was set in his ways and refused to change course even when confronted by new evidence.

96. The mother described an argument that she had had with AM during a visit to London in February or March 2018. She had just returned from India and was very tired. She said that AM sought to make her watch video tapes that he then wanted to discuss. She resisted saying that she had come to spend time with AM’s family. AM was, she said, very angry and shouted and screamed at her. She phoned her husband who told her to leave and stay in a hotel. She said that her daughter-in-law had said to AM that if he stopped harassing his mum, she would stay. AM added that he would not book his mother’s hotel because it would then look as if he had made her leave. At that point in her evidence, AM’s mother broke down.
97. The grandmother absolutely rejected any suggestion that she was motivated to make the referral because of the state of her relationship with her son. She confirmed that the referral to Lambeth was her idea. She explained that she and her husband had discussed the matter. She had also spoken to a friend who reassured her that the local authority would seek to support LM and her family, rather than take her into care. She and her husband decided to make the referral because LM was still not gaining weight and they wanted her to have the benefit of a proper medical assessment. The grandmother concluded her evidence-in-chief by addressing her son directly:

“You should know my love for you. You don’t know how we think about you. [A] – we admire you; we love you. For the child – there was a problem. We didn’t mean any harm.”

AM’s father

98. AM also called his father to give evidence. The grandfather insisted that he considered his son to be intelligent but that he and his wife were, in his opinion, not making “good decisions” about their daughter’s care given her failure to reach developmental milestones. Asked whether HJ had communicated her concern about LM’s inability to crawl, he replied that it was a concern for everyone. LM’s legs were, he said, just hanging and she wasn’t using them at all. He was aware that children develop differently and had some experience of other babies bottom shuffling. He believed, however, that it was clear to everyone that LM was not well, that she was lethargic, slept a lot and was not given the opportunity to get on the floor. It was, he said, clear that the child needed to be referred to healthcare professionals, but her parents were not doing anything about it.
99. AM’s father saw less of LM than his wife. He saw her in October 2016 when she was only a few months old and over the course of a week in September 2017. He said that he raised his concerns in a telephone conversation with his son in September 2017 after the visit. In particular, he said that the little girl was not crawling or using her legs, that she was underweight and not eating well. He also asked whether LM had had her jabs at which his son explained that they were not

vaccinating her because she would be home-schooled. Nevertheless, the grandfather advised that LM should be vaccinated, pointing out that she would come into contact with other children through playschool. He also recalled another conversation in which he sought to persuade his son to get LM vaccinated but AM's focus was upon his ethical and religious objections to the way in which vaccines are manufactured. The grandfather said he did not know and was not interested in how vaccines were manufactured. He accepted that AM might have a legitimate concern but considered that his son was "taking his eye off the ball" as to what could happen if LM became ill. What was important, he insisted, was the health of the child.

100. AM's father was concerned that LM was not fed solid foods save for small pieces of bread. He considered her feeding to be irregular and too dependent upon breastfed milk. He said that he advised his son that they should feed age-appropriate prepared bottle food and that doing so would help them quantify how much food the child had taken. His son responded that they would not be feeding prepared bottle foods because of the preservatives.
101. AM asked his father whether he was aware that LM had been "very ill" at the time of the September visit, that he and his wife attributed her weight loss to such illness and that in consequence the child was mainly breastfed at that time. The grandfather did not recall anyone telling him of any acute illness. Of course, whether LM was thin, being mostly fed breastmilk and generally unwell because (as her grandfather feared) she was undernourished, under-stimulated and missing her developmental milestones or she was coincidentally suffering an acute illness at the time of the visit might well not have been apparent to him. The suggestion, however, that LM was very unwell, had lost weight and was being breastfed at the time of the visit would appear to support her grandfather's evidence as to his observations even if he was wrong as to the assumed cause.
102. AM's father said that there was no ill-will between him and his son. They enjoyed an excellent relationship, and he enjoyed his son's jokes. He agreed, however, with his daughter's observation that no one could get through to AM when it came to LM's care. AM, he said, was dismissive whenever anyone raised concerns about the child.
103. Shown a photograph of LM from July 2017, the grandfather agreed that she looked "reasonably OK." He recalled, however, a conversation with his wife after her return from a visit in June 2017 in which a friend had asked his wife what was wrong with LM before adding that she looked gaunt.
104. The grandfather said that HJ had not mentioned any dispute with her brother although his wife had mentioned in passing that they had fallen out. He attached no great importance to the news and commented that the siblings had often fallen out over the years only to come back together.
105. The grandfather said that the decision to contact Lambeth was made jointly by him and his wife. It was prompted by learning that AM and his wife did not intend to

follow the paediatrician's advice to seek a neurological opinion. He also recalled seeing LM during a FaceTime call in January 2018 and noting that she looked skinny. He observed that LM was AM's first child and that he and his wife tried to educate their son but couldn't get through to him.

106. Asked whether he had thought through the possible consequences of a referral to the local authority, the grandfather insisted that he had considered everything carefully. They were, he said, in a very difficult situation. The referral was made to get help for LM and her parents. He was concerned that if nothing was done and LM had come to harm, the situation would have been far more serious. It was not an easy decision to make. He explained that he was aware that social services would make every effort to engage with LM's parents in order to help with her care. He believed that in extreme cases where parents failed to co-operate and a child's life was in danger, the authority might seek the removal of a child.

HJ's husband

107. HJ's husband gave brief evidence. I refer to the relevant parts of his evidence below.

Andrea Prifti

108. Mr Prifti is AM's friend and former flatmate. He witnessed two arguments between AM and HJ over the birthday weekend. He said that the first argument happened when they were setting up the garden for the party. HJ spoke to AM "like a twelve-year-old kid that needed a mother." It irritated him and he said that he would not let his own sister speak to him in such a way. The second argument was the following day. He tried to intervene but was told off by HJ. He recalled that AM was loud and angry but not hysterical. HJ remained calm, kept her back to her brother and continued to attend to the washing up.

Sica Miscoi

109. Ms Miscoi has known AM's wife since they were both girls. She works as an emergency nanny and had no concerns about her friend's care of her daughter. She rejected any suggestion that her friend might believe that a doctor could be trained in two weeks. She was aware of arguments at the party between AM and HJ and recalled HJ saying that her brother was "bossy" and being critical of the parents' care for LM.

The mother-in-law

110. AM called his mother-in-law as a witness. She formerly worked as a physics teacher. She made plain her love and appreciation for AM. She said that AM and her daughter are the "sweetest" of people and that she had no concerns about their care for LM. In her witness statement, she denied any contact or relationship with HJ, or discussion with her save for sharing some photographs after her daughter's wedding in 2014 on Facebook. She knows AM's parents a little better, but again denied any direct contact.

111. The mother-in-law has a very close relationship with her daughter with whom she speaks daily. She always found her advice about LM's care to be accepted by her daughter.
112. In cross-examination, the mother-in-law was taken to the following Facebook exchange with HJ on 12 July 2017:
- “HJ: I have asked [AM's wife] to get a paediatrician ... to check [LM]. [LM]'s weight, legs and physical development are a concern. Please pray for good advice and treatment.
- Mother-in-law: Yes, I will pray for that! I saw her problemes (sic) with legs and the weight! I make for [her daughter] a program for food, Eating program! ...”
113. She responded that it was true that she was concerned about LM's weight at the time. Asked whether she was concerned that the child was disabled, she said that that would be an overstatement but that she did have concerns. She later undertook some research and her concerns were allayed. She explained in re-examination that she had forgotten this exchange with HJ. She confirmed that LM had been ill at the end of 2017.

AM

114. AM has a Masters Degree in Electronic Systems Level Integration and is employed as a professional engineer to design, develop and test electronic systems. He asserted that he does not have a very good relationship with his parents or the majority of his siblings because he has a “fundamentally different regard for truth.” He said that as a Christian of Nigerian parentage, he was raised to respect and obey his parents. While initially proud of his intelligence, as he grew older, his parents became increasingly resentful that he always had an answer to their arguments, that he was able to point out their factual and logical errors and that he did not seek or follow their advice. He said that his mother had a contempt for knowledge and would confuse her son's knowledge of ethics or philosophy for “worldly knowledge.” Meanwhile, he said that his father had a contempt for independent critical thinking. AM said that his parents, and particularly his mother, complained that he did not visit them often enough. He explained that this was because the visits always ended in arguments. He added:
- “My thinking was this: if they could not offer wisdom or good advice, if they were unwilling to treat me with the same respect with which they treated strangers, then I would cease engaging with them, since it generated such antagonism and resentment.”
- AM pointed out that his relationship with his parents was so bad that he chose not to tell them at the time about the referral despite it being “the greatest trial” of his life. By contrast, he immediately confided in his parents-in-law and sought their advice.

115. AM insisted that the referral was borne out of HJ's malice. He said that she was a malicious liar and a mad sociopath with "mental issues." She was the "maestro" and, in a reference to mafia fiction, he said that if you have misconduct you get rid of it, like the Corleones or the Sopranos. He said that his mother had lied maliciously and unashamedly about his daughter, just as she had on oath to the court. He added:

"God help her. What a mess. I don't mean to demean her."

His mother raised concerns because she "didn't know how much she didn't know." AM accepted, however, in cross-examination that HJ and his mother were not trying to get LM taken into care. His father, he said, is an intelligent man but a follower.

116. AM rejected each of the concerns expressed by his family. AM was a thin girl, but then he was once a thin little boy. She was late walking, but she was within the bounds of normal variation. Indeed, she was a bottom shuffler and such babies are known for walking a little later than others. She was properly fed, cared for and hydrated. She was stimulated playing on her playmat and through soft play, normal interaction with other children and trips out. Her presentation – and indeed weight - in late 2017 would have been affected by the fact that she was very ill at that time.

117. AM insisted that LM was taken to doctors and other medical professionals as necessary. He and his wife did not believe in vaccinating their daughter but that was a matter for them and there were good ethical reasons for their decision. AM insisted that he is the "boss" and that he makes the decisions to protect his family. Nevertheless, he agreed that they should consult a paediatrician because his wife was getting agitated and he wished to accommodate her concern. He said that the paediatrician was then "freaking out" as to what was wrong with the child and that he had to calm things down and assure the doctor that there was nothing wrong. The paediatrician advised that if the parents were still concerned, they could take LM to see a neurologist. At that, AM told me in his evidence that he hated to be right and that that would be the arrogance. It was, no doubt, an attempt at humour. He accepted that they were advised of a mild developmental delay but said that that was because LM was bottom shuffling rather than crawling.

118. AM and his wife did not approve of feeding processed bottled food, but LM absolutely was fed on solid foods as appropriate. She had toys, a mobile as a newborn baby, a playmat and a highchair; all of which were evidenced by receipts and photographic evidence.

119. Turning to the birthday weekend, AM recalled a few disagreements about the food and other matters over the weekend. He particularly recalled having spoken sharply to a friend who had ignored his instructions to keep cooked food away from the raw meat. At that, he said HJ screamed at him that he should not speak to the friend in that way. AM said that he asked her not to help any further with the food or party preparations and to go and enjoy the rest of the party. HJ raised her voice and objected to being told what to do.

120. AM said that he later heard his sister bad-mouthing him to some friends about the potatoes. AM recalled that he apologised to his guests for her behaviour. Plainly, AM felt very aggrieved by his sister's behaviour. He said:
- “I was unable to sleep that night because I was so upset and I tried to work out how to speak to her so as to elicit an apology which I could accept. I remember that I resolved that if she did not apologise, I would not invite her to any such event and would only ever meet with her privately so that she would not ever embarrass me in such a way again.”
121. The following morning, AM said HJ was lecturing him. He was still infuriated by her conduct the previous day and her failure to show any remorse. He said that he was also justifiably upset because one of the guests had broken his coffee machine and his sister was criticising the way in which he had spoken to his guests. She was, he maintained, misconducting herself. Her conduct caused him to want never to associate with her again and she needed to apologise immediately. At some point, AM said that he invited his friend, Andrea Prifti, to offer a view only for his sister to suggest that his view was not valid and that he should not speak. At this point he was crying and lost control. Indeed, he told Judge Collins Rice that he had never been so angry in his life. By contrast, he told the judge that his sister was stoic. He told me that he could also have used the word sociopathic.
122. AM warned his sister that, if she did not apologise, he would never see her again because she was “insane.” She replied that she was standing up for other people at which he mocked her and asked when she had become Spartacus leading a slave rebellion.
123. Asked whether, after the argument, HJ had insisted that they all attend church together, AM responded that it was “nonsense” since it was his church and his house. He stressed that it was he who had permitted HJ to attend church with his family. Equally when asked whether HJ had stayed for lunch, he was quick to say that he must have permitted that also.
124. In cross-examination, AM accepted that Lambeth were entitled to be concerned but insisted that his daughter had been very ill on two occasions when she was seen by his family. He said that the video evidence showed that, between her two illnesses, she was doing well and – for example – filmed eating macaroni cheese.
125. As to whether he belittles or is derisive of medical professionals, the transcript of an exchange between a social worker and AM shows him to have said that he was “far more competent to take care of [his] child than random strangers apparently casually catching a glance of [his] daughter and then making verbose and highly detailed medical assessments.” Pressed about that comment in cross-examination, he retorted that just because someone is a health professional did not make them Jesus. He added, rather strangely, that we all sin and that there are bad eggs in all professions.

126. Asked about a series of texts between HJ and her mother in 2017 and 2018 in which the two women appear earnestly to be discussing their concerns and prayers for LM and HJ's contact with LM's mother, AM described his sister as an ignorant and "entirely dangerous individual" who was manipulating his wife. This was, he asserted, her self-absorbed narcissism working itself out.
127. AM was very critical of Lambeth's social workers for seeking his wife's consent to contact the health visitor. He said that his wife is the immigrant, and he is the smart one. On 18 January 2018, he telephoned a health visitor. Her note of the call describes him as very angry. He demanded to know who had made the referral to Lambeth and that he be the main person that the professionals spoke to. In cross-examination, he insisted that he had remained cool throughout and he described the health visitor to whom he directed this barrage as "a psychopath of HJ proportions", a monster, a clown, dangerous and insane. He added that he needed to take the matter up with the police and her professional body.
128. Another transcript records AM telling a social worker:
- "I will not be giving permission to anyone to ... see my daughter or in fact have any discussion with my wife"
- Asked why his permission should be needed to speak to his wife, AM insisted that he adheres to the Christian view that a wife should obey her husband. Children, he explained, are under the mother, but the mother is under the father and the father under God. He added that he therefore expected his own father to keep family members in line.
129. AM accepted that he knew that Lambeth had deliberately redacted the file in order to protect the informant's identity. He pointed to an error in the redaction that would have exposed HJ's identity even without the need to undo the redaction. In any event, he explained that he had already defeated the council's attempts at redaction before writing his letter of 18 December 2018 in which he questioned whether the original referral had been made by a statutory organisation. This was, he explained, an attempt to "flunk" Lambeth into disclosing HJ's identity. He had already engaged lawyers and was intent on litigation.
130. AM was a curious witness. Just as in his correspondence, he tended throughout the trial to refer to himself in the third person. He was keen to tell me what he regarded as a really funny story about certain events in 2019. Later he told me that he was going to make a joke about something but restrained himself. At another point, and without any obvious reason, he simply howled causing me to remind him that he was in a court of law and to ask him to desist from such conduct. Further, he was as recounted above, strident in branding others as malicious liars, insane, psychopaths, sociopaths, monsters and clowns.

ANALYSIS

THE BIRTHDAY WEEKEND

131. While there are differences in the siblings' accounts of their arguments over LM's birthday weekend, that is to be expected when two protagonists recall the details of a blazing row. Each will tend to see the matter from his or her own perspective and accordingly alight on different points. I am driven, however, to the conclusion that both were essentially describing the same events. It is not, in my judgment, necessary or fruitful to make detailed findings of fact. There were, I find, trivial incidents over the course of the weekend that got blown massively out of proportion. AM was, no doubt, somewhat stressed in the way in which new parents often are in seeking to throw the perfect first birthday party for his beloved daughter. It was, he said, the largest gathering that he had ever hosted at his home. Shortly before the party, he had laid a new lawn, built a base for a new shed, erected the shed and put together some garden furniture. HJ in turn was perhaps somewhat disrespectful and insensitive to the efforts to which he had gone and to her brother's pride and sense of status as the self-proclaimed head of his household.
132. I accept AM's evidence that he was very upset and that he regarded the birthday weekend as the beginning of a deep rupture in his personal relationship with his sister. Thereafter the siblings were, so far as he was concerned, estranged. Equally, I accept HJ's evidence that while the argument had been unpleasant, she did not at the time take seriously her brother's insistence that their relationship was at an end. No doubt the fact that she joined her brother's family at church later that day and for lunch made her think that matters would soon blow over. She did not appear to ruminate about the matter. Such findings are, in my judgment, supported by the evidence of her husband and her parents. Her husband recalled his wife telling him about the argument but did not seem that interested in the details.

THE ISSUES RAISED IN THE REFERRAL

133. I turn then to consider the evidence in respect of the issues raised in the referral email. In doing so, I group the various concerns into six key areas:
- 133.1 Concerns as to the child's weight and nutrition:
- a) The central concern about the child's weight was shared by the aunt, both paternal grandparents and, at various times, by the child's own parents, her maternal grandmother and medical professionals. Poor appetite and or insufficient solid foods would be natural concerns given the child's failure to put on weight. There is, as described above, objective evidence before the court as to the child's weight that clearly supports the concerns expressed by the paternal grandparents and aunt.
 - b) Upon AM's own evidence, his family saw his daughter during two periods of acute illness when she was eating very little and mainly being breastfed. He attributed, perhaps correctly, those matters to acute illness, but the agreed position that the child was not hungry and largely fed breastmilk at that time supports the family's observations. Further, there is evidence that the family and health professionals sought to encourage AM and his wife to give the child more solid foods but that AM was not happy to feed processed bottle foods. That was a matter of

personal choice and I don't doubt that AM and his wife instead fed homecooked solid foods. Indeed, there are, unsurprisingly, photographs of LM eating solid foods in 2017. There was, however, an objective basis for concern upon the observations made by the family.

- c) Furthermore, both the aunt and paternal grandmother observed incidents when the child's mother had not taken food out with her to feed the child.

133.2 Concerns as to the child's hydration:

- a) The aunt's evidence that the child was not offered sufficient water was supported by the observations of the paternal grandparents. There are, of course, photographs of LM drinking juice and water; but such evidence cannot be a complete answer to the family's concerns.
- b) AM dismissed as ridiculous the assertion that his wife had decided to cease offering water and rightly pointed out that water is essential for life. The child was, however, being breastfed and water is the primary component of milk. It is of course not uncommon for babies to reject water when it is first offered as a poor substitute for their preferred milk. There is evidence that AM's wife explained that LM did not like water but that the aunt and grandparents were concerned that it should nevertheless continue to be offered.
- c) AM's mother clarified that the reference to frequent constipation came from something that she had been told by her daughter-in-law. The grandmother advised that hydration is important for good bowel movements.

133.3 Concerns as to the child's development:

- a) The concern that the child was significantly lagging behind her developmental milestones was shared by the aunt and both paternal grandparents. As I have already identified, such concern is supported by the health records.
- b) Indeed, AM's mother-in-law was herself instinctively concerned as to her granddaughter's development until she subsequently undertook some research. In any event, I note that HJ first raised her concerns about the child's development before any estrangement with her brother.
- c) The observations that the child appeared weak and was sleeping a lot are unsurprising given the concerns about the child's weight and development and AM's own evidence that she was very unwell when the family saw her.
- d) The report that the child was bottom shuffling is common ground. Indeed, AM was keen throughout the trial to seek to rely on medical literature about bottom shuffling.
- e) The report about the child's inability to walk or stand in the summer of 2017 is supported by the observations of the aunt and grandparents that she was not then using her legs and that she did not put weight through her legs when bounced on her grandmother's lap. As her grandfather put it, her legs were just hanging.

- f) The reference to paraplegia was emotive and a somewhat clumsy way of expressing the depth of the family's concerns.
- g) Having raised their concerns to little effect, the aunt and grandparents believed that AM and his wife were "in denial" about their daughter's developmental delay, weight and ill-health and simply considered her to be a lazy child. Indeed, AM not only cross-examined his sister on the express basis that he and his wife had told her that the child was lazy but repeated the assertion in his own evidence to me.

133.4 Concerns as to a lack of stimulation:

- a) The paternal grandparents and aunt each observed LM spending much of her time in a chair or on the couch and were concerned that she was not given enough stimulation or time on the floor. This might be in part because, as AM insisted in his evidence, they saw her on two occasions when she was not at all well.
- b) The aunt's evidence was that AM and his wife were concerned about whether the floor was clean enough. She said that she observed them only putting the child on a playmat for limited periods.
- c) The separate concern that the floor might not in fact have been clean enough came from the grandmother who, HJ explained, "likes the floor to be clean." The grandmother confirmed the point although this concern appears to have related to a particular visit when AM explained that he would not put LM on the floor because there had been a rodent in the house. He confirmed the incident in his evidence but insisted that it had been a mouse and not, as his mother said, a rat. I accept AM's evidence that it was a mouse and suspect that his mother was mistaken about thinking that he mentioned a rat. Such misunderstanding explains her concern.
- d) The report that the child was not allowed on to the grass is a reference to the aunt's observation at the time of the birthday party. It is supported by AM's own evidence although he explained that his concern was that there was some broken glass. More generally, the grandmother was not surprised to hear about this incident and observed that "germs were a problem for them."
- e) While not the most significant issue in the case, the aunt was concerned by the lack of toys provided to her niece and her brother's comment that they were a commercial gimmick. It might well be that AM and his wife provided more toys for their daughter than his sister realised. One can see both points of view. Toys can be educational, and no doubt childcare experts would advise that some toys are important to stimulate a young child's natural curiosity and to develop hand-eye coordination, fine motor skills and problem-solving. Equally many children have far more toys than they could possibly need.

133.5 Concerns as to style of parenting: The concern that the child was too readily picked up when she cried came from the paternal grandmother. It is not uncommon for different generations to disagree about whether a child should be immediately comforted when it cries or left to learn to self-soothe. Disagreement as to the style of parenting was not perhaps something that needed to be reported to the local authority. The grandmother was astute,

however, in her evidence to say that she was describing overprotective parenting and that she was not suggesting that AM and his wife were neglectful.

133.6 Concerns as to a failure to engage with professionals: There is clear evidence to support the concerns raised about belittling, being suspicious and derisive of and of failing to engage with healthcare professionals:

- a) AM displayed remarkable contempt for the expertise and professionalism of healthcare workers during his evidence to me. One health visitor was, he told me, a psychopath, a monster, a clown, dangerous and insane. As recounted above, he told me in evidence that just because someone is a health professional did not make them Jesus.
- b) Further, AM told a social worker that he was “far more competent to take care of [his] child than random strangers apparently casually catching a glance of [his] daughter and then making verbose and highly detailed medical assessments.”
- c) The aunt and grandparents said that they were particularly concerned that, as they understood matters, AM and his wife were not following the paediatrician’s advice to refer the child for neurological assessment.
- d) LM was not given the usual childhood immunisations. While AM is entitled to his view that vaccinations are not ethical and offend against his Christian faith, his parents and aunt are entitled profoundly to disagree and believe that his attitude was indicative of what they perceived to be a wider contempt for and distrust of medical professionals.
- e) The grandparents and aunt believed that this attitude to professional advice might be putting LM – who was not thriving in January 2018 – at risk. As the grandfather put it, they were concerned that AM was taking his eye off the ball.
- f) AM’s subsequent conduct in failing to allow his daughter to see a GP again since October 2017 is instructive. I accept that for some months AM was suspicious that the referral had been made by healthcare professionals. He has, however, known the truth of the matter since November 2018 and his assertion that he will not allow his child to attend the GP’s surgery again while her healthcare records remain contaminated by the referral is to put his own outrage at the events related in this judgment above his daughter’s health.

FINDINGS

134. AM is an intelligent, articulate and capable man and a loving father. He is a proud and self-assured man; indeed, he is justifiably proud of his intellect and of his educational and professional achievements. While somewhat eccentric in his presentation at trial, he was, I find, an honest witness who was entirely sincere in his account. He is, however, also arrogant, self-righteous and inclined to lecture those who he thinks need intellectual or spiritual guidance. He despises what he sees as his mother’s lack of intellectual curiosity and his family’s hypocrisy as Christians in vaccinating their children. Although not medically trained, he is inclined to think that he knows best about his family’s health rather than deferring to professional advice.

135. AM is a committed Christian who seeks to live his life in accordance with the teachings of Christ. He believes that his religion places the man at the head of the household and that while children answer to their mothers, wives answer to their husbands and men, in turn, answer to God. Such patriarchal outlook no doubt explains his insistence that the local authority should have sought his permission, and not his wife's permission, before speaking to health visitors, but it also explains why he took such great offence when his sister had the temerity to criticise his conduct in his own home, why he expected his brother-in-law to procure his sister's attendance at the family meeting in January 2019 and why he despises his father for not - as he would see it - standing up to and controlling two strong and independent women.
136. I absolutely accept that AM feels a very strong and genuine sense of grievance. In his mind, the argument with his sister in July 2017 was a major event that marked the end of their relationship. I accept that he does not understand how his sister might see things differently. Further, I entirely understand why he should take great exception to his family making such a report to the local authority. I accept that he genuinely believes that the referral was made maliciously by way of revenge for the events of the previous summer, that his mother has colluded with his sister and that his father is weak for having gone along with them.
137. While AM is genuine in such views, he is, in my judgment, wrong on each count. I unhesitatingly reject AM's allegations that his mother and sister acted maliciously or that they colluded in making a knowingly false referral to the local authority. Indeed, I find both women to be reliable and honest witnesses who have throughout been motivated by nothing other than love and sincere concern for the child's well-being. They have no doubt irritated AM by constantly offering their advice to him and his wife as new parents. They might be said to have been too interfering, but I am satisfied that they have acted throughout in what they genuinely saw as the little girl's best interests.
138. Far from being weak, AM's father is his own man who respects and does not seek to control the views of his own wife and daughter. Indeed, his evidence was all the more impressive for his refusal simply to support each and every matter reported to Lambeth. Instead, he explained his own observations and was astute to differentiate between what he observed for himself, what he was told by others and matters upon which he could not assist the court. The resulting referral was, I am satisfied, a joint document that pooled the collective observations and concerns of the child's paternal grandparents and aunt.
139. I am fortified in my conclusion by the contemporaneous health records:
- 139.1 First, the health records provide clear objective evidence of LM's weight. Such evidence is, in my judgment, more useful and more likely to be accurate than asking witnesses or the court to look at individual photographs or video clips in order to assess whether the child did or did not look gaunt. While LM's weight was at or around the 50th centile during her first few weeks of life, the

records show that her weight fell to the 9th centile by 9 months and to the 2nd centile by 18 months. This evidence suggests a long-term and worsening issue with the child's weight. Indeed, the records suggest that at the time of the grandmother's visit in June 2017 and the aunt's visit over the birthday weekend that it is likely that LM was significantly under the normal weight for an eleven-month-old and one-year-old girl respectively. More precisely it can be said that, at the time of the referral, LM weighed less than 98% of girls of her age. This is not of itself evidence of neglect or illness, but it plainly provides a substantial objective basis for the observations made by the aunt and the grandparents as to the little girl's weight and their associated concerns as to her health and nutrition. Indeed, from these records, it was a concern that was shared by the child's own mother and by healthcare professionals.

139.2 Secondly, the health records provide significant objective support for the observations made by the aunt and the grandparents as to LM's inability to walk by January 2018. All children of course develop at a different pace. A failure to walk unaided by 18 months is unusual but not unheard of. Indeed, the document produced by AM from an NHS Trust describes most bottom shuffling babies as "late walkers" who start walking at anything from 18-24 months of age. Again, being a late walker does not establish neglect or any serious underlying health condition, but one can understand well-meaning relatives becoming concerned by a failure to walk by 18 months taken together with the evidence of a failure to gain weight and agreed evidence that LM was not well. Indeed, these were again concerns that were at one time voiced by the child's parents and evidently shared by health professionals.

139.3 AM sought to undermine the findings recorded on 4 January 2018 by explaining the circumstances of the health visitor's assessment. He was not, however, present on that day and chose not to call his wife to give evidence about such matters. There is, in my judgment, no reason to go behind the health visitor's clinical note which, in any event, accords with the other evidence before the court.

139.4 It is also telling that when, on 9 January 2018, a social worker from Lambeth phoned a health visitor to discuss the matters raised in the anonymous referral, she responded that "some of these concerns were also noted" in the recent clinical contact.

140. Unpleasant though the row in July 2017 was, I do not accept that HJ was motivated by malice arising from the argument when six months later she made the referral to Lambeth. Indeed, I find that the referral was not made maliciously but was a well-intentioned cry for help motivated by love for AM and his little daughter, a deep concern for the girl's welfare and a hope that professional social workers might be able to succeed where the grandparents and aunt believed that they had failed.

CONCLUSIONS

141. Accordingly, I reject the public interest defence and find that AM breached the duty of confidence owed to Lambeth by:

141.1 removing the redactions from the documents disclosed by Lambeth and examining the unredacted file in circumstances where he knew that he was not entitled to do so;

141.2 retaining an unredacted copy of the file and refusing to return or destroy the information as to HJ's identity as Lambeth's informant; and

141.3 using such information to write a pre-action letter to HJ threatening proceedings for alleged defamation and other torts.

Further, I find that AM wrongfully threatens further to breach the duty of confidence by bringing proceedings against HJ in reliance on the information as to her identity as the council's informant.

142. Lambeth is therefore entitled to final injunctive relief. I will hear counsel and AM as to the terms of such relief and any other consequential matters upon handing down judgment.