



Tribunals Service
Care Standards

JW

-v-

The Secretary of State for Children Schools and Families

Application No. [2009] 1569.PC

JW

-v-

The Secretary of State for Health

Application No. [2009] 1570.PVA

Before:

**Tribunal Judge John Reddish
Specialist Member Jennifer Cross
Specialist Member Jennifer Lowcock**

Hearing dates: 26 and 27 April 2010; 10 and 29 June 2010

Application

On 7 July 2009 the Applicant appealed under section 4(1)(a) of the Protection of Children Act 1999 against the decision of the Secretary of State for Children, Schools and Families to include him in the list kept under section 1 of the Protection of Children Act 1999 (the "POCA" list) and also appealed under section 86(1) of the Care Standards Act 2000 against the decision of the Secretary of State for Health to include him in the list kept under section 81 of the 2000 Act (the "POVA" list).

Representation

At the hearing Miss Sarah-Jane Davies of Counsel, instructed by Ms Shamini Grayson of the Treasury Solicitors, represented the Respondent Secretaries of State. The Applicant represented himself.

The evidence

The Tribunal heard oral evidence on behalf of the Secretaries of State from:
A (a girl who was, at the material time, aged 14 and is now aged 21)
Mrs W (A's mother)
Mr G (A's boyfriend)
B (A's younger sister)
Detective Sergeant Orjan Merrygold
Professor David Middleton

The Tribunal heard oral evidence on behalf of the Applicant from:
the Applicant himself and his fiancée, Ms NK

The Tribunal also received written evidence on behalf of the Applicant from:
Mr and Mrs T;
Mr SB;
Mrs SG;
Ms GR;
Mr and Mrs DG; and
Ms LA.

The Tribunal also read the documents submitted by the parties comprised in three files. These included:
the Notice of and Response to the Appeal;
the witness statement of A;
summaries of two video-taped interviews with A conducted in 2004;
the witness statement of Mrs W and the exhibited witness statement made by her in 2004;
the witness statement of DS Merrygold and the various documents and calculations exhibited thereto;
the witness statement of the Applicant and his statement made for the purposes of a hearing in the Employment Tribunal in 2005 exhibited thereto;
the written representations made by the Applicant to the Secretary of State for Education and Skills in October 2005;
the minutes of the Disciplinary Commission hearing held by the Football Association in 2007;
the Report of a Child Protection Enquiry dated 29 December 2004 (and amended in March 2005) and the schedule of alleged inaccuracies in that Report prepared by the Applicant;
the Case Summary prepared by DS Merrygold and the schedule of alleged inaccuracies in that Summary prepared by the Applicant;
various analyses prepared by the Applicant for earlier hearings;
a schedule of text messages alleged to have passed between Mr G and Ms NK in September 2004;
several chronologies prepared by the Applicant for earlier hearings;
the report made by the Applicant's former employer to the Secretary of State for Education and Skills in 2005;
transcripts of the Applicant's interviews by police officers in March and May 2004;
a photocopy of part of A's diary;
records of the calls made and text messages sent by the Applicant using the mobile telephone made available to him by his employer in 2003 and 2004;
the minutes of the investigation interview held by the Applicant's employer on 7 December 2004;
the Applicant's dismissal letter dated 24 January 2005;
the written decision of the County Council Appeals Committee dated 31 March 2005;
correspondence between the Applicant and the Department for Education and Skills in 2005;

correspondence between the Applicant and the Department for Children, Schools and Families in 2008;
correspondence between the Football Association and the Department for Children, Schools and Families in 2005, 2007, 2008 and 2009;
the report of Professor David Middleton dated 20 November 2008;
the representations made by the Applicant to the Secretaries of State in 2009;
and
the minutes of several Child Protection Strategy Group meetings held between February 2004 and September 2004.

Preliminary matters

1. On 16 December 2009 Tribunal Judge Maureen Roberts made an order, pursuant to Rule 14(1) of the Tribunal Procedure (First-tier Tribunal) (Health, Education & Social Care Chamber) Rules 2008, prohibiting the disclosure of any matter likely to lead members of the public to identify the Applicant or any child in the proceedings. The Tribunal decided to extend that order indefinitely.
2. At the commencement of the hearing the Applicant applied for an order barring the Respondents from taking further part in the proceedings on the ground that the case put forward by the Respondents was exactly the same as the case considered by the Secretary of State for Education and Skills in October 2005, when she decided that she would not take any further action under section 142 of the Education Act 2002 and would not place the Applicant's name on "List 99" and thus bar his employment as a teacher or worker with children and young persons. The Applicant argued that he was wrongly placed in "double jeopardy" for the same alleged offence.
3. On behalf of the Respondents, Miss Davies submitted that (i) there was nothing unlawful, unreasonable or contrary to the rule against double jeopardy in the course of events which led to the Applicant's name being placed upon the POCA and POVA lists; (ii) the rule against double jeopardy is a common law rule applicable only to criminal proceedings; (iii) the protection of the public must take priority over the principle of double jeopardy in a situation such as this; (iv) the Respondents were not constrained by the earlier decision, either by the principle of estoppel or by the doctrine of reasonable expectation, to reach the same conclusion: and (v) this was a new referral under a different regime which required and received separate consideration by the Respondents.
4. The Tribunal decided not to make an order barring the Respondents from taking further part in the proceedings, holding that:
 - (a) the Applicant was "listed" in 2009 under a different statutory regime;
 - (b) the "double jeopardy" principle has no application since this is not a matter involving criminal charges;
 - (c) the Respondents were not estopped by the earlier decision of the Secretary of State for Education and Skills, since estoppel is not a principle which may properly be applied to a Minister exercising statutory powers for the protection of the public and, in any event,

- the Applicant could not show that he suffered any detriment as a consequence of the earlier decision;
- (d) the decision of the Secretary of State for Education and Skills was not such as to give rise to the reasonable expectation that no different decision would ever to be taken by other Secretaries of State following another referral; and
 - (e) while consistency is to be preferred, it is not required by the different statutory regimes.

Facts

The material facts found by the Tribunal are as follows:

5. The Applicant was born in the Netherlands in November 1954 and is now 55 years old. As a young man, the Applicant played football as a goalkeeper for a well-known Dutch team. He also qualified as a football referee and coach.
6. After completing his compulsory military service in 1977, the Applicant trained as a teacher, specialising in Physical Education and Physics. In 1980 he was appointed as a science teacher in a secondary school in the Netherlands and worked there until 1986. He then worked for four years as a computer salesman and as a director of an office supplies company in the Netherlands.
7. In 1977 the Applicant married. There were three children of the marriage. The Applicant and his wife separated in 1985 and were subsequently divorced. This involved “some bitterness” and the Applicant encountered difficulties in maintaining contact with his children, who remained living with their mother.
8. In or about 1989 the Applicant married for a second time. In 1990 he and his wife decided to make a fresh start in England, where a cousin of the Applicant had settled successfully. The Applicant applied for jobs as a teacher in England and was appointed to a post as a science teacher in a school in Essex.
9. The Applicant’s second marriage was not successful and ended in divorce soon after the move to England, when the Applicant’s wife formed an adulterous association with his cousin.
10. The Applicant remained in his teaching post and, in 1996, he met and formed a relationship with Ms LA, who was born in December 1978 and was therefore 17 years old.
11. In 1997 the Applicant (then aged 42) was appointed as the Head of Science at a school in the north west of England. The Applicant moved there with Ms LA, then aged 18.

12. On 1 April 2002, the Applicant took up an appointment as a Science Consultant in the Advisory Teaching Service of another County Education Authority.
13. In June 2002 Ms LA, then 23 years old and an experienced footballer, joined the Ladies' Football Club situated near the home to which she had moved with the Applicant. The Applicant attended training sessions and trial matches at the Club with Ms LA and was introduced to the officers of the Club. In July or August 2002 the Applicant was appointed as a goalkeeping coach at the Club. In that capacity he met B (then aged 11), who was playing as a goalkeeper for one of the Club's junior teams. The Applicant made enquiries about her background. He discovered that B and her older sister, A (then aged 13) lived locally with their single mother, Mrs W.
14. In December 2002 the Applicant's relationship with Ms LA broke down when she decided that her sexual preferences lay elsewhere. However, the Applicant and Ms LA continued to live separately under the same roof until July 2004.
15. On 5 April 2003 the Applicant held a party at his home. He issued an open invitation to all of the members of the Ladies' Football Club's first and reserve teams to attend. The party passed off without any significant incident, though three members of the reserve team who were under 18 did drink alcohol and misbehaved in a way which Ms NK and other members of the first team found unacceptable. Mrs W and her daughters did not attend the party.
16. The Applicant responded to approaches made to him by Mrs W and he befriended her and her daughters. Mrs W was, as she put it, "romantically interested" in the Applicant and she encouraged him to visit her home and to take part in recreational activities with her and her daughters. She perceived that the Applicant had established a good relationship with her daughters and was "a father figure" for them. Despite Mrs W's best endeavours, there was no sexual relationship between the Applicant and Mrs W but, for several months in 2003, they spent much time together. Mrs W made it "quite clear" to the Applicant that she "liked him" and, on occasions, he was affectionate towards her. The Applicant also spent time with A and B, helping them with their homework and discussing with them, in a reassuring manner, the problems that they were facing, both at school and at home.
17. In 2003 Mrs W and her daughters each had the use of a mobile telephone. They all used them frequently to send and receive text messages.
18. On 24 May 2003 the Applicant held another party at his home, following the Ladies' Football Club's annual "Presentation Night". More than 40 people attended the party, including several female players under the age of 18 and two under the age of 16. Many of the guests (including the two 15-year old girls) were already intoxicated by their consumption of alcohol at the earlier presentation of awards. The guests played "drinking games" involving the consumption of substantial quantities of alcohol. Several of those who

attended the party stayed overnight by prior arrangement, including the two young girls.

19. On 4 June 2003 one of the Applicant's managers at work "flagged up" her concern over the Applicant's "organisation" during the recent past. She reported that the Applicant knew that he had "let things slip" and said that there was no need for immediate action but she would be closely monitoring aspects of the Applicant's work.

20. During the month of June 2003 the Applicant sent a total of 758 text messages to A. This total (which derives from the records kept by the telephone company) represents an overstatement of the actual number of communications, since messages in excess of a certain length are transmitted successively and counted as more than one. A substantial proportion of the total number of text messages were sent to A's telephone between the hours of 10 p.m. and 6.a.m. During the month, the Applicant sent 235 text messages to A's telephone between the hours of 10 p.m. and 6.a.m. on nights when she would have been attending school on the next day. During the same month the Applicant also sent 402 text messages to Mrs W and 292 text messages to Ms NK.

21. In some of his text messages to A the Applicant introduced the notion that his relationship with her was "special" and that they should meet without others being present. According to the Applicant, many of the text messages he received from A, to which he responded immediately, were concerned with her unhappiness at home; her wish to leave home as soon as possible and the possibility that she might harm herself.

22. On Friday 27 June 2003 the Applicant sent the last of a series of 16 text messages to A at 11.50 a.m. Thereafter, he sent no text messages to A until 6.04 p.m. on Saturday 28 June 2003. On 27 June the Applicant also sent three text messages to Ms LA (who was still living in his home) between 5.22 p.m. and 6.11 p.m.

23. On Friday 27 June 2003 the Applicant met A after school and eventually took her to his home in his car after delaying in a local park, waiting for Ms LA to leave the property. A had previously told her mother that she would be staying overnight with a named friend. The Applicant and A had a meal, listened to music and had conversation about a variety of matters, including A's performance at school and her diabetic condition. Thereafter, the Applicant took A to his bed and, with her full co-operation, had extended sexual relations with her, including full intercourse.

24. On the morning of 28 June 2003 the Applicant took some photographs of A in a state of undress before providing her with breakfast and taking her in his car to a shopping centre near her home.

25. On the afternoon of 28 June 2003 A attended the summer fete at the primary school that she had attended and at which her mother was employed

as a teaching assistant, to take part in a dance routine. The Applicant also attended the fete.

26. The Applicant sent no text messages at all between 6.11 p.m. on Friday 27 June 2003 and 12.40 p.m. on Saturday 28 June 2003. Between 6.04 p.m. on Saturday 28 June 2003 and 2.26 a.m. on Sunday 29 June 2003 the Applicant sent 44 or 45 text messages to A.

27. On a date in 2003 which she is now unable to recall (because she omitted the month from the entry that she made in her diary [*viz* "6/ /03"]), A recorded in writing that her life was "gr8 [great]" but, at the same time, it was "a complete mess". She was "in love" but the "situation" was "so bad". A set down in her diary an account of the occasion when she had had sexual intercourse with the Applicant. She said that they had "not had sex again" because she had been menstruating but they had "snogged and touched" in her room and it had been "gr8 and real intense". A said: "We text loads, it is love". She noted that it was "a mess" because her mother loved the Applicant but he loved her [A]. He wanted her not her mother. A concluded that it [her relationship with the Applicant] sounded "dogey [dodgy]" but it was not.

28. In late July and early August 2003 the Applicant travelled to Australia for 12 days in connection with his employment. Shortly before his departure, the Applicant and Mrs W had a minor disagreement following which the Applicant told Mrs W that he "needed some space". He perceived that Mrs W wanted him to become "her next partner" but he was not happy to be drawn into a close relationship of that kind with her. He was also conducting a romantic association with Ms NK, who was then 18 years old. That association had commenced in May 2003 and had developed slowly.

29. After his return from Australia, the Applicant reduced the number of visits he made to Mrs W's home; told Mrs W that he wished only to be "good friends" with her and pursued his romantic association with Ms NK. Mrs W was shocked and distressed by this turn of events but she retained her interest in the Applicant and continued to see him from time to time. During September 2003 the Applicant and Mrs W were engaged in the preparation of a brochure for the Ladies' Football Club and worked on that project together. They remained on friendly terms but their friendship was, in the Applicant's words, "phasing out".

30. In October 2003 Mrs W and her daughters confronted the Applicant and Ms NK in the car park of a public house. There is a dispute as to how and why this occurred. The Applicant says that Mrs W and her daughters followed him and tried to sabotage his car as part of an obsessive "spying and stalking" exercise. Mrs W says that the meeting happened by chance. She agrees that, on one occasion, A (not B, as the Applicant alleged) did try to disable the Applicant's car by inserting a bottle into the tail pipe of the exhaust system.

31. On 22 October 2003 the Applicant received a warning from his employer that hoped for improvements in his work had not been realised and

that his performance might have to become subject to the County Council's Work Performance Monitoring Procedures.

32. On 28 November 2003 the Applicant held a birthday party at his home. As before, he issued a general invitation to the members of the Ladies' Football Club's first and reserve teams to attend, save that he told the three players who were minors and had behaved badly at the previous parties that they should not attend. These players pleaded with him to be allowed to join in the social activities with the other members of their team. The Applicant relented and agreed that the girls could attend but insisted that they should not drink alcohol and that their team manager, Mr K should take responsibility for their supervision during the evening.

33. Mrs W attended the Applicant's birthday party, though she had not been invited. She had by this time become aware of the content of a text message that the Applicant had sent to A. She confronted the Applicant at the party and asked him to explain why he had sent: "it is 3 in the morning: just woke up and I have been dreaming about you", or words to a like effect, to her daughter. The Applicant explained that the text had been intended for Ms NK but had been sent by accident to A. Mrs W accepted this explanation. However, her relationship with the Applicant "stopped all together" at this point, though they continued to exchange greetings if they met at the Football Club or elsewhere. The Applicant agrees that he had no further relations with Mrs W after 28 November 2003 but says that Mrs W kept harassing him and that she spread gossip about him on internet chat rooms and elsewhere. She did so because she had "not moved on".

34. At the Applicant's birthday party the female footballers played "drinking games" as before. Two of the girls under the age of 18 consumed alcohol. Some of that consumption was achieved surreptitiously by them. They took alcohol intended for other guests and mixed it with the soft drinks that they were ostensibly consuming. The girls stayed overnight and became involved in indecent activities with Mr K.

35. By December 2003 the Applicant had incurred charges for his private use of the mobile telephone supplied to him by his employer amounting to £966.41, which he had failed to pay. On 19 December 2003 the Applicant's manager instructed him not to make any further personal use of the mobile telephone. The Applicant disregarded this instruction and continued to use the mobile telephone to make personal calls and to send personal text messages during January and February 2004. The Applicant subsequently admitted this but said that he used the telephone only on a few occasions while he was arranging to have a second mobile telephone of his own.

36. The Applicant encountered financial difficulties at the end of 2003 because of his reckless spending. This included giving money to A to "top up" her mobile telephone account. She was thus able to send text messages to the Applicant in broadly the same quantities as he sent them to her.

37. In December 2003 rumours began to circulate about indecent conduct by a member of the coaching staff of the Ladies' Football Club with young players. The Applicant "found himself in the middle" of these rumours in that several people thought that they concerned him, though they actually related to Mr K.

38. On 21 December 2003 the Applicant sent A a birthday card in which he said that he would buy her two tickets to a concert of her choice as a birthday present. In January 2004 the Applicant attended A's 15th birthday party which was held at a local ice rink. This caused no apparent difficulties.

39. In January 2004 A, then aged 15, commenced a relationship with Mr G., then aged 23. Mrs W disapproved of the relationship. The Applicant alleges that Mrs W told Mr G that she would not report him to the police for having unlawful sexual intercourse with her daughter provided that he co-operated with her in constructing a false case against the Applicant. Mrs W denies this allegation. Mr G says that he was never subjected to such threats.

40. On 8 January 2004 the Applicant had a meeting with his line manager. The Applicant explained that his personal financial circumstances had made it difficult for him to concentrate on his work. However, he was working with National Debt Line "to manage the situation" and things were "much more under control". The Applicant's manager raised the question of the unpaid telephone bill. The Applicant said that he had acquired a mobile telephone of his own and was no longer using the mobile supplied to him by the County Council for personal calls. This was strictly true but misleading. The records show that the Applicant continued to use that mobile telephone to send personal text messages throughout January 2004 and much of February 2004.

41. On 5 February 2004 the Chairman of the Football Club informed all of the parents of young players, by letter, that one of the club coaches had been removed from the club because he had "abused his position" and "betrayed the trust placed in him". The coach, Mr K, had been accused of indecently assaulting two young, female players. One of those players had recorded details of her sexual relationship with Mr K in her diary.

42. On 24 February 2004 a Strategy Group consisting of the local authority's Child Protection and Review Manager, Ms Sue Nash; Detective Constable Merrygold and Sergeant Myers (both police officers with the Police Family Unit) and the local authority's Sports Development Manager, Mr Mundy, convened to consider allegations, made anonymously to the NSPCC, that Mr K, formerly a coach at the Ladies' Football Club and a local authority employee since November 2003, had had sexual relationships with three girls, two of whom were under 16 and further allegations that "a Dutch man who was involved with the Club" had also "been involved in having sex with girls". Mr Merrygold reported that he had identified the Applicant as "the Dutch man". He had discovered nothing sinister about him, save that he had "an 18 year old girlfriend". Mr Merrygold also reported that Mr K had been involved in "a breach of trust" and had been dealt with by the officers of the Ladies' Football

Club. The Chairman of the Club had said that he was satisfied that no girls under 16 had been involved in “things of a sexual nature” but such “things” had taken place consensually with at least one girl aged 16. Mr Mundy said that the local authority had, at first, been satisfied that, since the girls were over 16, this was not a matter for them. However, on 17 February 2004 they had received a formal complaint from the parents of a 16-year old girl who had claimed that Mr K had had sexual relations with their daughter and also with her 15-year old friend, after plying them with alcohol. Mr K had been suspended from work. When interviewed, he had described parties organised for members of the Ladies’ Football Club at private houses, involving alcohol and “unsuitable sleeping arrangements”. Mr K had also said that he had been threatened by the parents of the 16-year old girl in question and that they had a history of violence. The Strategy Group decided that there were grounds to initiate a Child Protection Enquiry; that the Social Services should be asked to allocate a social worker to interview the identified girls; that the Football Association should be informed that there was to be an enquiry and that the Ladies’ Football Club and Mr K should also be informed that there was to be an enquiry but given no further details.

43. On a date which she is now unable to specify, B found and read the entry in her sister’s diary in which A described her sexual relations with the Applicant. B told A that she must tell her mother what had happened but A refused.

44. On the evening of 1 March 2004 A became distressed and tearful. She declined to tell her mother why she was upset. Mrs W then summoned Mr G, with whom A had continued her association, and asked him to assist by discovering the source of her daughter’s distress. Mr G took A out of the house for a walk. A then disclosed to Mr G that she had had sexual intercourse with the Applicant in June 2003 and had been placed under pressure by her sister to reveal that fact to their mother but she felt unable to do that. A and Mr G then returned to the house and Mr G related what he had been told. Mrs W was “completely shell shocked” and angry. On the following day, she sought advice from friends and reported the matter to the police.

45. When Mr Merrygold received the report from Mrs W that her daughter had had sexual intercourse with the Applicant, he was already engaged in the investigation of the allegations of sexual impropriety made against Mr K and had already identified the Applicant as someone against whom allegations had been made. He subsequently formed the view that the two cases, though similar, were not connected, save that the two juvenile victims of indecent assault by Mr K had apparently attended a party held by the Applicant where they had engaged in “alcohol fuelled drinking games”.

46. On 3 March 2004 Mr Merrygold and a social worker, Ms Susan Wade interviewed A, with the consent of her mother. A explained that the Applicant was “a family friend” and her sister’s goalkeeping coach, whom she had known since early 2003. She said that had met the Applicant by arrangement after school and had gone to a park to wait for his “housemate” to leave.

They had then gone to the Applicant's house and, after having something to eat and listening to some music, she had slept with the Applicant. She clarified that she had "had sex" with him in his room. She could not recall the conversation that had led to intercourse. She said that the overnight stay was planned in advance "by text" and that they had had sex "two or three times" and that she had masturbated him. She was not sure whether he had masturbated her. A said that she was unable to recall "whether the subject of sex was mentioned beforehand" and could not remember what was said afterwards. She confirmed that that was the first time that she had had sexual intercourse and that she had not been injured or hurt during the activity. Finally, A mentioned that, after 27 June 2003, she had continued having contact with the Applicant by text message and face to face. They did not have sex again but they may have kissed. She could not remember.

47. Mr Merrygold felt that he had no reason to doubt the veracity of A's account. Following the interview she was very emotional and cried while being comforted by her mother.

48. On 4 March 2004, the Strategy Group reconvened. Ms Nash, Mr Merrygold and Mr Mundy attended together with Detective Sergeant Hunt of the Police Family Unit; Ms Wade and Ms Duncanson, a Social Services' Team Manager. Mr Merrygold reported upon his investigation of Mr K's activities and his reading of a diary kept jointly by his alleged victims. The Group decided that Mr Merrygold and Ms Wade should continue with their enquiry into Mr K's activities. They then turned their attention to the allegations made by A against the Applicant. Mr Merrygold related the background information he had obtained from Mrs W and said that the Applicant would be arrested "as soon as possible". The Group confirmed that the Applicant should be arrested and decided that his computer equipment should be "scrutinised"; that his employer should be informed; that a letter should be sent to the families of children involved with the Football Club and that support should be provided for any young person who required it.

49. On 5 March 2004 Mr Merrygold arrested the Applicant at his home on suspicion of indecently assaulting A. Other officers took the Applicant to the police station while Mr Merrygold searched the Applicant's house and seized two mobile telephones and a laptop computer.

50. On two occasions during the afternoon of 5 March 2004 Mr Merrygold interviewed the Applicant, in the presence of his solicitor. During the first interview, the Applicant explained how he had become involved with the Ladies' Football Club and how he had developed a "strong friendly relationship" with Mrs W and had become "nearly a father figure in the family". He agreed that A had been to his house "but never on her own". He denied that he had ever had sexual intercourse with A and that his texts to A had ever been "of a sexual nature". He said that he had stopped "texting with the girls" towards the end of July 2003, just before he went to Australia. He explained that Mrs W wanted him to be her next partner but he only wanted to be "good friends". He stopped going to Mrs W's house after the incident in October 2003, when he was "spied on" when with Ms NK. When specifically

confronted with the allegation made by A, the Applicant said that it was “an awful allegation” and that “it didn’t happen”. He could not understand why somebody would maliciously make up something like that. He felt that he had been placed “in the middle of all this by the very active gossip circuit”, of which Mrs W was a part.

51. During the second interview the Applicant told Mr Merrygold that the written account apparently given by A was false and that “what was written in the diary ... never happened”. He suggested that A was easily influenced. He explained that he was not attracted to Mrs W. He also explained how he had formed a “stronger bond” with A than with B, who was “a bit embarrassed” by the presence of her goalkeeping coach in her home. The Applicant also said that he had offered to buy concert tickets for A on her 15th birthday because he had previously bought a fairly expensive gift for her sister and because he was sorry that he had had to be abroad (attending his parents’ 50th wedding anniversary) on her actual birthday. He said that Mrs W was “a really obsessed woman” and repeated that he had never had sex or behaved inappropriately with her daughter.

52. On 8 March 2004 the Applicant was suspended from his post as a Science Consultant “to allow a thorough investigation under the Council’s disciplinary procedure into the allegations ... that could amount to gross misconduct”.

53. On 13 March 2004 the Applicant was formally suspended by the Ladies’ Football Club and prohibited from attending matches, training sessions and club functions.

54. On 16 March 2004 details of the Applicant’s arrest and of the allegations made against him were published on the front page of a local newspaper.

55. On 19 March 2004 the Strategy Group held a further meeting, attended by Ms Nash, Mr Merrygold, Mr Mundy, Ms Wade, Ms Lincoln (an Investigation and Referral Support Officer) and the Applicant’s line manager at the County Council. Mr Merrygold reported on his investigation. He said that the Applicant was “flippant in his response in interview, portraying women as throwing themselves at him and becoming upset when he told them where to go”. The Applicant had acknowledged that was attracted to young women and had spoken of not liking Mrs W “because she was older”. Ms NK was “very young looking” and had been only 17 when she first met the Applicant. The Applicant had presented as “genuine, articulate and intelligent, wanting to control the interview”. He had accepted that there had been parties at his home but had denied plying any of the girls with drink and having had relationships with any other girls apart from Ms NK. The Applicant’s line manager gave the meeting details of the Applicant’s employment and described a minor difficulty when another employee had expressed concern that the Applicant was “paying her too much attention”. He described the Applicant’s manner when suspended as “arrogant” and “trying to control the situation”. Mr Merrygold and Ms Wade gave the meeting details of the

information obtained from several girls and their parents about the parties they had attended. One girl had mentioned being given whisky by the Applicant at one of five “unofficial parties” at his home. The Group agreed that Mr Merrygold and Ms Wade should arrange to interview other identified young girls and that the Football Association should be invited to suspend the Applicant and Mr K from coaching activities.

56. On 19 March 2004 the Football Association suspended the Applicant from any football activity involving children under the age of 18, subject to ratification by a Disciplinary Commission on 15 April 2004.

57. On 2 April 2004 the Strategy Group received a further report from Mr Merrygold. He said that there were no indications that Mr K and the Applicant were “working together to acquire girls”, although “the gossip around the club was that the only way for girls to get ahead was to sleep with coaches”. The parties at the Applicant’s home were attended mainly by adult women and there was “no suggestion of overt sexual activity”. It was agreed that the enquiry should continue, both into alleged sexual abuse of specific young people and into concerns about the appropriate running of a football club involving children and young people.

58. On 16 April 2004 the Strategy Group (constituted as before) received a further report from Mr Merrygold and Ms Wade. They had interviewed another young girl who had attended parties and had drunk alcohol but had not seen, or been involved in, any “sexualised behaviour”. A former manager and player at the Football Club (from 1996 to 2002) had described “difficult relationships” between members of the Club, including homosexual and bisexual relationships. She had also mentioned a sexual relationship between the Chairman of the Club and a 14 or 15-year old girl in 1999; Mr K’s unacceptable “flirting behaviour” with younger girls and an incident when the Applicant was seen with a young girl “between his legs” (in respect of which there was no detail). The Applicant’s line manager reported to the meeting that he was obtaining full details of the Applicant’s use of the mobile telephone supplied to him by the County Council and that he would supply these to Mr Merrygold in due course. The meeting endorsed the continuing child protection enquiry and expressed “continuing concern” about the role of the Chairman of the Club.

59. On 10 May 2004 the Strategy Group (constituted as before but without Ms Wade) noted that Mr K had been arrested and interviewed but had said nothing on legal advice. They also heard that A had run away from home and had been to stay with her father and that there had been “a significant breach” by the Applicant of an instruction not to use his mobile telephone for personal calls and texts.

60. On 18 May 2004 Mrs W made a statement to the police in which she described how she had met the Applicant when watching her younger daughter training in April 2003. She had sent him a “joke text message” to “break the ice”. She had then invited him to her home “for coffee and a chat” and a romantic relationship had developed which she hoped and believed

would be sustained. Later in her statement, Mrs W described her annoyance at being “led on” by the Applicant while he was conducting a relationship with someone else and how “everything changed for the worse” when she discovered, after the intervention of Mr G, that A had had sex with the Applicant.

61. On 25 May 2004 Mr Merrygold interviewed the Applicant again and confronted him with the relevant telephone records. The Applicant explained how he had “screwed up on a whole telephone bill” by sending private texts. His first “text contact” with A had been when she had been left at home on her own and he had “played a twenty question game” with her to keep her occupied. His text messages, though numerous, were not inappropriate. A sometimes texted him in the middle of the night but there were reasons for that. A had “lots of things to say” and had “a very creative mind”. Having been introduced to the activity by Mrs W and her daughters, he had become “addicted to texting” for a time. Mr Merrygold put to the Applicant that he had sent no texts to A between 11.50 a.m. on 27 June 2003 and 6 p.m. on 28 June 2003 because she had been with him during that time. The Applicant strenuously denied that allegation and asserted that A had never been to his home on her own; that she was not with him on 27 June 2003 and that he did not have sex with her, either then or at any time.

62. On 8 June 2004 the Strategy Group received a further report from Mr Merrygold. He said that a response was awaited from the Crown Prosecution Service as to whether the Applicant would be charged; that he had examined 500 to 600 pages of telephone records; that the Applicant had sent 731 text messages to A in June 2003 and that the Applicant had explained in interview that he had been “babysitting by mobile phone”. It had been noted that, on the day of alleged sexual abuse of A, the Applicant did not contact her at all after he had sent her texts “all through the morning” when she was at school.

63. On 13 July 2004 the Football Association informed the Applicant that, following consideration of his case on 12 July 2004, a Commission had concluded that he should “continue to be suspended from all football and football activity involving children under the age of 18 pending enquiries”.

64. In a letter to his solicitor dated 14 June 2004 (in respect of which he waived privilege), the Applicant explained that he recalled that he had fallen ill with an upset stomach on 26 June 2003 and had reported himself as unavailable for work on 27 June 2003. He had recovered sufficiently to be able to attend the school fete with Mrs W and her daughters on 28 June 2003. In her reply, the Applicant’s solicitor said that she understood why the Applicant had only just recalled the events of 26-28 June 2003 and said that the fact that he was off work might be significant. However, she also expressed the fear that “it could be a double-edged sword” because the Crown might suggest that the illness was fabricated as a convenient way to get out of work and to facilitate a meeting with A. The “flip side” was, she said, that it explained why there was no contact with A or her family on 27 June 2003.

65. In a further letter to his solicitor dated 21 July 2004 the Applicant noted, amongst other things, that B had left Mrs W's home and was living with her father and that A had been seen, during school lunch times, begging for cigarettes in return for sexual favours, which he found slightly shocking though not surprising in the light of her family problems.

66. On 23 July 2004 Mr Merrygold reported to the Strategy Group that the Crown Prosecution Service had advised him to interview A again because there was "insufficient detail about the sexual activity". Mr Merrygold attributed the lack of detail during the first interview to A's embarrassment about using the words to describe what she alleged had taken place.

67. On 28 July 2004 Mr Merrygold and Ms Wade interviewed A again. She repeated her previous account, on this occasion saying that she had had sex "a couple of times" on 27 June 2003. She explained that she understood sexual intercourse to be "basically putting a penis into a vagina" and also explained what she meant when she said that she had "masturbated him".

68. On 20 August 2004 the Applicant was informed that, following advice from the Crown Prosecution Service, no criminal charges would be brought against him in respect of the allegations made by A.

69. On 2 September 2004 Mr Merrygold reported to a Strategy Group meeting that the further interview with A had gone well and she had given more detail but the Crown Prosecution Service had nevertheless advised against charging the Applicant, on the basis that there was no realistic chance of securing a conviction because of the inadequacies in A's first account. Mr Merrygold further reported that the enquiries had revealed some dubious material stored on the Applicant's computer but no other criminal offences by the Applicant. It would have been possible to have charged him with "grooming" A if the relevant legislation had been in force in 2003. The content of the voluminous text messages had not been recovered and so it had not been possible to establish that the Applicant was guilty of "predatory behaviour" to the requisite standard. However, there was, in Mr Merrygold's view, no reason to disbelieve A or to accept that she was "a bitter child". She had not initiated the allegation but had been forced into making it by her sister and her current boyfriend. There was a pattern of the Applicant forming relationships with girls "considerably younger than himself". The unanimous view of the Strategy Group was that A's allegations should be believed and that it had been inappropriate for the Applicant to hold parties and to encourage children to drink alcohol at them.

70. On 27 September 2004, and again on 21 October 2004, the Football Association informed the Applicant that, following further consideration of his case, two Commissions had concluded that he should "continue to be suspended from all football and football activity involving children under the age of 18 pending enquiries".

71. On 22 November 2004 Mr Merrygold reported to the County Council's Human Resources Manager, in response to her request for information, that

he had spoken to “numerous young persons” at the Football Club, two of whom recalled attending parties at the Applicant’s house and taking part in drinking games. One girl had alleged that the Applicant had given her a potent cocktail of a fortified wine, a spirit and a liqueur. Mr Merrygold also pointed out in his letter that it had always been “quite evident” that the Applicant would have been charged with the offence of “grooming” A, contrary to the Sexual Offences Act 2003, had that Act been in force at the relevant time and that a prosecution for that offence would have proceeded.

72. On 7 December 2004 the Head of the County Council’s Advisory Service (the Applicant’s line manager) held an “investigation interview” with the Applicant. The Applicant said that A’s allegation was false and had been made because he had rejected her mother “and it was a game of love and hate”. The Applicant also said that he sent texts to A “as she was being bullied at school, giving her ways of coping”. It was, he said, pure coincidence that no texts were sent during the evening of 27 June 2003. He was not with A at that time but was “unwell and asleep at home”.

73. The interview then turned to consideration of the “volume and timing of text messages to an underage girl”. The Applicant insisted that there was “a very good reason” for texting A: “it was to counsel her as she was being bullied at school”. He was not grooming A but attempting to stop her harming herself.

74. In response to the allegation that he had held parties involving excessive drinking by under-age girls, the Applicant explained that he had held four parties. The first two (in April 2003) were unremarkable and did not involve excessive consumption of alcohol. The third party (on 24 May 2003) was held at the request of the Chairman of the Football Club and did involve some excesses, partly because some players were already drunk when they arrived at the party. He had spent a busy night as a host, mopping up spillages; clearing up breakages and preparing pizzas. He had also had to persuade two youngsters that looking for wildlife in the woods near his home in the early hours of the morning was unwise. The fourth party (held on 28 November 2003) was attended by 26 guests, two of whom were girls under the age of 16. They had been invited on the understanding that they would not consume alcohol and would behave responsibly. The fact that they did not do so was not attributable to any failure on his part. He had not supplied a cocktail of port, whisky and sambuca to a girl. He had never had the latter drink in his house. The Applicant accepted that his guests may have played drinking games but said that the participants were of full age and he was not involved in the games.

75. At the end of the interview the Applicant summarised his position. He said that he had “done some things wrong” in that he had allowed others to use the laptop computer supplied by his employer and had failed to follow the action plan regarding his mobile phone. As a result, his life had “crashed to pieces” in March 2004 but he never previously done anything wrong.

76. The Applicant's detailed explanations of his relationships did not persuade his line manager that there was a valid reason for the making of a serious, false allegation by A. He accepted that A's allegation was true and rejected the Applicant's denial. He also rejected as improbable the suggestion that the texts sent to A were "for counselling purposes". He accepted as true the allegations relating to improper behaviour at the Applicant's parties.

77. On 29 December 2004 the local authority's Inter-Agency Child Protection and Review Manager, Ms Nash published her Report of the Child Protection Enquiry conducted as a result of the allegations made against the Applicant. She recorded that the Strategy Group believed that the allegation of sexual abuse made by A was true. She further recorded that the Group had concluded that the Applicant's conduct in holding parties at his home attended by young girls was inappropriate and that his conduct in sending text messages to "young club members" was unacceptable. Ms Nash noted that the Applicant had acknowledged being attracted to young women. The view of the Strategy Group was that the Applicant's conduct as a football coach was outside acceptable boundaries. Their recommendation to the County Council and others was that the Applicant should be regarded as unsuitable to work in the field of education.

78. On 4 January 2005 the Head of the County Council's Advisory Service notified the Applicant that there were grounds to consider formal disciplinary action against him and that a hearing would be held.

79. On 19 January 2005 the County Council held a disciplinary hearing and considered three charges of gross misconduct against the Applicant and three further charges of misconduct, relating to the misuse of a computer; continued use of a mobile telephone contrary to instructions and the sending of private text messages during the working day. The County Council's senior officers decided that the first charge of gross misconduct (sexual abuse of A on 27 June 2003) was not sufficiently proved but that they were satisfied that the Applicant was guilty of gross misconduct in (a) sending a large volume of text messages to A and (b) holding parties at his house involving excessive under-age drinking. The Applicant was accordingly dismissed from his employment.

80. On 9 February 2005 the County Council's Human Resources Manager reported to the Children's Safeguarding Operations Unit that the Applicant had been dismissed and should be considered for inclusion on List 99.

81. On 31 March 2005 the Appeals Committee of the County Council accepted that there was no conclusive evidence that the Applicant had directly served alcohol to minors at his parties and therefore rejected the third allegation of gross misconduct but dismissed the Applicant's appeal against the second allegation of gross misconduct (sending a large volume of text messages to A and thus "grooming" her) and confirmed his dismissal. The Committee took the view that the inaccuracies in the reports prepared by Mr Merrygold and Ms Nash, to which the Applicant had drawn attention, were not "errors that would have made a difference".

82. On 17 May 2005 the Football Association informed the Applicant that his case had been reviewed by a Commission and it had been determined that his “interim suspension” should continue until further notice.

83. On 1 June 2005 an officer of the Football Association formally notified the Applicant that he had been charged with a breach of the Association’s Rules. It was alleged that the Applicant was guilty of conduct, when a coach, which may have posed a risk to a child and constituted behaviour which was improper and brought the game into disrepute. The Applicant denied the charge and requested the opportunity to appear before a Regulatory Commission. The personal hearing was delayed until August 2007.

84. On 8 June 2005 the Football Association informed Ms Denise McGowan of the Children’s Safeguarding Operations Unit (List 99) that they would make a referral to the POCA list if the Applicant were permanently suspended but not before.

85. On 10 August 2005 Ms McGowan invited the Applicant to make representations about the referral received by the Children’s Safeguarding Operations Unit (List 99) from the County Council. Ms McGowan referred specifically to the allegation that the Applicant had sent a large volume of text messages to A and invited him to explain why, if he had been concerned for A’s mental health, he had not raised these concerns with her mother or with an appropriate specialist. She also asked for an explanation of the Applicant’s understanding of “appropriate professional boundaries”.

86. On 10 September 2005 the Applicant made a witness statement for the purposes of proceedings in the Employment Tribunal in which he claimed that he had been unfairly dismissed by the County Council. In that statement the Applicant explained his relationship with Mrs W and her daughters and said that he had sometimes hugged A when leaving her home but he had never had a sexual relationship with her and had never shown affection to her by kissing or any other form of physical contact. The Applicant also set out his case to the effect that Mrs W and her daughters had conspired together with Mr G to make false allegations against him. He said that he had sent text messages to A “in the capacity of a father looking after his daughter, giving advice and support”. The content of the messages was never inappropriate or offensive.

87. The Employment Tribunal heard the Applicant’s claim for unfair dismissal on 26 and 27 September 2005. The Tribunal later dismissed the claim.

88. On 6 October 2005 the Applicant made his detailed representations in response to the letter from Ms McGowan of the Children’s Safeguarding Operations Unit. The Applicant said that he had sent many text messages to his friends, including A, because, having been introduced to “texting” by A’s family, he had become addicted to “this new medium” and had been unable to stop. He accepted that sending a very large number of text messages to A

was “not the smartest thing” he had done in his life but asserted that the texts were “of a general nature” and were “pleasant, short conversations amongst friends”. He had, he said, maintained his moral values throughout.

89. In the course of making his representations to the Children’s Safeguarding Operations Unit, the Applicant set out his understanding of the position of “a professional in education”. Such a person must, he said, “act as a role model, meeting the highest standards of trust and responsibility towards parents, colleagues, the employer, staff in schools and pupils alike ... These standards include a clear acknowledgment of boundaries; an understanding to avoid intimacy or inappropriate confidences between the professional and the young person; the importance of keeping contact at a formal level and in a way that cannot be misinterpreted by an impressionable young person and the need to be aware of the risk of infatuations or ‘crushes’ between the adult and a young person”.

90. By a letter dated 27 October 2005, Ms McGowan informed the Applicant that the Secretary of State for Education and Skills had decided that she would not, on this occasion, take any action but that his details would remain on record and might be taken into account in the event of any further misconduct coming to the Department’s attention.

91. On 14 August 2007 a Disciplinary Commission of the Football Association considered a substantial bundle of written evidence and heard oral evidence from Mr Merrygold; from the new Safeguarding Manager of the local authority’s Children’s Services and from the Applicant.

92. Mr Merrygold told the Disciplinary Commission that the content of the text messages sent by the Applicant to A could not be retrieved but that A had confirmed to him that “some of the messages were of a sexual nature”. Mr Merrygold was also asked to comment upon the claim that the Applicant was “counselling a child who was having suicidal thoughts”. He said that it was “incomprehensible” that someone with the Applicant’s background in teaching would think it appropriate to counsel A by text, without her mother’s knowledge. The timing and volume of the text messages were completely inappropriate and the Applicant should have known better. The Applicant cross examined Mr Merrygold and suggested, amongst other things, that the allegation that some of the text messages were of a sexual nature had not been raised previously, at the strategy meetings or during his interviews with the police. The truth of the allegation should, he said, be “doubted strongly” in those circumstances. The Applicant also drew attention to the lack of detail in the account given to Mr Merrygold by A of her sexual intercourse with him and commented that it would be fair to assume that A would have remembered details of the encounter if it had actually taken place. The Applicant also sought to highlight many instances of “inaccurate reporting” in the Report of the Child Protection Enquiry.

93. When addressing the Disciplinary Commission on his own behalf, the Applicant said that he had made “an error of judgment”. He admitted that had been “stupid” and had “acted irresponsibly” in his conduct towards A her

family. However, his intentions were, he said, “honourable and never malicious or harmful”. The Applicant suggested that Mr Merrygold’s enquiry was “motivated by a form of malice” and that Mr Merrygold was determined to pursue him because the Crown Prosecution Service had declined to prosecute him. He contended that A never kept a diary and that there were no entries either before the date of alleged offence or after. It was a “concocted story” and “a malicious attempt to seek revenge” after he had rejected the advances of Mrs W.

94. The Disciplinary Commission took time for consideration and, on 20 August 2007, notified the Applicant that they considered that the charge against him was proved.

95. On 15 October 2007 the Disciplinary Commission heard the Applicant’s plea in mitigation. The Applicant said that there was no evidence that he had been involved in relationships with young girls. He regretted sending a large number of text messages but pointed out that their content had not been retrieved. He drew attention to “an unblemished 30-year career in football” and said that he had made a mistake which was “strictly one off”.

96. The Disciplinary Commission decided that the Applicant should be suspended permanently from all football and football activities involving persons under the age of 18. In their written reasons the Commission noted that Mr Merrygold and Ms Nash were of the opinion that the Applicant had been grooming A; expressed surprise at the decision of the Secretary of State not to restrict the Applicant’s employment as a teacher and said that they found it incomprehensible that a man with the Applicant’s experience felt it was not appropriate to make A’s mother aware of her problems and that “text messaging would be a suitable means of counselling”. The Commission acknowledged the inaccuracies in Mr Merrygold’s report and in the Report of the Child Protection Enquiry identified by the Applicant but said that these did not affect the outcome. The central fact (that the Applicant had sent a vast number of text messages to a girl aged 14) was not contested. The Commission was “deeply concerned” by the Applicant’s conduct and was not satisfied by the explanation that Mrs W and her family had concocted the allegation as an act of revenge. They felt that the Applicant’s conduct was “completely unacceptable and breached the appropriate boundaries ... between an adult in a position of trust and a young girl”.

97. By a letter dated 7 November 2007 the Football Association referred the Applicant to the Secretary of State for consideration of the inclusion of his name on the POCA List.

98. On 19 March 2008 Mr Bateman of the Children’s Safeguarding Operations Unit (POCA) informed the Applicant that his name had been referred to the Secretary of State for possible inclusion on the POCA List and invited him to make representations.

99. On 6 April 2008 the Applicant wrote to Mr Bateman pointing out that this was “not a new case” and that the material had been “seen, analysed and acted upon” in October 2005.

100. On 23 September 2008 the Independent Safeguarding Authority wrote to the Applicant; explained that the Authority would be advising the Secretary of State as to whether to include his name on the POCA List and invited him to attend a consultation with an appropriate specialist.

101. On 31 October 2008 the Applicant had an extensive interview with Professor David Middleton. The Applicant provided details of his past relationships and accepted that he found younger women sexually attractive. He pointed out that this was “not a crime” and that his relationships with young women had lasted for significant periods of time and were not “one night stands”. Professor Middleton formed the view that “regardless of the truth in relation to the sexual abuse allegation” there was “sufficient evidence to suggest that this vulnerable girl was harmed” through her contact with the Applicant. Professor Middleton also concluded that the Applicant’s “relationship history” suggested that there was “a remaining potential risk to young post pubescent girls” arising from the Applicant’s “needs for intimacy in an inappropriate way”.

102. On 14 January 2009 the Applicant responded to the report by Professor Middleton in a letter to the Independent Safeguarding Authority. He said that he did not agree with “some aspects of the recording of the conversation nor with the key conclusions drawn” and set out his detailed reasons. The “conclusion of risk” could not, he said, be drawn from the fact that he had had relationships with “two young adult women” since the first of these had lasted for seven years and the second was approaching its sixth anniversary as was continuing. The Applicant presented a summary of his position, pointing out that he had always been genuine in his approach to Mrs W and her family; that the alleged wrong doing took place “in a family setting during one month in 2003”; that, since being dismissed as an advisory teacher, he had gained respect in his employment with the Prison Service and as the leader of a team charged with the task of reducing re-offending by improving education and learning in prisons and that he had an “unblemished career of 30 years” with no criminal convictions. He expected the Secretary of State to come to the same conclusion as that reached in 2005 and to take no further action.

103. On 4 February 2009 the Respondents decided provisionally to list the Applicant on the POCA and POVA lists and invited him to complete a “Provisional Listing Observation Form”.

104. On 10 March 2009 the Applicant presented his observations in response to his provisional listing. He referred to the delay of almost 6 years and the extensive documentation and restated his admission of “an error of judgement” in his personal life, which had “grave consequences”. He apologised to those involved and said that he was upset that he had placed himself in a position where doubt could be cast over his “always present

professionalism". Finally, the Applicant listed the reasons why he should not be included in the POCA and POVA lists. These were: (i) the Secretary of State did not bar him from teaching in 2005; (ii) he had 30 years of unblemished work in teaching and football; (iii) he had always abided by the law and no offences recorded against him, not even a parking ticket; (iv) he fully complied with the conditions of his suspension; (v) he had a clear CRB check; (vi) he had a clear Home Office security check; (vii) he had a clear Interpol check; (viii) he was a full member of the General Teaching Council; (ix) he had always, throughout his career, earned the respect of staff and clients; (x) he had never had any dealings with the police before or after 2004; and (xi) in his current post, he worked with the most disadvantaged client group to ensure that they were given a second chance in life.

105. On 14 April 2009 the Respondents confirmed the Applicant's listing on the POCA and POVA lists and notified him accordingly.

106. During the hearing the Applicant accepted that he had overstepped the boundaries he referred to in his letter dated 6 October 2005 by sending an excessive number of text messages to A but he denied that he had had sexual intercourse with A and further denied that he was guilty of any misconduct in relation to the parties held at his home.

107. The Applicant has continued his association with Ms NK. They now cohabit and they are to be married in August 2010.

The law

108. Under section 4(3) of the Protection of Children Act 1999, if the Tribunal is not satisfied that the individual applicant (a) was guilty of misconduct (whether or not in the course of his or her duties) which harmed a child or placed a child at risk of harm and (b) is unsuitable to work with children, it must allow the appeal. If the Tribunal is so satisfied, it must dismiss the appeal.

109. The decision to place the Applicant on the POVA list was as a result of his inclusion on the POCA list. Section 92 of the 2000 Act provides that proof of misconduct relating to a child satisfies the requirement of misconduct relating to a vulnerable adult for the purposes of the POVA list. However, the issue of unsuitability to work with vulnerable adults falls to be considered separately

110. Section 4 of the 1999 Act and section 86 of the 2000 Act place the burden of proof on the Secretaries of State.

111. The standard of proof required, in order to be satisfied as to the matters set out in section 4(3) of the 1999 Act and section 86(3) of the 2000 Act, is that described in the decision of the House of Lords in *Re H and others (minors) (sexual abuse: standard of proof)* [1996] AC 563; [1996] 1 All ER 1; [1996] 1 FLR 80, as later explained by the House of Lords in *Re B (Children)* [2008] UKHL 35; [2008] 2 FLR 141.

In *Re H*, Lord Nicholls of Birkenhead said:

“[T]he standard of proof required in non-criminal proceedings is the preponderance of probability, usually referred to as the balance of probability....The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability....Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation.”

In *Re B*, Baroness Hale emphasised that:

“neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies”.

112. Misconduct is not defined in the 1999 Act nor is the term qualified by any adjective such as “serious” or “gross”. In most cases the misconduct will be an incident forming part of a course of erroneous or incorrect behaviour undertaken by a person who knew or ought to have known that what he or she was doing was contrary either to the general law or to a written or unwritten code having particular application to his or her profession, trade or calling.

113. Inclusion in the lists kept under section 1 of the 1999 Act and section 81 of the 2000 Act is not intended to stigmatise, discipline or punish. The concern of the listing regime is to contain the risk of harm to children and vulnerable adults. The regime identifies an unacceptable risk of harm by reference to some past misconduct plus a present unsuitability to work with children and/or vulnerable adults.

114. It is neither necessary nor appropriate to limit the scope of the regime by adopting a restricted definition of “misconduct”. The misconduct triggers consideration of the second criterion for inclusion – unsuitability to work with children or with vulnerable adults. Not all of those found guilty of misconduct will be held to be unsuitable to work with children or with vulnerable adults. A finding of misconduct of a less serious nature will not generally lead to a finding of unsuitability without more. Conversely, an individual guilty of relatively trivial misconduct could be shown to be wholly unsuitable to work with children and/or with vulnerable adults.

115. Section 12 of the 1999 Act provides that “harm”, in relation to a child, has the same meaning as in section 31 of the Children Act 1989. Section 31(9) of that Act defines “harm” as “ill-treatment or the impairment of health or

development including, for example, impairment suffered from seeing or hearing the ill-treatment of another”

116. Unsuitability must be judged by the Tribunal at the date of the hearing. The judgment will involve consideration of the character, disposition, capacity and ability of the individual concerned, including his or her ability to act properly in potentially difficult circumstances. The judgment will inevitably be, at least in part, by way of deduction from past performance, including (but not limited to) the nature and extent of the misconduct, admitted or proved in the course of the proceedings, which harmed a child or placed a child at risk of harm. The Tribunal may have regard to:

- (a) the number of the incidents constituting the misconduct established for the purposes of section 4(3)(a) of the 1999 Act;
- (b) the gravity of that misconduct;
- (c) the time that has elapsed since that misconduct;
- (d) the timing and degree of recognition by the applicant that the conduct constituted misconduct and that it had the potential to harm a child;
- (e) the steps taken by the applicant to minimise the possibility of there being a recurrence of that or like misconduct;
- (f) extenuating circumstances surrounding the misconduct; and
- (g) other admitted, undisputed or proved past conduct of the applicant, whether good or bad.

This should not be regarded as an exclusive list. The Tribunal may also have regard to any other relevant matter.

Issues

117. It was argued by Miss Davies on behalf of the Secretaries of State that:

In relation to the allegation that, on 27 June 2003, the Applicant had sexual intercourse with A, who was then 14, the Tribunal should accept the first-hand evidence of this from A herself, who was an entirely credible witness.

A's evidence was completely corroborated by the Applicant's mobile telephone records for the relevant period.

A's allegation was made in February/March 2004 with no awareness of the Applicant's mobile phone records but the records tally entirely with her account.

The records show (i) an increase in intensity in texting leading up to Friday 27 June 2003; (ii) an unusually large number of texts to A at school on the Friday morning and then (iii) extraordinarily, no texts to her at all until 6 p.m. on the Saturday. That was a highly unusual occurrence during June 2003.

If the allegation were false, the date that A alleged sexual intercourse took place would have to have been randomly

chosen in February or March 2004 and it is unlikely to the point of being incredible that A would have somehow chosen a date (the only date) when the mobile phone records supported her account.

If the allegation were false, the mobile phone records would have disproved it – either because the Applicant would have been sending text messages to A, as he did every other evening, or because he would have been sending them to other people when A alleged they were together. A happened to choose a day when the Applicant, very unusually, called in sick from work. Had the allegation been false, she would surely have alighted upon a day when he was at work and could have shown that he was elsewhere at the time she said he picked her up from school.

A's account was also supported by B, Mr G and Mrs W, who described the way in which the allegation came out via A's diary. Mrs W's evidence also supported A's account of being away overnight on that night and lying about her whereabouts.

Mrs W was an entirely credible witness, candid in admitting to having had a romantic interest in the Applicant and persuasive in dismissing the suggestion that she made up the allegation against the Applicant (and somehow prevailed upon her two daughters and Mr G to assist her) as "nonsense".

It would be an astonishing thing for a mother to involve her 14-year old daughter in a false allegation that she had sexual intercourse with a man of 48 because she would know that the child would have to be interviewed by the police and, in this case, that the child would have to make up an entire diary, including a description of the alleged abuse.

B was also plainly a truthful witness who had a clear memory of finding A's diary while cleaning her room and being shocked by what she read. B also remembered A going for a walk with Mr G and she described sitting on the stairs watching Mr G and A tell her mother what had happened. This was clearly a truthful account and was entirely consistent with A's evidence.

Mr G was also an entirely credible witness who clearly remembered going back to the house and telling Mrs W. This was an uncomfortable experience.

The suggestion that Mr G had lied because Mrs W threatened to report him to the police as a result of his relationship with A unless he agreed to lie about the Applicant was contradicted by Mr G's evidence.

It is completely fanciful to suggest that these four individuals conspired to fabricate an allegation of this nature about the Applicant at the time and came 6 years later to the Tribunal to continue with that false allegation.

There are unusual features to A's diary but it is plausible that she would not have written the date in full to keep the matter more secret and that, having made the entry, she would not have made any more because the relationship between the Applicant and the family had rapidly fizzled out.

The suggestion that A made up the diary because the girls involved with Mr K kept diaries does not bear scrutiny because there is nothing to suggest that A knew the girls involved. She was not a football player, her sister was. There is nothing to suggest that A was aware of those diaries.

Sexual intercourse with A was plainly misconduct that harmed A or placed her at risk of harm.

In relation to the allegation of excessive texting, the telephone records show very substantial numbers of text messages sent to A's phone by the Applicant.

Although at times the Applicant purported to admit sending the messages to A, at other times he sought to minimise his role, and, for example, suggested that Mrs W used A's phone and that some of the messages were therefore sent to Mrs W on A's phone. That explanation lacked credibility, in that (i) A's recollection was not perfect but she certainly recalled texts such as 20 question games, enquiries about her day, advice and so on; (ii) Mrs W gave evidence that she did not use A's phone; (iii) Mrs W also gave evidence that her phone was on a contract so she would not have run out of credit and would not therefore have needed to use a different phone; (iv) B's evidence was that they did not swap phones; and (v) there were many occasions on which messages were sent to A's and Mrs W's phones in turn, suggesting that each was using her own phone.

The telephone records also showed very substantial numbers of text messages sent to A's phone at inappropriate times. There were also occasions when the Applicant was texting A at school, which was not appropriate for someone in the Applicant's position.

This was plainly misconduct within the meaning of the Tribunal's jurisprudence.

This aspect of the Applicant's conduct either caused A actual emotional damage or risked doing so. Essentially, the Applicant

entered into an intense texting relationship at all hours with a vulnerable and impressionable 14 year old girl and effectively terminated that relationship soon afterwards.

In relation to the third allegation (that between April and November 2003 the Applicant held parties at his home which involved, with his knowledge, underage drinking): (i) the Applicant was aware that the girls had been drinking before they came to the party after presentation night but he did not stop them from coming; (ii) he took no effective action to prevent them from drinking, for example by calling their parents or arranging for them to be taken home; (iii) despite their earlier behaviour, he allowed them to come to his birthday party and took no steps to prevent them from drinking, beyond telling them not to; and (iv) even when he became aware that they had been drinking, he still took no effective action.

It was not enough for the Applicant simply to leave the girls to do as they pleased. He was responsible for them and should have taken proper steps to make sure that they were properly supervised and did not drink alcohol.

Knowingly permitting underage drinking in the manner described was misconduct (as defined) that harmed a child or placed a child at risk of harm.

If the Tribunal accepted A's account, the Applicant is plainly unsuitable to work with children because he is a man who, aged 48, had sexual intercourse with a girl of 14 and has lied about that ever since.

In relation to the second allegation (the text messages), the real concern is that while on the one hand the Applicant professes to accept that he made a mistake, he continues to seek to justify and minimise the misconduct.

The attempted justification on the basis that he was acting as a "parent" or "counsellor" is deeply concerning because it would have been quite inappropriate for a parent or counsellor to act in that way and, in any event, the Applicant was not a parent or counsellor to A.

Professor Middleton gave powerful evidence on this point. His concern was how the Applicant meets his needs for intimacy and in his view the relationship with the family was reflective of his meeting those needs in an inappropriate way. Professor Middleton still did not detect any understanding from the Applicant of harm to A.

The Applicant's cross-examination of Professor Middleton was indicative of a complete absence of reflection upon the contents of the report or willingness to accept any of its conclusions.

As to the third allegation, the concern is the Applicant's inability to recognise and implement appropriate boundaries.

The Applicant is also unsuitable to work with vulnerable adults (who have less experience in life and who are less able to discriminate for themselves) because he may think that he is actually helping them but he is actually meeting his own needs.

118. It was argued by the Applicant that:

He had been accused of having sexual intercourse with a 14-year old girl, which was something he had not done and would never do.

Despite the intense interviewing of A, including (exceptionally) a second interview to seek clarity, no police action was taken.

His employers dismissed him for reasons other than indecent assault upon a 14-year old girl – an allegation which they found not proven.

The Secretary of State decided not to place his name on List 99 in October 2005.

His suspension by the Football Association was not because of the alleged indecent assault upon a 14-year old girl.

A's account was unconvincing. During her video interview she was vague and six years later she could not remember a lot of what happened, even when reading her own diary.

The diary was written at a much later date, probably in February 2004 at the height of the rumours of alleged wrongdoing by coaching staff at the Football Club.

If A had had sexual intercourse as she alleged she would have remembered the details.

Mrs W agreed that she might have threatened Mr G with the police in February 2004, confirming his suggestion that whole episode in June 2003 was staged and did not really occur.

Mrs W was well aware of the rumours concerning Mr K and with the details of his case.

Mrs W admitted harassing him on several occasions.

Mrs W admitted in her witness statement that she wanted to see him punished.

B was a good witness who was not involved in the scam but was set up to find her sister's diary.

Mr G was a hostile witness who had something to hide and could not recall anything because his involvement was non-existent.

Mrs W did not take the justified termination of his relationship with her very well and began harassment in which she involved A.

The stories told by the witnesses did not match.

The volume and timing of the text messages was not disputed nor was it disputed that they were inappropriate and ill judged. He had never denied that his behaviour in this regard was stupid and irresponsible.

He was truly sorry for what happened and upset by the fact that he placed himself in a position where doubt could be cast over his professionalism.

The content of the text messages was never retrieved.

The Enquiry Report was wrong when it said that he had used his business phone to contact other young members of the Club.

The intense text communication only took place with A and her family who were "text addicts".

The suggestion that A was emotionally harmed by his actions was speculative and Professor Middleton's opinion should not be regarded as conclusive.

There was no causal connection between his alleged misconduct in holding parties and any harm to a child.

All of the parties were well organised for adults and were not intended for younger players.

The party after the presentation night was designed to deflect the "drinking culture" away from the town centre.

The offending girls were not initially invited to the November 2003 party but were only subsequently allowed to attend on

condition that they would be constantly supervised by their team manager, Mr K.

He took appropriate steps to avoid difficulties at the parties.

He is not unsuitable to work with children because he has a stable life, a well paid job and a bright future.

In 2005 the Secretary of State, after reviewing all the materials presented, decided not to bar him from teaching and there was no good reason for a different decision to be taken in 2009.

His 30 years of unblemished service as a teacher and football coach should be taken into account.

He should also receive credit for the fact that he has no criminal convictions, even for minor driving offences and never had any dealings with the police or other authorities before March 2004.

He now works with a most disadvantaged client group and should be permitted to continue to do so.

Conclusions and reasons

Having carefully considered all of the evidence given and the arguments presented at the hearing and the witness statements and other papers submitted in advance, the Tribunal came to the following conclusions:

119. The misconduct alleged against the Applicant was that he: on 27 June 2003, when he was 48 years old, had sexual intercourse with A, a girl then aged 14; in June 2003, sent an excessive number of text messages to A and sent text messages at inappropriate hours to A; and between April and November 2003, held parties at his home which involved, with his knowledge, under-age drinking.

120. The Tribunal was hindered by the fact that the videotapes of the interviews with A in March 2004 and July 2004 are no longer available; that transcripts of those interviews are similarly unavailable and that the original of A's diary could not be made available for inspection. The Tribunal was invited to rely upon the summaries of the interviews; upon a partial photocopy of the diary and upon the impressions of those who were present at the interviews as to the veracity of the witness. While in no way questioning the integrity of Mr Merrygold (who consistently reported his conviction that A was truthful), the Tribunal felt obliged to remind itself of guidelines set out in the *Report into Child Abuse in Cleveland 1987* (Command Paper 412) by Butler-Sloss LJ (as she then was) at paragraphs 12.46 to 12.53 and the observations there cited. Where there is a dispute whether there has or has not been abuse, the tribunal will be anxious whether it should accept the *ipse dixit* of the interviewer or interviewers, however skilled and experienced. This is because

cases have shown that the precise questions, the oral answers, the gestures and body movements, the vocal inflection and intonation, may all play a part in interpretation.

121. Nevertheless, the Tribunal was satisfied by the evidence that the Applicant did have sexual intercourse with A on 27 June 2003 and was also satisfied that the Applicant had further and other, improper and unlawful sexual relations with A on that occasion.

122. The evidence given to the Tribunal by A was clear, consistent and credible.

123. The suggestion made by the Applicant that A was giving an account which was wholly untrue and had been fabricated at the instigation of her mother to cause the maximum difficulty for him was impossible for the Tribunal to accept in the light of the way in which A gave her evidence and responded to the questions put to her.

124. Most significantly, the account given by A was fully corroborated by the telephone records. A's description of the way in which the assignment was made and confirmed by text messages was supported by the records which showed that the Applicant sent the last of a series of 16 text messages to her at 11.50 a.m. on 27 June 2003. A's account of the delay before she and the Applicant repaired to the Applicant's home was supported by the records of text messages sent to Ms LA between 5.22 p.m. and 6.11 p.m. on 27 June 2003. The fact that the Applicant, unusually, sent no text messages to A between 11.50 a.m. on 27 June 2003 and 6.04 p.m. on 28 June 2003 strongly suggested that A was correct when she said that she had been with the Applicant during that period.

125. The submission made by Miss Davies to the effect that, if the allegation made by A were false, it is unlikely to the point of being incredible that A would have somehow chosen a date when the mobile phone records supported her account, was compelling.

126. If A had fabricated the account as alleged by the Applicant, she would inevitably have chosen a date when the Applicant would have been able, by reference to telephone records, to disprove or, at least, to cast doubt upon that account.

127. A's evidence was also fully corroborated by the evidence of Mrs W, Mr G and B. Mr G and B could easily have declined the late invitation to give evidence but they did not. They gave their accounts in a straightforward manner which made it impossible to accept that they were sustained co-conspirators with Mrs W. They independently recalled details of their involvement and showed themselves to be honest and truthful.

128. Mrs W accepted that she was "a woman scorned" and she was not inclined to accept that there was anything good to be said about the Applicant but she was neither furious nor vengeful. She had plainly long ago overcome

the disappointment and annoyance that she felt when the Applicant rejected her. Mrs W was understandably unable to recall some of the matters of detail put to her but she gave a clear, consistent and apparently truthful account of how the relevant relationships had developed and diminished and of how she discovered, to her horror, the way in which the Applicant had conducted himself with her daughter. The allegation that she had concocted the allegation and sustained the falsehood for seven years was not credible.

129. The Applicant correctly identified a number of flaws in the evidence. The account given by A in her interview on 3 March 2004 was seriously lacking in detail. Her answers to the questions posed by Mr Merrygold and his colleague were, in many respects, unsatisfactory. A was vague about matters which she could reasonably have been expected to have recalled with some precision. However, the relative reticence of A was explained by the fact that she may well have been reluctant to use the language necessary to describe in full the activities that she had undertaken. By the time she was interviewed, A realised the implications of her behaviour and how she had been deceived by the Applicant. In those circumstances, her distress and her feelings of shame and her lack of specificity were understandable.

130. The discrepancies noted by the Applicant in some of the reports received by the Strategy Group were of less significance. It would clearly have been better if the reports to the Group had been recorded more precisely and if the final Report of the Child Protection Enquiry published on 29 December 2004 by Ms Nash had been more precisely accurate. The Applicant correctly identified several inaccuracies. However, these were largely immaterial.

131. By way of example, Mr Merrygold's report to the County Council's Human Resources Manager on 22 November 2004 that he had spoken to "numerous young persons" at the Football Club, was something of an exaggeration. Mr Merrygold had only spoken to two or three young persons who had given him accounts of the Applicant's social activities. The valid criticism of Mr Merrygold's lack of precision on this occasion did not lead to the conclusion that his analysis of the matter was, as the Applicant alleged, fundamentally flawed and certainly did not lead to the conclusion that his investigation was motivated by malice. In other respects, Mr Merrygold's investigation was balanced and meticulous. He examined the telephone records with great care. In any event, the Tribunal were able, with appropriate guidance, to examine the telephone records themselves and to form their own conclusions from them.

132. On 2 September 2004 the members of the Strategy Group accepted that there was no reason to disbelieve A; that there was no reason to accept that she was "a bitter child"; that A had not initiated the allegation but had been forced into making it by her sister and her boyfriend and that there was a pattern of the Applicant forming relationships with girls "considerably younger than himself". These conclusions were well founded in the evidence that they had examined. The Tribunal saw no reason to hold that the Group' reasoning was flawed.

133. Sexual intercourse with A was plainly misconduct that harmed A or placed her at risk of harm.

134. The Tribunal was satisfied that the Applicant was guilty of misconduct by sending large numbers of text messages to A as part of a process of “grooming” her. There was little evidence as to precise content of the text messages and A was unable and/or reluctant to recall in detail what had been said to her by the Applicant. However, there was clear evidence that the Applicant sent a message to A in the early hours of the morning to the effect that he had been dreaming about her. Further, it was possible to infer, from A’s diary entries and other evidence, that the Applicant had successfully persuaded A that she was special to him and that they should communicate and meet without others being involved or present.

135. The Tribunal accepted that one of the extended, all-night “texting sessions” revealed by the telephone records could have been conducted with Mrs W rather than with A but noted that there was a clear pattern of behaviour by the Applicant in communicating privately with A at length by text over a substantial period of time. On several occasions the Applicant, though sometimes qualifying his admissions, has accepted that his behaviour amounted to misconduct.

136. The Applicant set out an accurate account of the duties of “a professional in education” in response to an invitation to do so in October 2005. He rightly said that such a person must “act as a role model, meeting the highest standards of trust and responsibility” towards parents, colleagues, his or her employer, staff in schools and pupils. He also correctly noted that the professional standards to be adhered to include a clear acknowledgment of boundaries and an understanding of the need to avoid intimacy or inappropriate confidences, the importance of keeping contact at a formal level and in a way that cannot be misinterpreted by an impressionable young person and the need to be aware of the risk of infatuations or “crushes”. The Applicant was not A’s teacher but he was purporting to act as her adviser and mentor. His involvement with the family placed him in a position of influence which he exploited. His communications with A constituted a clear breach of the duties he described and involved a manifest failure to acknowledge the relevant boundaries. The Applicant clearly acknowledged and accepted his failings in this regards during the hearing.

137. The Tribunal noted, agreed with and adopted the conclusions of the FA Commission with regard to “grooming” and shared the Commission’s surprise at the decision of the Secretary of State in 2005 not to restrict the Applicant’s employment as a teacher. It was, as Mr Merrygold suggested and others accepted, incomprehensible that a man with the Applicant’s experience should feel that it was not appropriate to make A’s mother aware of the problems she had supposedly been disclosing to him. The notion that text messaging could be a suitable means of counselling was absurd.

138. In common with the Appeals Committee of the County Council and the FA Commission, the Tribunal noted the inaccuracies in Mr Merrygold's report and in the Report of the Child Protection Enquiry identified by the Applicant but found that these did not affect the outcome because the core of the allegation (the sending of excessive and inappropriate texts) was admitted.

139. This aspect of the Applicant's conduct either caused A actual emotional damage or risked doing so. The Applicant entered into an intense texting relationship with a vulnerable and impressionable 14-year old girl and effectively terminated that relationship soon afterwards. A was thoroughly deceived and suffered distress and emotional harm over an extended period until the truth emerged. Thereafter, she suffered further emotional harm, as evidenced by the fact that she left her home and behaved badly for some time.

140. The Tribunal was not satisfied that, by organising parties and inviting members of the first and reserve teams of the Ladies' Football Club to them, the Applicant was further guilty of misconduct.

141. The Tribunal's conclusion would have been different if they had been satisfied by the evidence that the Applicant organised parties with a view to exploiting the vulnerability of juvenile members of the Club. There was no evidence from which an inference to that effect could properly be drawn. The fact that two 15-year old girls became intoxicated and behaved badly at the parties was an unintended consequence. They were permitted to attend the last party despite their poor behaviour on earlier occasions because they successfully pleaded that they should be allowed to take part in the same social activities as their fellow team members. It was understandable that such a plea should succeed.

142. There was a certain irony involved in the Applicant's insistence upon the younger members of the reserve team being closely and constantly monitored and supervised at his party by Mr K, who was subsequently convicted of committing indecent acts with them. However, at the material time, the Applicant probably had no sound basis for suspecting that Mr K would be an unfortunate choice as a supervisor.

143. The evidence to the effect that the Applicant had himself administered alcohol to minors was hearsay from witnesses with a reputation for unreliability. The Tribunal declined to accept as true the suggestion that the Applicant organised and/or participated in the "drinking games". The Applicant strongly denied this and was fully supported in his denial by Ms NK. Her evidence about the activities at the parties was entirely plausible.

144. The suggestion that the Applicant could have done more than he did to prevent the involvement of minors in drinking games and other reckless activities was sound but it did not follow that the Applicant was guilty of misconduct. The Applicant did take some steps to prevent misuse of alcohol by his guests who were minors. The worst that could be said against the Applicant was that he allowed them to have access to alcohol. He did not

actively supply alcohol to those not entitled, by reason of their age, to purchase it for themselves. Even if he had, he would not have committed an offence. Much of the Applicant's conduct in relation to his parties was, when viewed with the benefit of retrospection, inadvisable and unwise but none of it amounted to misconduct.

145. Having found that the Applicant was guilty of misconduct in two respects, the Tribunal had to give careful consideration to the question whether the Applicant is unsuitable to work with children.

146. The Applicant's misconduct in having sexual intercourse with A was sufficiently serious to justify the conclusion that he is, *ipso facto*, unsuitable to work with children.

147. During 2003 and early 2004 the Applicant behaved in a thoroughly reckless manner. Not only did he seduce a vulnerable and impressionable young girl, knowing that that was a serious criminal offence but he also incurred substantial debts by spending excessively on his own text messaging and subsidising A's use of her telephone. He also neglected his professional duties, lied to his employers and deceived a woman who was obviously enamoured of him. Such recklessness could be repeated by the Applicant. He has a dangerous level of confidence in his ability to escape the consequences of his actions.

148. It is, as Miss Davies submitted, a matter of real concern that while the Applicant professes to accept that he made a mistake, he continues to seek to justify and minimise the misconduct involved in sending text messages to A.

149. The Applicant's attempts to justify his actions on the basis that he was acting as a "parent" or "counsellor" were, as Miss Davies submitted, concerning. It would clearly have been quite inappropriate for a parent or counsellor to do as the Applicant did. At the hearing, the Applicant did not attempt to sustain this justification and accepted that parenting and counselling were not proper bases for his communications with A. However, the fact that the Applicant proffered these explanations on other occasions indicates that his thinking can become distorted and his arguments preposterous.

150. The Applicant's reference, in July 2004, to the allegation that A had been seen, during school lunch times, begging for cigarettes in return for sexual favours indicates a distinct lack of judgment on his part. It is not clear why the Applicant reasoned that this unattractive observation could form part of his defence.

151. The Tribunal accepted and took into account the opinion of Professor Middleton that the Applicant's relationship history suggests that there is a potential risk to young, post pubescent girls arising from his needs for intimacy in an inappropriate way.

152. The Applicant is entitled to rely upon his past record but some elements of that record are not necessarily helpful to him. In 1996 the Applicant met and formed a sexual relationship with Ms LA, who was born in December 1978 and was therefore 17 years old. He was then 41 years old. In 1997, when he was 42, he began living with Ms LA, then aged 18. In 2002 he gained access to the Ladies' Football Club via Ms LA and then behaved in a predatory manner, forming romantic associations with Mrs W, Ms NK and A during the same period of time in 2003.

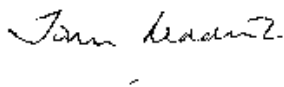
153. The Applicant's unsuitability to work with children lies in his need and desire to exploit their lack of sophistication and lack of relevant insight and experience. Vulnerable adults frequently share those features with children. It follows that the Applicant is equally unsuitable to work with them.

154. The Tribunal therefore concluded that the Applicant is unsuitable to work both with children and with vulnerable adults.

Order

The Applicant's name shall remain on the lists kept under section 1 of the Protection of Children Act 1999 and section 81 of the Care Standards Act 2000.

Signed



Tribunal Judge John Reddish

23 July 2010