CA on appeal from Central London County Court (HHJ Green QC) before Simon-Brown LJ; Morritt LJ; Waller LJ. 21st February 1997

LORD JUSTICE SIMON BROWN:

1. This is an application by the first plaintiff (Mr Zaiwalla) for leave to appeal against an order for costs made against him by Judge Green QC in contempt proceedings at the Central London County Court on 28th November 1996.

2. The application has a long and somewhat complicated history which can be summarised as follows.

3. Mr Zaiwalla is a solicitor and senior partner in the firm of Zaiwalla & Co. In October 1993 he brought proceedings under the Race Relations Act alleging against three defendants (the respondents to the present application) that they had unfairly discriminated against him on account of race. He is a British citizen of Indian origin. Put shortly, he complains that the defendants required him to hand over personal control of a particular case in which his firm was instructed to a (white) junior assistant. In March 1994 the Commission for Racial Equality issued parallel proceedings identical in all respects to Mr Zaiwalla's save that whereas they claimed declaratory and injunctive relief only, he claimed damages too. The two sets of proceedings were later consolidated.

4. In August 1994 the defendants disclosed on discovery in the Race Relations Act proceedings a note of a telephone conversation (hereafter the Steele memorandum) which Mr Steele, then an employee of the second defendants, had had with a senior employee of a member of the P & I Club managed by the second defendants. The Steele memorandum recorded highly critical views about

5. Mr Zaiwalla as a solicitor. In October 1994 Mr Zaiwalla wrote to Warner Cranston, the defendants solicitors, alleging that the memorandum was libellous and demanding that their clients apologise for it. In November 1994 he raised the matter direct with the third defendants' chairman, demanding also an apology from him. In December 1994 he threatened to report the P & I Club to the Baltic Exchange. On 12th December 1994 Warner Cranston drew Mr Zaiwalla's attention to the fact that the Steele memorandum had been disclosed on discovery and was accordingly subject to an implied undertaking that it would not be used otherwise than for the purposes of the Race Relations Act proceedings. Later in December 1994 Mr Zaiwalla sought, but was refused, release by the defendants from the undertaking. In January 1995 he applied to the County Court for release, but in the event chose not to press the matter, his application being dismissed with costs on 1st February 1995.

6. On 3rd February 1995 a witness statement was made on behalf of the defendants by Mr Bruce Harris, a marine arbitrator.

7. Mr Harris had been appointed an arbitrator by Fletamentos Maritimos SA (Marflet) in an arbitration between them and Effjohn International BV, proceedings which have been the subject of another application for leave to appeal before us this week. The two applications were linked and heard successively so that I shall assume that anyone interested in the present judgment will be familiar also with the judgments just given in the Fletamentos case. Although Mr Harris knew nothing of the Steele memorandum, his statement too was highly critical of Mr Zaiwalla. On 23rd March 1995 Mr Zaiwalla wrote to Mr Harris in connection with his statement, enclosing a copy of the Steele memorandum and, by reference to it - suggesting that the memorandum indicated a vendetta by the defendants against him - seeking to dissuade Mr Harris from giving evidence for the defendants in the Race Relations Act proceedings. He threatened in addition to bring the matter to the attention of the International Arbitration Bodies including the LMAA. This round of correspondence ended in April 1995.

8. Almost a year later, in March 1996, Zaiwalla & Co. replaced Herbert Smith & Co as the solicitors for the plaintiffs in the arbitration proceedings. On 4th June 1996, following an interlocutory hearing on 14th May 1996 when Mr Harris and his fellow arbitrator, Mr Mark Hamsher, refused Marflet's application for discovery, Marflet issued an originating motion seeking amongst other relief the removal of Mr Harris as an arbitrator. Whilst arguing that motion before Morison J on 16th July 1996, Mr Zaiwalla mentioned that Mr Harris was going to give evidence against him in the Race Relations Act proceedings whereupon the judge indicated that in those circumstances he wished at the next hearing day, 23rd July, to be shown the pleadings and other public documents in those proceedings.

9. Between 16th and 23rd July Mr Zaiwalla swore the third and fourth of his many affidavits in those proceedings. In the third, sworn on 17th July, he spoke of having received a fax dated 16th July from the defendants' solicitors *"informing us that Mr Bruce Harris will be giving evidence at [the Race Relations Act] trial on behalf of the defendants in accordance with his witness statement."* (That, I may say, was something he had known for some time; all that he learned on 16th July was that a second round of correspondence which he began in June 1996, again with a view to persuading Mr Harris not to give evidence, had failed in its objective.) His fourth affidavit, sworn on 23rd July, exhibited (a) a letter of that date from Warner Cranston confirming that they had no objection to Mr Harris' statement being produced to Morison J, (b) the statement itself, and (c) "*related correspondence*" between Mr Zaiwalla and Mr Harris, including the Steele memorandum which, it will be remembered, Mr Zaiwalla had sent to Mr Harris in March 1995 when he had earlier sought to discourage him from giving evidence against him. At the resumed Fletamentos hearing on 24th July those affidavits were put in and Mr Zaiwalla made limited reference to the Steele memorandum although without actually taking the judge to it.

10. On 14th August 1996 Mr Zaiwalla wrote to Mr Steele as follows: *"I must inform you that [the Steele memorandum] in which you have committed a very serious libel, has become part of the open Court proceedings in another action before the Hon Mr Justice Morison a few days ago. The circumstances in which this has happened is*

obvious from the enclosed exchange of letters [the exchange in which Mr Zaiwalla sought and obtained permission to produce Mr Harris' witness statement]."

11. The letter asked Mr Steele for a written apology and confirmation that the libel would not be repeated, stated that consideration would be given to making a complaint against him to the Solicitors Complaints Bureau (Mr Steele is now a solicitor with Richrds Butler), and concluded: *"In the circumstances I must ask you to respond to me within 7 days from today with an apology and the undertaking which I have asked for above, failing which kindly note I will take all legal steps open to me to protect my reputation which needless to say I will be doing at your entire risk as to costs and consequences without further notice to you.*"

12. Warner Cranston now acting also for Mr Steele (he being another of the defendants' witnesses in the Race Relations proceedings), wrote to Mr Zaiwalla complaining of the use of the Steele memorandum in the Fletamentos proceedings as a breach of the implied undertaking. Mr Zaiwalla rejected that complaint, contending that the undertaking had implicitly been waived by the defendants' agreement to let in Mr Harris' witness statement; he continued to assert his right to bring libel proceedings on the basis of the use of the memorandum in the Fletamentos proceedings.

13. In the result, in early September 1996, the defendants decided to issue committal proceedings in respect of that disclosure of the memorandum.

14. That, however, was not the end of the story. On 26th September 1996 the Steele memorandum was again before a court, this time the Court of Appeal who were hearing an appeal from Judge Hallgarten QC's refusal on 2nd September 1996 to postpone the hearing date for the Race Relations Act proceedings to a date more convenient for Mr Zaiwalla's counsel. The day after that hearing, on 27th September, Mr Zaiwalla wrote to Warner Cranston indicating that he was about to bring libel proceedings against Mr Steele based on the memorandum but this time relying on the reading of the document the previous day rather than at the Fletamentos hearing in July.

15. In the result, on 7th October 1996, the defendants issued a second application before the County Court, namely an application that the plaintiffs continue to be bound by the implied undertaking notwithstanding that the memorandum had been read by the Court of Appeal on 26th October, or that it might be read in the course of the contempt proceedings. This second application was brought pursuant to Order 14 rule 8A of the County Court Rules: *"Any undertaking, whether express or implied, not to use a document for any purpose other than those of the proceedings in which it is disclosed shall cease to apply to such a document after it has been read to or by the court, or referred to, in open court, unless the court for special reasons has otherwise ordered on the application of a party or the person to whom the document belongs.*"

16. There were, therefore, two applications before Judge Green when the matter came to be listed before him on 26th November 1996. Although it will become necessary later to examine the actual course of those proceedings in rather more detail, it is convenient first to complete the overall story in broad outline. The parties having (at least in the Judge's view) seriously under-estimated the likely length of the hearing, they ultimately agreed to settle all matters save only for the costs of the committal application. Under the settlement Mr Zaiwalla submitted to an order that he continue to be bound by the implied undertaking not to use the memorandum for any purpose other than in the Race Relations Act proceedings until their conclusion, and to pay the defendants their costs of the Order 14 rule 8A application; the defendants for their part agreeing not to proceed with their application to commit Mr Zaiwalla for contempt. That, I repeat, left outstanding the issue of costs on the contempt application.

17. In those circumstances, the judge pointed to the "logical difficulties in the court deciding upon what principle it should exercise its discretion on costs", and in accordance with his usual practice indicated that the only basis upon which he would accept jurisdiction would be if the parties gave him "an unfettered discretion" in the matter (albeit, of course, as he expressly recognised, a discretion which had to be exercised judicially). This they did. The hearing overall lasted a day. Judgment was reserved and given two days later, the issue of costs being resolved in the defendants' favour. That, as Mr Gray QC very candidly acknowledged at an early stage of his submissions before us, although no doubt disappointing, would not of itself have prompted this application. What in truth Mr Zaiwalla objects to here is not the costs order against him but rather the terms in which that decision is recorded in the judgment, and to these I now come.

18. Having reviewed the history of the proceedings and the rival arguments the Judge then made the following eight "points":

"A. Mr. Gray concedes for the purpose of this ruling that the plaintiff was in technical contempt.

B. I agree with Mr Falconer that contempt of court is a serious matter whether or not the label "technical" can be applied to it.

C. Mens rea is not a necessary ingredient for contempt. A contempt may be committed by an unintentional breach of the implied undertaking.

D. However, I find that the plaintiff knew quite clearly that he was breaking the undertaking at the time he broke it. He had been warned clearly from the outset not to use the memo for a collateral purpose. He had not asked for nor received express or implied permission to use it. The effect of a contempt being intentional is, to my mind, that it reduces or destroys any mitigation.

E. His present excuse for the breach in this latest affidavit is disingenuous.

F. The defendants' proper and appropriate remedy was to seek his committal.

G. The defendants withdrew their application for a committal as an act of clemency. They were fully entitled to make the application.

H. There is no merit in the mitigation put forward by the plaintiff in his final affidavit."

19. Having regard to those considerations the Judge found it "just and fair" that Mr Zaiwalla should bear the costs. That, however, did not conclude his judgment. He added, whilst making it perfectly clear that it formed no part of his reasoning for awarding costs in favour of the defendants, this further paragraph regarding Mr Zaiwalla's motive in all this: *"I consider that one of his motives, if not his sole motive, was to lay the basis for a libel action by releasing himself, as he thought, from the implied undertaking. I doubt that he genuinely thought that the motive [that must be a mistake for 'memorandum'] had some relevance to the issue before the commercial court. The memo was not referred to in Mr Harris's witness statement; it was only introduced by the plaintiff himself in sending it to Mr Harris. He was pulling himself up by his own bootstrings*."

20. Mr Gray complains of three of those factual findings in particular. In ascending order of gravity they are these:

- That Mr Zaiwalla's "present excuse" for breaching the undertaking is "disingenuous" (point E). That excuse, I should note, deposed to in his third affidavit sworn on 22nd November 1996, was that: *"It appeared to me that it was relevant for Morison J to know that, despite being made aware of the existence of the memorandum, Mr Harris had neither withdrawn his offer to give evidence for the defendants nor resigned as arbitrator."*

  This was the third explanation he had given for the breach -the first (as stated) being that the waiver of privilege in Mr Harris's witness statement had operated to waive also the undertaking with regard to the Steele memorandum; the second, in an earlier affidavit of 8th October, being that the memorandum was produced to the judge "at his direction," clearly an impossible contention.

- That Mr Zaiwalla "knew quite clearly that he was breaking the undertaking at the time he broke it." The contempt was "intentional" (point D).

- That at least one of Mr Zaiwalla's motives for breaching the undertaking was to enable him to bring libel proceedings against Mr Steele. This finding, one notes, echoed an earlier passage in the judgment where the judge said that he accepted Mr Falconer's submission that "the true motive for using the memorandum in the Fletamentos proceedings [was] to tee-up a libel action or threat thereof against Mr Steele." That passage, however, is somewhat puzzling given that at an early stage of the hearing Mr Gray had specifically asked: "*Is it being alleged (and I do ask my learned friend to make clear what his case is) that Mr Zaiwalla used the Fletamentos proceedings as a pretext or a ruse in order to get the memorandum referred to in open court so that he could subsequently say, 'Oh, snap, now I can sue for libel on it?*" (Page 4 of the Transcript of Proceedings) to which Mr Falconer had responded: *"As far as the question that Mr Gray asked, namely, do we allege that it was all a 'set-up' by Mr Zaiwalla? No, we do not*." (Page 9 of the Transcript).

21. Mr Gray's objections to those findings are essentially two-fold. First, that in ascribing to Mr Zaiwalla the improper motive of setting up a libel action against Mr Steele, the judge went, as indicated, substantially further than the defendants themselves had ever contended for. Second, and this in relation to all three of the findings complained of, that none was properly open to the judge given the actual course that the hearing took. To this I must now return.

22. The transcript extends to 93 pages. At page 11 Mr Gray indicated for the first time that Mr Zaiwalla was now prepared to undertake not to make use of the Steele memorandum for libel or any other purpose unconnected with the Race Relations Act proceedings until they were completed. That, as everyone immediately recognised, solved most of the problems in the case. As Mr Falconer observed at page 17: *"In the light of the undertaking that has been given, it seems to us that there is now no point in wasting the court's time for two days in relation to the contempt motion*", although, as he then pointed out, it left outstanding the issue of costs. At page 18 the judge indicated "my provisional view is that this is a technical contempt, but they ought to pay your costs", and shortly afterwards, added: *"... it does seem to me provisionally that it was a very technical deliberate contempt. After all you drew his attention ... [and he then referred to Warner Cranston's letter of December 1994 reminding Mr Zaiwalla of the implied undertaking attaching to the memorandum] so it is hard for him to say that this was not a deliberate breach of the undertaking."*

23. At page 23 the judge turned to Mr Gray to ask him whether he wanted the whole issue of contempt to be tried or simply the issue of costs, to which Mr Gray replied, at page 24, that he would be content with the latter "provided that it is accepted ... that there would not be any finding of contempt, even of technical contempt." It was at that stage that the judge referred to the logical difficulty in following that course and said he would require "an unfettered discretion." That then being agreed, the judge said, at page 26 (and this really is a most important comment, not least in the context of what Mr Gray had said at page 24): "*I will then hear submissions on costs. I am bound to say that I think I ought to warn Mr Gray that by giving me an unfettered discretion, I would be able to approach it on the basis that I might well have found there was a technical contempt. That is the whole point of giving me the unfettered discretion. Do you see? It is very difficult logically, but it is very sensible practically*."

24. There followed a brief adjournment during which the parties reduced to writing the extent of their agreement and there then began the costs hearing itself.

25. Mr Gray addressed the judge first, reiterating his strong denial that Mr Zaiwalla had committed even a technical contempt -although very much later, at page 73, he finally conceded this. The essence of his case why Mr

Zaiwalla should not be required to pay the costs was that the defendants had over-reacted by issuing the contempt proceedings to commit him to prison; rather, Mr Gray contended, the defendants should have confined themselves to an application under Order 14 rule 8A, namely for an order that the disclosure in the Fletamentos proceedings should not be regarded as freeing the document from the undertaking. I shall return later to this argument: it is of relevance to the issue whether or not Mr Zaiwalla should have been ordered to pay costs, but has no bearing whatever on the judge's entitlement to reach the findings of fact now complained of.

26. Pages 31 to 71 of the transcript record Mr Falconer's arguments. He was intent upon drawing the judge's attention to the detailed facts and upon persuading him to the following conclusions. First, that Mr Zaiwalla had indeed committed a contempt (that not yet having been conceded); second, that he had done so deliberately in the sense that he knew that his disclosure of the Steele memorandum to Morison J was a breach of his implied undertaking; third, that he had given a number of changing explanations for making the disclosure, none of which was credible; and fourth, that the contempt was of some importance given that Mr Zaiwalla had thereafter used the fact of disclosure to threaten libel proceedings. These considerations were, of course, of importance in response to Mr Gray's contention that a motion for contempt was an inappropriate and unnecessarily vigorous response to Mr Zaiwalla's conduct.

27. The final point to note on the transcript is Mr Gray's reply at pages 72 and following where he expressed great concern lest the judge went too far in making findings of fact. At page 76 appears this: *"I do very strongly invite your Honour not to enter into the realm of making a decision as to whether it was more than a technical contempt ... because really without having had the matter argued out that would, in my respectful submission ...*"

There was then an interruption but the sense is clear.

28. It is Mr Gray's *cri de coeur* before us that, having regard to the way the proceedings went, Mr Zaiwalla was most unfairly treated by thereafter being made the subject of a series of damaging findings. He was, the submission goes, enticed into the settlement agreement on one basis and then roundly condemned on another. Mr Gray relies in particular upon the Judge's comment at page 26 (cited above), just before the Court adjourned for the settlement terms to be crystallised, namely his express warning to Mr Gray *"that by giving me an unfettered discretion I would be able to approach it on the basis that I might well have found there was a technical contempt"* - and this against the background of Mr Gray's continuing efforts to resist "*any finding of contempt, even of technical contempt.*" Necessarily implicit in this, submits Mr Gray, was an assurance that certainly nothing worse than a finding of technical contempt would be recorded against him. Furthermore, he submits, the result of the proceedings settling save as to costs was that Mr Zaiwalla never had the opportunity of giving oral evidence on oath, yet his denials on affidavit were summarily rejected.

29. True, Mr Gray acknowledges, by giving the Judge, as he did, "*an unfettered discretion*" in the matter of costs, he clearly freed the Judge from some of the more rigid restrictions ordinarily attending contempt proceedings: he plainly enjoyed a wider than usual latitude to consider all circumstances relevant to the issue of costs. But, counsel submits, not even an unfettered discretion could entitle the Judge to step outside the bounds of fairness and this is what happened here.

30. I, for my part, recognise some force in these submissions. Whilst no doubt it was necessary for the Judge to form a provisional view upon the strength of the defendants' contentions regarding the seriousness of Mr Zaiwalla's contempt - Mr Gray was, after all, submitting on his behalf that his conduct was not such as to have justified a committal application - it was to my mind quite unnecessary and, for the reasons which Mr Gray has given, inappropriate, to reach and record a series of actual findings upon these matters. Rather the judgment ought expressly to have recognised that in the light of the way the proceedings had gone and the fact that Mr Zaiwalla's case on the facts had not been heard as fully as it would have been on a contested contempt hearing, only tentative conclusions could be expressed. Once that had been said, there could have been no possible objection to the Judge then going on to indicate that the defendants appeared on the documents before the court to have a very strongly arguable case - a case, moreover, not merely of technical contempt but of deliberate contempt; it will be remembered that the Judge had spoken earlier of "*a very technical deliberate contempt*". Certainly the Judge was well entitled to indicate his profound scepticism as to Mr Zaiwalla's explanations on affidavit and to have expressed himself amply satisfied on the evidence before him that the defendants had every justification for having instituted and pursued the contempt proceedings. To none of that in my judgment could Mr Zaiwalla have taken the least exception. But whilst it would have been one thing, and legitimate, to reach and express strong though necessarily provisional views of that nature, it was quite another, and as I believe illegitimate here, to put on public record in a Court judgment the clearest findings of a most serious contempt even although one not to be recorded in an actual court order.

31. It follows that in my judgment the Judge below, carefully and conscientiously (and, indeed, in a real sense helpfully) though he was seeking to discharge his duty in resolving the costs issue, went too far in the damning terms in which he expressed his conclusions. Most plainly is this so with regard to the finding as to Mr Zaiwalla's underlying motive in all this. But to my mind it is so also with regard to his finding that Mr Zaiwalla knew full well that he was breaching the undertaking. The only conclusion which he was entitled to reach and express in terms of finality was, as foreshadowed in his warning before the settlement agreement, and as, indeed, finally conceded by Mr Gray, that Mr Zaiwalla was plainly guilty of a technical contempt - by which presumably was meant that Mr Zaiwalla acted as he did without justification but nonetheless in good faith.

32. Turning finally to the costs order itself, there is really very little which need be said: it was to my mind, on any conceivable view of the facts, not merely a proper order to make, but in truth the only order that would have been proper in the circumstances. Realistically the bottom dropped out of Mr Gray's argument once he had to acknowledge that Mr Zaiwalla was guilty of at least a technical contempt. To my mind it then became quite impossible to submit that, rather than issue contempt proceedings, the defendants should instead have obtained an order under Order 14 rule 8A. Whatever the true construction and application of that rule, it cannot in my judgment come into effect following a disclosure made in breach of the undertaking: there can be no need for the court "*for special reasons ... otherwise*" to order, to preclude the implied undertaking from being discharged by a contempt. Even assuming therefore - as Mr Gray submits and as, contrary to my initial reading, I am now inclined to accept - the reference in the rule to *"the court"* does not confine this release mechanism to occasions when the document is read or referred to in the very court in which discovery of the document was first given, I reject the argument that the rule could or should properly be invoked in the event of a contemptuous disclosure, as occurred here. No doubt, had the disclosure been authorised by the defendants - or, indeed, by the Judge himself insisting, despite being told (as he should have been) of the implied undertaking, that he wished nevertheless to see the document - it would then have been necessary in those proceedings for Morison J to have made an 'otherwise' order under the rule (Order 24 rule 14A in the High Court). That, however, is not for present decision.

33. Once that argument is disposed of, there is frankly nothing left of Mr Zaiwalla's case on costs. Given his subsequent threat of libel proceedings based upon the disclosed memorandum, the defendants really had no alternative but to issue their contempt motion. And indeed, irrespective of whether the defendants could have safeguarded themselves against the further misuse of the memorandum by resorting to Order 14 rule 8A, Mr Zaiwalla's conduct, however indulgently one views it, to my mind richly deserved the reaction it attracted from the defendants.

34. If one asks here - and really this was the critical question arising on the outstanding costs issue - who was most open to criticism for their part in all this - was it Mr Zaiwalla for having acted as he did with regard to disclosing the memorandum and then threatening its use to bring libel proceedings, or was it the defendants for issuing contempt proceedings, the question to my mind admits of only one answer: plainly it was Mr Zaiwalla. Giving him the benefit of every possible doubt in the case, he was nevertheless guilty of the gravest misjudgments for which he had properly to be condemned in costs. He was in truth lucky to escape the proceedings without a formal finding of contempt recorded against him; it was foolish of him ever to have contested the issue of costs.

35. It follows in these circumstances that it would be wholly inappropriate to grant leave to appeal against the costs order and the application before the Court is accordingly refused. The challenge to the terms of the judgment itself could never, of course, have founded an appeal.

36. I add three short footnotes. First, I wish to make plain that I have not overlooked the exchange of correspondence between Mr Zaiwalla and Morison J in October and November 1996, in particular the Judge's view expressed in his letter of the 20th November that he did not consider that Mr Zaiwalla had "behaved *improperly ... in the way you responded to my request for material",* with regard to the allegation of bias against Mr Harris. All that need be said as to that is, first, that Morison J had been left unaware both of the previous reminder to Mr Zaiwalla with regard to the implied undertaking attaching to the Steele memorandum, as also of Mr Zaiwalla's subsequent threat to use the now disclosed memorandum to bring a libel action; second, that, with the best will in the world, it is impossible to see how the Steele memorandum could ever sensibly have advanced the Judge's understanding of the case to Mr Harris' fitness to continue as an arbitrator.

37. My second footnote concerns the possible impact of these proceedings upon litigants' readiness generally to settle proceedings subject to costs. Clearly it is in everyone's interest that, wherever possible, proceedings should be compromised. Ideally compromises encompass costs too, but sometimes, as we all know, costs prove the sticking point and have to be decided. For my part, I commend judges who, like Judge Green, recognise the logical difficulty that this presents but nevertheless face up to it: better this than that the substantive issues too have to be fought out. But, as this action teaches, clear ground rules for resolving the outstanding issue must then be laid down and observed. Otherwise, as it seems to me, parties may be positively discouraged from settling lest, as here, they are left with findings arguably more damaging than those that might have followed from a full hearing.

38. Finally this. Although to some extent Mr Zaiwalla has justified this application by persuading us to dilute the findings recorded against him in the judgment below, he has failed in his substantive application and has failed too to show any responsibility in the defendants for the Judge's excessive findings. Once again, therefore, as between Mr Zaiwalla and the defendants (who had to attend this application since any appeal was listed to follow), the costs clearly fall to be paid by him. We so indicated at the conclusion of the hearing earlier in the week. Mr Zaiwalla has, alas, in a real sense brought all this on himself.

LORD JUSTICE MORRITT: I agree.

LORD JUSTICE WALLER: I also agree.

Application refused with costs

MR. C GRAY QC & MR. G BUSOTTIL (Instructed by Messrs. Zaiwalla, London WC2A 1ZZ) appeared on behalf of the Applicant
MR. C FALCONER QC & MR. R COLEMAN (Instructed by Messrs. Warner Cranston, London SE1 9DG) appeared on behalf of the Respondent