

May be reposted

Response to a statement emanating from Prof. Malcolm Hooper of the 29th of July forwarded by Stephen Ralph

**By
Ciaran Farrell**

I have written this statement in response to statements put out on the internet by Prof. Malcolm Hooper. These statements were sent by Margaret Williams to a list of recipients in the form of MS Word documents with a request that they be circulated as widely as possible. Stephen Ralph then forwarded the two statements dated the 29th of July and the 5th of August to Co-Cure and he subsequently circulated the URLs to these documents for locations in the files area of MEActionUK, the Yahoo Group he runs and manages as both List Owner and Moderator.

The NICE Judicial Review

The Judicial Review of the NICE Guidelines on CFS/ME was lost on all counts. This is in itself a bitter pill for the ME community to swallow, but what has made this situation excruciatingly bad is that the solicitors acting for NICE, Beachcroft LLP, applied to the High Court on behalf of their client NICE for a 'Wasted Costs Order' and this was granted. <http://www.barcouncil.org.uk/guidance/wastedcostsorders/>

Judicial Review hearings are conducted in open Court and in public and it is very rare for witnesses to be called upon to give oral evidence to the Court by taking the Witness Stand. Witnesses provide written statements and barristers debate the weight, worth, relevance and impact of the witness' written testimony in terms of points of law before the Judge.

Highly controversial and contentious matters led to a Wasted Costs Order were centred principally on three issues:-

- 1) *The inclusion of a large tract of a Margaret Williams document in Mr. Beagent's official Witness statement to the Court in which he sets out his case to the Court on behalf of his clients.*
- 2) *The nature of the extremely controversial and contentious content of the Margaret Williams tract that Mr. Beagent tried to pass off as his own original work.*

3) *The conduct of Margaret Williams herself.*

In order for a Witness Statement to be entered into Court proceedings, it must be written by the person concerned and signed by them. Since Margaret Williams is only a pseudonym, if she wanted to provide a Witness Statement she would have had to do so in her real name of Kate Stewart and then explain that she was known under the pseudonym of Margaret Williams. If she was not prepared to do this, she would not have been able to tender a Witness Statement to the Court for inclusion in the Judicial Review proceedings.

If this were the case, this would be problematic since although Mr. Beagent could provide an explanation of the situation in his Witness Statement and he could refer to a free standing document written by Margaret Williams, such a document would not have the same status in the eyes of the Court as a properly written and signed Witness Statement.

This would have created enormous problems for the complainants as the Margaret Williams document was effectively the case against NICE and so it could not have been relegated to the status of a supporting document in the case, because the document could not have formed the basis of the case if this were done.

It was the job of the instructing solicitor in the case, Mr. Beagent, to turn the research material presented to him by Margaret Williams, in the role of an informal advisor, into a well founded legal case setting out formal legal arguments and grounded in solid points of law. This he did not do as he simply incorporated the Margaret Williams document in his own Witness Statement, which contained the case that was put to the Court.

Lawyers who are not very conversant with ME or the medical, scientific and governmental issues concerning ME involved in a Judicial Review of the NICE Guidelines, will not know enough about the ME based issues involved to be able to find and select the relevant laws that will enable their clients to be able to put their case to the Court in the terms of specific ME based issues without a certain amount of assistance. This assistance can be obtained from within the firm of solicitors concerned by assigning paid staff to the job, which is a slow and expensive process as those staff members have to start learning about ME from scratch, as they do not have the same level of insight into the issues that a well informed ME patient or carer would have.

Where there is neither the time or the money for this approach, which is usually the case with Judicial Reviews and other public interest cases fought on Legal Aid, it is common practice for the Legal Team to use an informal advisor who is a volunteer that can undertake this, thus minimalising costs. Hopefully, the learning curve for the lawyers will be a smooth and relatively short one.

The job of an informal or “special” advisor to the Legal Team is to form a bridge between the vast subject matter of the field, in this case ME, and the legal requirements of lawyers for relevant subject matter that will sit underneath their points of law, thereby exemplifying the legal arguments that will be put forward in Court and consequently customise for use the general points of law on which the case is based.

The reason why this is so vitally important is that the instructing solicitor has to articulate the arguments of the expert and other witnesses in legal terms in relation to the law itself as well as the rules and regulations of a body, such as NICE, in terms of points of law in order to build a legal case.

It is a very worthwhile exercise to compare the Witness Statements of Mr. Beagent to that of Mr. Conrad Hallin.

Mr. Hallin makes his starting point the statutes that established NICE as a quasi-autonomous government organisation and then sets out what NICE was established to do and how NICE ought to go about it, according to the law and the rules and regulations of NICE itself. He then shows that NICE did not abide by their rules, regulations and protocols when they came to draw up the NICE ME Guideline by articulating in legal terms the technical medical and scientific arguments of his star expert witness, Dr. Malcolm Kendrick.

The basic problem with the Margaret Williams document “A NICE dilemma?” (15th December 2008) was that Mr. Beagent reproduced it as a tract in his Witness Statement when the document was written by an ME activist, the aforementioned Margaret Williams. The document was written for a target audience of ME activists about the ME politics of the NICE CFS/ME Guideline, therefore it was not suitable to be the central core of a detailed and highly technical legal case which it became when it was inserted into Mr. Beagent’s Witness Statement.

The fact that “A NICE dilemma?” was reproduced in Mr. Beagent’s first Witness Statement is beyond doubt since Mr. Beagent apologised to the Court for having done so.

Therefore the document came under intense scrutiny from Mr. Hocking and the Legal Team at Beachcrofts as well as NICE and the document was found lacking in legal argument and legal rigour and it contained very few if indeed any real points of law. However, it did contain a great many allegations about the members of the NICE Guideline Development Group and many other prominent individuals, including ME charity representatives.

The document set out these allegations from a political standpoint, illustrated by scenarios for why and how the NICE Guideline Development Group was appointed, and who had made the appointments. Margaret Williams then argues that because the individuals concerned were appointed essentially for holding a biopsychosocial perspective on CFS/ME, they were unsuitable to be members of the Guideline Development Group and that in any event some of them had serious biopsychosocial connections and affiliations with the biopsychosocial movement or lobby. Margaret Williams then argues that any breach of rules and regulations occurred due to the political intentions and motivations of those involved.

If the Margaret Williams document "A NICE dilemma?" is viewed simply through the lens of an ME activist, like myself, who has an anti-biopsychosocial view, and therefore an anti-CBT and anti-GET view of ME politics, the document makes for an interesting read, but it is not a legally rigorous document that ought to be at the heart of a complex legal case.

Lawyers and Judges in particular are inclined to be displeased by thus intolerant of this sort of political analysis because it organises the facts of any given matter in terms of the political issues, and not the legal ones, and it imputes and assigns political motivations to the main players involved in those issues which are difficult to prove in any objective way. Therefore they tend to dismiss them as "conspiracy theory", and this was precisely what happened.

Essential background on Wasted Costs Order

A Wasted Costs Order is effectively a fine in all but name. This was imposed by the Judge in the Judicial Review case on Leigh Day & Co, the solicitors acting for the complainants Mr. Fraser and Mr. Short. Messrs Fraser and Short had mounted a series of challenges against the NICE Guidelines in the High Court through the Judicial Review. A Wasted Costs Order is granted by a Judge when a case that has been brought before the Court of that Judge considers that the case was so badly constructed and presented in Court that it did no justice to the legal issues involved, thereby wasting valuable Court time and public money and/or where there are serious issues involving professional misconduct on the part of the solicitors who brought the case to Court in the first place.

The point and purpose of a Wasted Costs Order is to ensure that the standard of case that is brought to Court by lawyers meets the required standard that Courts consider is necessary in legal practice.

They do this by ensuring that where this is not the case, the individuals, companies or public bodies such as NICE who have had to defend themselves in Court against lawsuits that are so way below the acceptable standard that they have wasted Court time and resources, the Wasted Costs Order serves as a fine on one party in proceedings for having brought the case, and provides compensation to the other side for having to suffer the case. It is important to recognise that a Wasted Costs Order is effectively a fine on the solicitors who brought the case to Court, for doing so in the way they did, and not a surcharge to be paid on the ordinary legal costs of the case.

Wasted Costs Orders deal in financial fines and remunerative sums that are over and above the awarding of legal costs against the party to proceedings who the Court decides was at fault in the legal proceedings before the Court. That is why they are particularly relevant in the case of Judicial Reviews conducted in the public interest as those who challenge public bodies such as NICE through the Courts will have their costs met by the public purse through Legal Aid to some extent although Legal Aid does not cover anywhere near the full costs of the case.

The reason that this is so important in public interest cases involving a Judicial Review of the decisions of public bodies like NICE is that it sends out a very clear message that although the case was heard in the public interest for the public good, the case was so badly constructed and presented to Court that the solicitors who did so in this case, Leigh Day & Co, were not acting in the public interest due to their appallingly low standards of legal representation of their clients.

The value of this Wasted Costs Order was £50,000 - a very serious fine. Therefore it represents a very powerful message by the Judge in the NICE Judicial Review to the public about the competence and conduct of Mr. Beagent of Leigh Day & Co, the solicitor who represented Mr. Short and Mr. Fraser.

My credentials as an advisor in a similar legal case

Many years ago I was both an advisor and a client of the solicitor who took Camden Council to Court over their failure to maintain the district heating system on the estate where I live, in a legal group or "class action" on behalf of well over 50 individuals. I was the Chair of the Tenants Association at the time and therefore I was accountable to both the Tenants Association Committee and to the estate's tenants. I helped prepare the Court documents and I gave evidence in Court both as a tenant and as the Chair of the Tenants Association as well as being called as an expert lay witness in the case in general and in the cases of other tenants.

I had been on the steering committee of the Denton tenants' action group that had taken similar legal action against Camden a few years earlier so I was able gain valuable insights into how to prepare and organise such a legal case. The Denton tenants action group was supported by community workers from the nearby Neighbourhood Advice Centre, which closed down before the case I set up commenced. Therefore I had to do a great deal of the work myself. Both of these very large cases were won forcing Camden to engage in large scale and comprehensive works programmes costing millions of pounds in order to resolve the issues that tenants were complaining about.

Therefore I know what is involved in researching and compiling the required documentary evidence and making that evidence relevant to the legal basis of a Court case, and I also know what is required of an advisor to a Legal Team or solicitor as I have understudied that job in preparation for successfully carrying out that job myself.

It is upon this basis, and with the insights I gained from this experience, that led me to report the contents of Mr. Hocking's Witness Statement on YouTube in the video series about the Judicial Review because I believed it was in the public interest of the ME community for me to do so, and that is also why I made the comment and analysis I did about the contents of Mr. Hocking's Witness Statement.

The nature of the YouTube series "NICE review?
The CFS/ME Guidelines Judicial Review" on GBCTwo

There is a certain amount of controversy about the YouTube series "NICE review? The CFS/ME guidelines Judicial Review" on GBCTwo, the YouTube Channel belonging to Gus Ryan. The mini documentary series features various people providing their own views and insights into the NICE Guidelines on ME and their views on the Judicial Review process as they see it. My contributions to the series are that I provide a running commentary which explains the Judicial Review process as well as a critical analysis of the legal challenges made against the NICE ME Guideline and the defence put up by NICE against these challenges. I researched what I was going to say to camera reading and referring to, where appropriate, official Court documents and other sources of authoritative information and material. In order to provide a more interesting and "live" performance, I did not read from a prepared script and the video was edited in order to ensure that what went into the finished product was accurate, precise, concise and to the point.

In the second part of Part 1 and in the whole of part 2, the background of the Judicial Review is set out and a description of the 3 challenges to NICE made by the complainants is embarked upon. Part 3 describes the Interested Party's challenge to NICE which continues into part 4 which also describes the NICE defence to the challenges. Part 5 sets out more on the NICE defence. Parts 6 & 7 contain the views of people with ME talking about what the Judicial Review means to them. Part 8 deals with the verdict. Parts 9, 10 and 11 feature Dr. Ellen Goudsmit providing expert comment and analysis on the technical aspects of the way in which NICE dealt with scientific and medical research NICE claimed underpinned their Guideline.

Part 1 can be found at :-

<http://www.youtube.com/watch?v=GhWqGL6KyI8>

Part 2 can be found at:-

<http://www.youtube.com/watch?v=dH6BTwur9V4>

Part 3 can be found at:-

<http://www.youtube.com/watch?v=iCkG3D-kReg>

Part 4 can be found at:-

<http://www.youtube.com/watch?v=rPDTEfqxUJ8>

Part 5 can be found at:-

<http://www.youtube.com/watch?v=w8M9faoVzzI>

Part 8 can be found at:-

<http://www.youtube.com/watch?v=vcYp8sqKa-I>

Controversy has centred in particular on parts 12 and 13 of the series in which I provide evidenced based comment and analysis on the public court hearings with reference to official Court documents used in the case as well as other documentary evidence.

Part 12 can be found at :-

<http://www.youtube.com/watch?v=pKPeI06vVLw>

Part 13 can be found at :-

<http://www.youtube.com/watch?v=X2JV11PNw0M>

The nature of the controversy about the "NICE review?
The CFS/ME guidelines Judicial Review"
on the YouTube channel GBCTwo

The reason for the controversy about parts 12 and 13 of the series is not about the way in which the videos were made, or about the comment or analysis that is given by me about the facts that I am reporting on in the video as might be expected, as these matters contain a certain amount of opinion based judgement about the worth and interpretation of the pertinent facts. Neither is the controversy about the way in which the videos were edited, or about the editorial judgements involved in the presentation of the material concerned. The controversy is not about the basic standpoint of the series as a whole or my contributions to it, or the standpoints taken by the participants including myself who take an anti-NICE Guideline approach to the Judicial Review and therefore support and endorse the legal challenges to the NICE Guideline.

The controversy is about the fact that I reported the content of the Witness Statement of Beachcroft LLP solicitor Steven Hocking who was the solicitor defending NICE against the challenges made against NICE in the Judicial Review. The reason for the controversy is that Mr. Hocking's statement is a damning indictment of the way in which the case against NICE was constructed and conducted by the Legal Team for the complainants, Mr. Beagent (a Leigh Day & Co solicitor) and Margaret Williams (an advisor to the complainants - Mr. Short and Mr. Fraser). This reflected very badly on them and on one of their close allies in this matter and their principal witnesses and supporter, Prof. Malcolm Hooper.

Prof. Hooper says in his statement of the 29th of July that "people have a right to know the facts" about the Judicial Review of the NICE Guidelines which was conducted by two individuals on behalf of the ME community, as well as the London based internet campaigning group "One Click". He is right on this point as this issue together with the issue of freedom speech are at the heart of the controversy over the videos concerned.

All Court documents that are submitted to an open Court of law are deemed to be public documents after the conclusion of the case in Court unless a successful application is made to the Court to withhold them from the public, or to redact information contained in them. No such application was made in the case of the Judicial Review, and this is why all the Court documents are public documents and can be published and discussed by the public, in public discussion forums, such as those found on the World Wide Web, or elsewhere.

There are reasons for this which are at the heart of the British judicial system and are enshrined in law. They are validation of the rule of law by ensuring that justice is seen to be done, and therefore freedom of the press to report on open Court proceedings to this end, as well as knowledge of the judicial process and therefore informed access to the judicial system by the public so that the public can make use of the Parliamentary system in order to ensure that laws are made and enforced with the consent of the people.

Therefore it is a legal right to report the proceedings of the NICE Judicial Review, which was heard in the public interest and held in open Court and to report, and to analyse and discuss the content of public Court documents which formed part of the case that was heard in Court.

Therefore, when Prof. Hooper asserts in his statement:

“The failure to redact this erroneous information before the Court was entirely the fault of the lawyers involved and was not due to Margaret Williams or any other advisors to the Claimants”

it contains the fallacious argument that there was a basis for such redaction, as it constitutes censorship of a public document that was produced as part of legal proceedings in an open Court in the public interest as it presumes that the Court agreed with him that the document contained the “erroneous” information he claims the document contained when quite clearly the Court did not believe that this was the case.

In his statement of the 29th of July, Prof. Hooper alleges that these videos constitute what he perceives to be a malicious attack on Margaret Williams over the handling of the Judicial Review because he believes the content of the videos to be “both erroneous and defamatory”, as they contain reported content from Mr. Hocking’s Witness Statement.

However, I have to point out that the time to have challenged the content of Mr. Hocking’s statement over the matter would have been in Court, but Margaret Williams/Julia Hamilton did not do so by putting into Court her own Witness Statement challenging the “erroneous and defamatory” content of Mr. Hocking’s statement that she objected to. This was simply not done.

I can see one reason why it would have been rather awkward to have tried to do so as Kate Stewart would have had to make that statement in her own true name and she would have been forced by circumstances to explain herself in Court and to justify her actions. I can see very clearly why Ms. Stewart would not want to be in the position of having to occupy the 'witness stand' in these proceedings given the evidence ranged against her by Mr. Hocking.

It has to be pointed out that the Court simply did not consider that there was any such "erroneous and defamatory" content in Mr. Hocking's Witness Statement, but the Court did consider that there was a very serious issue over Mr. Beagent's Witness Statement which did contain material that was "erroneous and defamatory" to the point of slander and even libel towards members of the NICE Guideline Development Group and other individuals that was written by Margaret Williams and reproduced in Mr. Beagent's Witness Statements.

The authorship of Prof. Hooper's statements

I contacted Prof. Hooper by email with an offer of discussing the situation with him privately, but as of the 20th of August, I had received no response from him.

However, Gus Ryan contacted Prof. Hooper on Sunday 9th of August 2009 and Prof. Hooper replied the following day at 4.35pm. At 5.07pm Stephen Ralph posted a forwarding of Prof. Hooper's reply to Gus Ryan on MEActionUK, the list owned by Mr. Ralph.

Gus Ryan asked Prof. Hooper to confirm that the statements released in his name were composed by him and only him. His answer was: "Both the statements I issued were my full and final comments on the matter and I have nothing further to add." This however does not address the central issue of the authorship of Prof. Hooper's statements as the statements concerned went bearing his name, and therefore unless he were to disown them, he would have to acknowledge that he had issued the statements. What he does not say is that he was the author, or the sole author, or that he composed the statements himself. Nor does he say how the statements were to be disseminated in order that they could be published on the internet, and if another person was in any way involved in any way with the production of the statements he 'issued'.

Therefore doubt about the authorship of Prof. Hooper's statements, as a result of his being perhaps unwilling or unable to answer a simple question with a simple answer, may exist. An analysis of the Windows/Word file properties of the Word documents that Margaret

Williams sent to recipients for distribution reveals significant doubts as to whether or not Prof. Hooper actually was the sole author of these two statements. This led to an analysis of the language used in the statements as well as the writing style being performed which indicates through the use of certain phrases together with certain perspectives expressed in the second statement in particular, that they are consistent with the general writing style of Margaret Williams as being the author of the statements rather than Prof. Hooper.

Therefore on the basis of this evidence, Prof. Hooper may not have been the only author of these statements as they could have been a joint enterprise with Margaret Williams, or that Margaret Williams may well have been the author.

The suppression of the facts & the stifling of debate about the NICE Judicial Review

Margaret Williams, though her close ally and supporter Stephen Ralph, has made representations to Gus Ryan, which by extension apply to me, that we are led to believe Prof. Hooper knows about, to withdraw the YouTube videos that report the content of Mr. Hocking's Witness Statement, namely parts 12 and presumably 13 as well. Mr. Ryan has informed me that he has no intention of doing so unless there is a solid legal basis for removing them.

It is now in the public domain that the One Click Protest Group received similar representations from these individuals who wanted the Stephen Hocking Witness Statement taken down from the One Click website, and that Jane Bryant did not do so, and that she has no intention of so doing.

Therefore what Prof. Hooper together with Margaret Williams and Stephen Ralph want to do is to deny the public and the ME community access to a public document produced for the NICE Judicial Review that was mounted in the public interest of the ME community in order to prevent public discussion and debate about the NICE Judicial Review case and why the case was lost. In doing so, I consider that they are acting against the public interest of the ME community.

Therefore when Prof. Hooper says in his statement of the 29th of July that "people have a right to know the facts" about the Judicial Review of the NICE Guideline, he ought to practice what he preaches rather than engaging in trying to suppress knowledge of the facts of the matter in order to stifle discussion and debate.

In the light of this, Prof Hooper's allegation that "Those making these attacks [on Margaret Williams] are ignorant of all the facts of the case and are acting maliciously" rings very

hollow since Prof. Hooper together with Margaret Williams have sought to prevent the ME community knowing all the facts about the NICE Judicial Review.

An analysis of the claims of "errors" & "defamation"
within Mr. Hocking's Witness Statement

Prof. Hooper puts forward a new version of events in his statement, but very few, if indeed any, new real facts. These new facts can legitimately be subjected to scrutiny and interpreted within the overall known framework of events in order to place them in context.

The following statement was made concerning the activities of Margaret Williams in relation to the Judicial Review that is of relevance to the allegations made by Prof. Hooper about the "errors" and "defamation" he considers that the videos contain, although it is to be noted that he does not state precisely what he means, although he does present events in relation to the following public exchange of emails about the subject in a different light.

From the One Click website:

<http://www.theoneclickgroup.co.uk/news.php?start=2680&end=2700&view=yes&id=3393#newspost>

"NICE And The CFS/ME Guidelines Case Dismissed In The British High Court

One Click Group Director Jane Bryant writes:

Dear All

The Judgement in the case of the Judicial Review of the Chronic Fatigue Syndrome/Myalgic Encephalomyelitis (CFS/ME) NICE Guidelines was handed down in the High Court of Britain today by Mr Justice Simon. The legal challenge has been dismissed on all counts.

SEE

Judgement - Judicial Review CFS ME NICE Guidelines

There is a very great deal to be concerned about on behalf of the Pledgers, those good people who raised funds around the world to finance this legal activity through the One Click solicitors, from November 2007 through January 2008. These were the funds demanded of us and set as a target to us by the Legal Services Commission (Legal Aid).

As the Interested Party on the Pledgers' behalf (and no, we ABSOLUTELY did not choose

this role), we have been shocked at the roles played in this court case by Kevin Short, Douglas Fraser, Margaret Williams (real name Kate Stewart) and solicitor Jamie Beagent of Leigh Day. The Witness Statements on the part of the latter are particularly banana skin stunning. Let alone Margaret Williams/Kate Stewart masquerading as 'Julia Hamilton', contacting NICE's solicitors Beachcroft whilst pretending to be an employee of Leigh Day, as the court papers state. You couldn't make it up if you tried. You could also be scant less professional if you tried. And there is a great deal more..."

[UK Web Hosting by 3DPixel.net Fri, March 13th, 2009. 10:10 pm]

To which Margaret Williams responded :-

"Statement from Margaret Williams re: One Click post on 13th March 2009

On 19th October 2008 the solicitor acting for Fraser and Short in the Judicial Review of the NICE Guideline on "CFS/ME" informed them that the Interested Party had asked to be represented by the Claimants' barrister at the Judicial Review Hearing. The Interested Party's request was declined.

Allegations made on 13th March 2009 by One Click about Margaret Williams are inaccurate: in this specific regard, the Court documents submitted by Beachcroft on behalf of NICE are erroneous and were challenged."

[14th March 2009]

One interpretation that can be made of this exchange of emails is that Margaret Williams did not challenge the basic truth of the allegations in Mr. Hocking's Witness Statement, because she claims that by acting in the way she did, she was able to obtain information that she would not have done through normal means. In other words, Margaret Williams defence is that the ends justify the means.

Prof. Hooper's statement of the 29th of July serves as a confirmation of this as he states:

"Using the name Julia Hamilton, Margaret Williams did indeed contact NICE and the Legal Services Commission with a legitimate request for information that was in the public interest..."

This endorses what I said in the videos together with the comments that such behaviour on the part of an advisor to the complainant's Legal Team is risky and provocative because it offers a hostage to fortune if one were caught, as Margaret Williams certainly was, and that this would reflect very badly on the case. That is why the standard legal advice to litigants in such circumstances is not to engage in any such behaviour but to route all communications with the other side through their lawyers.

Prof. Hooper has not got his facts straight about the specifics of the allegations against Margaret Williams contained in the Witness Statement of Stephen Hocking. Mr. Hocking alleges upon the documentary evidence of emails, which are reproduced within his statement, that Margaret Williams, posing as Julia Hamilton, contacted NICE claiming to be from the Legal Services Commission (LSC) in order to obtain information about the NICE Judicial Review case.

Mr. Hocking makes a separate allegation, that Margaret Williams, posing as Julia Hamilton, contacted Beachcroft LLP, the firm of solicitors working for NICE, (which is also backed up by emails reproduced within his Statement), in which she claimed to be working for the Legal Services Commission for the purpose of obtaining information on the NICE Judicial Review case.

There is also the matter of Margaret Williams posing as Julia Hamilton contacting NICE in her role of an informal or special advisor to the Legal Team of the complainants (Mr. Fraser and Mr. Short), in which Julia Hamilton/Margaret Williams, wanted information on the NICE Judicial Review case when she had no authority or capacity to have done so, and therefore she employed a pseudonym in order to avoid detection. Mr. Hocking's allegations are also backed up by emails reproduced within his Witness Statement to Court so the basis for his allegations and the evidence for them can clearly be seen. If this contact had been as legitimate as Prof. Hooper appears to suggest, which I doubt, then Kate Stewart/Margaret Williams could have continued to use her well know alias of Margaret Williams in order to mask her real identity of Kate Stewart if she wanted to retain her privacy as Prof. Hooper claims.

Prof. Hooper's statement of the 29th of July conflates these allegations presumably in order to bring all of them within the remit of Margaret Williams' role as an informal or special advisor to the complainants' Legal Team so as to minimise the scope and depth of the allegations ranged against his friend and colleague Margaret Williams in what I consider is a damage limitation exercise.

Despite this Prof. Hooper's statement does serve as a confirmation that the contact between Margaret Williams/Julia Hamilton and NICE as well as Beachcroft did take place in the general way in which Mr. Hocking describes it in his Witness Statement. Therefore

Prof. Hooper's objections to Mr. Hocking's allegations are more a secondary matter of detail rather than a primary matter of a dispute over the key facts as set out in Mr. Hocking's Witness Statement to Court.

When I stated in the YouTube video that the various parties that Margaret Williams contacted recorded her contacts with them I did not state how they did so. It can be seen from references within the correspondence contained within Mr. Hocking's Witness Statement, as well as the Statement itself, that NICE, Beachcroft LLP and The Legal Services Commission personnel that were contacted by Margaret Williams made notes in which they recorded the events concerned. They subsequently wrote emails about the matter to each other thereby recording a paper trail which is reported in Mr. Hocking's Witness Statement. Mr. Hocking reports the edited highlights of this paper trail in his Witness Statement, which is therefore a record of events based upon that paper trail and that therefore there is a very good evidence base for Mr. Hocking's allegations.

The consequences of the actions of
Julia Hamilton/Margaret Williams

In his statement, Prof. Hooper says of Margaret Williams/Julia Hamilton:

"She did, however, say she was working with Leigh Day & Co, a fact confirmed by them on 9th February 2009 when Jamie Beagent wrote to her saying: "Your role and involvement..in the legal proceedings is perfectly proper".

The full text of the letter that Prof. Hooper quotes from is not made available and the quote given is of a rather selective nature and as such it does not provide much if indeed any real evidence that Margaret Williams'/Julia Hamilton's activities and conduct were acceptable to Mr. Beagent of Leigh Day & Co as being legitimate, as the role of an informal or special advisor is indeed a perfectly proper one as I have described previously, and therefore it would be perfectly proper for Mr. Short, Mr. Fraser and Mr. Beagent to have used the services of an informal or special advisor.

There is another aspect to this which is that by the time that Mr. Beagent wrote to Margaret Williams/Julia Hamilton on the 9th of February 2009, there had been some exchanges of correspondence between the various parties through their solicitors and the matter of the Margaret Williams document "A NICE dilemma?" was a factor in this as Mr. Hocking had already been able to assemble the pieces of the jigsaw by then as the 9th of

February was very close indeed to the start of the Court hearing. Therefore it might be surmised that what might be the case is that Mr. Beagent was simply nailing his colours to

his mast and hoping that by doing so he could ride out the storm in Court. If these were indeed his intentions, he was sorely mistaken.

I have set out above the fact that I have been an informal or special advisor, so I know where the borders and boundaries of acceptable conduct are drawn, and one place in which there are very clear demarcations is around the prohibition of informal or special advisors substituting for paid members of staff in the day to day running of the solicitors chambers. The relationship between solicitors and their clients is protected in law so that clients can have faith in the highest standards of probity and confidentiality on the part of their solicitors. Any attempt to gain information on the case by an interloping third party to that relationship risks being seen as someone making an attempt to break the law by breaching the sanctity of the client-solicitor relationship.

Therefore the role of an informal or special advisor is not to make telephone calls or to correspond with the solicitors for the opposing party in legal proceedings by email or by any other means, or to make enquires of official bodies such as the Legal Services Commission about the case, or to contact the opposing party directly.

This is the job of the solicitor undertaking the case that one is advising. There are clear and simple reasons for this; The solicitor is officially responsible and accountable for the conduct of the case in law and is the licensed professional who has membership of a professional body to whom he or she belongs who is in charge of the case under the supervision of the legal practice for whom they work. The judgements and decisions of the solicitor in the case cannot and must not be overridden or walked around by an advisor who is not an employee of the legal practice concerned as the advisor is not covered by the various codes of legal practice and any liability insurance the legal practice may have for its staff and solicitors.

This means that any research that is undertaken by an informal or special advisor must be undertaken in the role of an individual member of the public, and not on behalf of the solicitor's clients or the solicitor in the case. The results of research conducted by members of the public can be used as part of a legal case where appropriate, but the informal or special advisor must not engage in risky or provocative enquiries of those involved in the legal proceedings as this would undermine the advisor's role and that of the solicitor and the solicitor's clients.

There is another aspect of this which is crucial to the understanding of what took place in the NICE Judicial Review case;

If an informal advisor does engage in contacting various parties involved in the legal proceedings, the advisor will not be known to them as an official member of staff dealing

with the matter as contact arrangements and personnel involved in the case are agreed by all parties to proceedings at a very early stage in those proceedings. Therefore when enquiries are made about who the informal or special advisor is and their capacity in proceedings, those enquiries will reveal that the person concerned does not work for the legal practice or organisation concerned as they have no one who does work for them of that name. Therefore there will be the immediate suspicion that the person is some kind of interloper.

It is therefore clear that Margaret Williams/Julia Hamilton crossed the normal and expected borders and boundaries for an informal or special advisor by contacting other parties involved in proceedings directly as well as the Legal Services Commission when she had no capacity, remit or authority to have done so.

One crucial feature of the correspondence reproduced in Mr. Hocking's Witness Statement is that Julia Hamilton/Margaret Williams was considered to be making enquiries about obtaining information on how NICE had appointed members of the Guideline Development Group, GDG, who were the committee that was responsible for the production of the Guideline on CFS/ME, under the Freedom of Information Act. This raises a number of issues :-

- 1] That a request for the information about the appointment of the GDG and enquiries were made about the possible use of the Freedom of Information Act (FOI) were made by Julia Hamilton/Margaret Williams, although the correspondence, if accurate, does show a lack of knowledge about the use of FOI on the part of Julia Hamilton/Margaret Williams. Therefore it is doubtful if an official and formal request for the information was made under the Act as a result of this contact.

- 2] That it was stated in the High Court during the hearing that an official FOI request had been made by the complainant's Legal Team, but that this was rather late in the day as it was very close to the date of the actual Court Hearing date, and therefore had to be rushed through in order that the case could be heard. Had Julia Hamilton/Margaret Williams decided to avail herself of the standard advice to litigants in these situations that I have set out above, a more comprehensive and timely FOI request could and should have been made on a proper and official footing through the complainant's Legal Team at the start of proceedings which would have enabled the case against NICE to have been developed in a more cogent and well structured way, based upon the actual facts of the matter rather than on assumptions, presumptions and what was described in Court as "conspiracy theories".

- 3] The procedural hearing before Mr. Justice Cranston on the 17th of June 2008 required the complainants' case to be focussed and restructured in terms of points of law rather than points of science or medicine, as only points of law are relevant in a Court of law. The chief reason why this was not done according to the Witness Statement of Mr. Hocking was that the solicitor acting for the claimants, Mr. Jamie Beagent of Leigh Day & Co, had incorporated in his statement to the Court setting out his case on behalf of his clients, Mr. Fraser and Mr. Short, a very large tract of a document written by Margaret Williams, and that Mr. Beagent had passed this document off as his own.

The consequences of this act run far, far deeper and broader than simply a bit of plagiarism because it meant that the factual content and evidence base for the allegations contained in the document that were central to the complainants case could not be focussed and structured as ordered by Mr. Justice Cranston without the FOI information and material that was required from NICE in order to see if NICE had indeed broken any of their rules and other rules and regulations in relation to the appointment and composition of the GDG. Establishing that NICE were in breach of such rules and regulations was a central plank of the case because it was part of the case to say that the wrong people had been appointed to the GDG, and this had been done in the wrong way so that the GDG was biased and therefore predisposed and predetermined to arrive at a predestined conclusion to make a robust recommendation for CBT and GET, which was not supported by the evidence about CBT and GET.

- 4] That another one of the consequences of the incorporation of the Margaret Williams document in Mr. Beagent's statement was that Mr. Beagent, who stands as an Officer of the Court as far as putting his case to the Court is concerned, became responsible for the unchecked, unedited and unsubstantiated allegations contained within the Margaret Williams document. His duty as an Officer of the Court and as a solicitor is to check and corroborate the evidence and material he is given by his clients and their advisors to ensure it meets all the required legal standards to be presented in a Court of Law. This quite clearly he had not done, as was highlighted both in Court and in Mr. Justice Simon's Judgement in which Mr. Justice Simon criticises Mr. Beagent for speaking on behalf of the ME community when he has no legal standing to do so. Mr. Beagent can only legally speak on behalf of his clients and state that his client's case is relevant to many other people diagnosed with ME who are affected by the NICE Guideline in the same way as his clients.

This is not simply a matter of mere semantics as it affects the legal principal of standing which sets out in broad terms that the person complaining of a decision by a public body, e.g. NICE, must be directly affected by that decision, and that the case is in the public interest as a legal ruling must be made that the relevant law is clarified

on the matter for the public good. The legal power of this set of considerations can easily be seen in Mr. Justice Simon's decision to deny legal standing to the case of the Interested party to the Judicial Review proceedings, and so their case was effectively struck out by Mr. Justice Simon on that basis.

- 5] The reason why large portions of the complainants case was withdrawn in Court and an apology made to NICE, as Prof. Hooper illustrates in his statement as well as his account of the legal threats made by NICE against Mr. Beagent and Mr. Hyam (the Barrister acting for the complainants), was simply because when the complainants Legal Team were finally in possession of the FOI information and material from NICE, it was realised that the allegations contained in the Margaret Williams document which Mr. Beagent had incorporated in his Statement to the Court simply could not be substantiated by reasoned legal arguments based on the legal facts of the matter in a Court of Law. This is why it was necessary for the allegations against Prof. Pinching to be withdrawn and an apology made to him in open Court.

The collapse of the case against NICE

The result of all this was that the case fell apart in Court as a result of too much reliance being placed upon a poorly researched and legally weak document written by Margaret Williams being the focus of attention in Court through its slavish incorporation in Mr. Beagent's Court Statement, rather than other aspects of the case, as Prof. Hooper rightly points out. This is precisely what I meant in the YouTube videos when I say that one ought not to offer such hostages to fortune as they can and will be used against one by the opposing side in legal proceedings, the point being that trying a case in the court of public opinion on the internet is one thing, and trying a case in a Court of law is quite another. Therefore a document suitable as an opinion piece from a leading opinion former within the ME community online such as Margaret Williams may be a suitable vehicle to kick start debate on the internet, but it is not suitable as the heart of a complex legal case. This is what I sought to explain in my YouTube video about the Judicial Review.

I note that in his statement, Prof. Hooper describes the claimants case collapsing, but he ascribes a different reason for this which is that he considers that the full case ought to have been put before the Court in the Judicial Review hearing, and that this would have ensured victory against NICE. He refers to Mr. Beagent's first Witness Statement of the 8th of December in support of his argument. This is not correct. Mr. Beagent's second Witness Statement is dated the 12th of February 2009.

In that second Witness Statement of the 12th February, Mr. Beagent admits to the charge made against him by Mr. Hocking of reproducing a large tract of a Margaret Williams document in his Witness Statement and he apologises for doing so thus misleading the

Court, and he pleads in mitigation of his offence which he argues does not amount to serious professional misconduct. Mr. Beagent's second Witness Statement is a very much watered down version of his first Witness Statement as he has had to withdraw a great many of Margaret Williams' highly personal and contentious allegations against the members of the GDG and others as he was bound to do as he could not sustain, support or substantiate them with the required quantity and quality of evidence

I consider that Prof. Hooper is wrong to consider that the case as put in Mr. Beagent's first Witness Statement would have ensured victory against NICE, as there are rules and regulations that govern what constitutes evidence from a legal point of view for the presentation of a legal case in a Court of Law, and there are legal definitions about what constitutes a point of law, all of which mean that the case as Prof. Hooper would have liked to have seen it presented to a Court of law, would not have been accepted by a Court of law for hearing.

I also note that Prof. Hooper introduces what I consider to be a new set of facts into the public domain about the Judicial Review, when he states:

"As a consequence, in April 2009 a substantial complaint was served upon both Jamie Beagent and Jeremy Hyam, which is currently before the Legal Complaints Service and the Bar Council Standards Board and is the subject of on-going action".

I consider that this demonstrates that by making a YouTube video on the subject of the Judicial Review, there is certainly a lot to discuss about the conduct of the case, as well as the way the case was conducted, all of which are legitimate topics for discussion on the internet in a free country where we have freedom of speech. What Prof. Hooper did not say is what I have subsequently learnt from the One Click website about this particular matter of the complaints against Mr. Beagent and Mr. Hyam being made by Mr. Fraser, Mr. Short and Margaret Williams, presumably because they share Prof. Hooper's view that the case ought to have been put to the Court in the unadulterated form of the Margaret Williams document contained in Mr. Beagent's first Witness Statement to the Court.

I do not foresee that they could possibly be successful in their complaints to the professional bodies' concerned bearing in mind the Wasted Costs Order and the apologies given in Court and those contained in Mr. Beagent's second Witness Statement.

There has been some suggestion in certain quarters that because complaints have been made that this restricts in some way the freedom of the ME community to discuss and debate the way in which the Judicial Review was conducted, as if complaints to lawyers professional bodies is the same as taking out certain types of proceedings in a Court of law. This is simply not the case, therefore there is no such restriction on public discussion of these matters.

Conclusions

I have reviewed the videos in question and the entire set of videos that comprise the series and I can find no basis for the allegations or claims that any of the videos contain material that is “erroneous and defamatory” or that could be construed as constituting defamation, slander or libel.

I have also reviewed the content of Mr. Hocking’s Witness Statement and I can find no material that is of an “erroneous and defamatory” nature or which could be construed as “erroneous and defamatory” or which could be construed to constitute defamation, or slander or libel or in any way amount to any of them. I must point out that no such criticism of Mr. Hocking’s statement was made in open Court where such matters could and indeed should have been raised if there was any credible evidence that Mr. Hocking was guilty of these offences.

The evidence based reporting of contentious issues will always be contentious, due to the nature of the controversial material that is being reported to the ME community and the public, and the attendant comment and analysis of the reported facts that are part and parcel of investigative journalism or documentary making.

This is a case in point as Prof. Hooper’s objections to part 12 and therefore also part 13 of the series arise out of his conviction, borne out of a sense of personal loyalty towards his friend and colleague Margaret Williams, who he has championed in his statement of the 29th of July, are that Mr. Hocking’s Witness Statement is a damning indictment of Margaret Williams’ conduct and the part she played in a Court case that was disastrously lost. It is certainly true that Mr. Hocking’s Witness Statement is indeed a damning indictment of Margaret Williams’ activities and conduct and the part she played in the Judicial Review, but the only person responsible for this is Margaret Williams herself.

Prof. Hooper’s loyalty does him credit, but I consider that he has allowed his emotions to cloud his reason to the extent that he has failed to see the dividing lines between what would be for him, very awkward and unpalatable facts, which I am sure he wishes would disappear because they reflect so badly on his friend and colleague Margaret Williams and the “erroneous and defamatory” material he feels Mr. Hocking’s Witness Statement contains.

Therefore he believes that the public reporting of Mr. Hocking’s Witness Statement on YouTube constitutes making “unfounded allegations” and “mount[ing] misconceived and unjustified attacks on Margaret Williams” and that “Those making these attacks are ignorant of all the facts of the case and are acting maliciously” when this is simply not the

case.

I attended the Court hearing for the Judicial Review and I had very much hoped that the NICE Guideline would have been overturned although there was no guarantee that this would have been the outcome even with a well constructed and expertly put case. However, discussion and debate should not, and in my view must not, be stifled about the matter simply because the case was so disastrously lost.

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