



## **BARGATE MURRAY - EMPLOYMENT LAW CASE REVIEW**

**Philip Henson, Partner, and employment law expert** in the City of London law firm **Bargate Murray** discusses Sharon Shoemsmith's recent victory in the Court of Appeal and opines that a negotiated settlement could be the best way forward.

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### **Sharon Shoemsmith - "The Scapegoat"**

[Sharon Shoemsmith](#), Former [Haringey Council](#) Children's Boss, has won her Court of Appeal Case, against her controversial sacking (live on TV by former Minister [Ed Balls](#)) following the tragic death of Baby P.

The Court of Appeal has held that Ms Shoemsmith was "*entitled to be treated lawfully and fairly and not simply and summarily scapegoated*".

#### **Background**

For international readers unfamiliar with the tragic case of Peter Connolly – referred to as "Baby P" – he died on 3 August 2007 when he was only 17 months old. For some months he had been the subject of a child protection plan devised by Haringey Council and was accordingly on the child protection register because of concerns about neglect and abuse. Following his death, Tracey Connolly (his mother), Steven Barker (her boyfriend) and Jason Owen (Barker's brother) were charged with a number of offences. They were tried in the Central Criminal Court, London. The trial ended on 11 November 2008. Although they were acquitted of murder and manslaughter, they were convicted of causing or allowing Peter's death contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004.

A public and media outcry followed the convictions, much of which was directed at Haringey, and Sharon Shoemsmith.

On 12 November 2008, the day after the conclusion of the criminal trial, the Secretary of State, then the Rt Hon Mr Ed Balls MP, requested the Office for Standards in Education, Children's Services and Skills (OFSTED), together with the Healthcare Commission and Her Majesty's Chief Inspector of Constabulary, to produce an urgent report into child safeguarding arrangements within Haringey. His request was made pursuant to section 20 of the 2004 Act. OFSTED produced a final draft of its report on the evening of 30 November. In accordance with OFSTED practice, it did not name individuals but it was very critical and it identified a number of serious concerns.

On the morning of 1 December 2008, leading members of the OFSTED team had a meeting with the Secretary of State. Within hours, the Secretary of State made a direction pursuant to section 497A (4B) of the Education Act 1996 appointing Mr John Coughlan (seconded from another local authority) as DCS in Haringey until 31 December 2008.

### **Press conference – 1 December 2008**

The Secretary of State held a press conference on the afternoon of 1 December 2008 at which he said that, as Ms Shoemith was employed by Haringey, it would be considering the employment relationship (as opposed to the statutory position of DCS from which he had removed her) “this afternoon and immediately”. He made it clear that his view was that Ms Shoemith “*should not be rewarded with compensation or pay offs*” but that “*that’s a matter for Haringey*”.

There was also reference to a petition (with over a million signatures) which had been organised by *The Sun* newspaper in the aftermath of the criminal trial and which had called for the sacking of Ms Shoemith and others.

### **Application for Judicial Review**

On 6 March 2009, Ms Shoemith issued an application for permission to apply for judicial review against OFSTED, the Secretary of State and Haringey. In a nutshell, her case is that the OFSTED report was prepared without compliance with relevant procedural arrangements and/or in breach of common law requirements of fairness; that the Secretary of State’s directions under section 497A (4B) were unlawful because of a failure to observe the requirements of procedural fairness and because he impermissibly had regard to *The Sun*’s petition; and that her dismissal by Haringey was unlawful because it was founded on the unlawful directions of the Secretary of State and/or it, too, was procedurally unfair. At the same time, Ms Shoemith commenced proceedings in the Employment Tribunal but these are currently stayed pending resolution of the judicial review proceedings.

### **High Court**

Following six days of oral argument and later written submissions, the Judge (Foskett J) dismissed all of Ms Shoemith’s applications. He did so with “*a lurking sense of unease*”.

Ms Shoemith appealed to the Court of Appeal, and the Judgment was released on 27 May 2011; click [here](#) for a copy.

### **Court of Appeal**

Lord Justice Maurice Kay (Vice President of the Court of Appeal) held: *It follows from what I have said that I would dismiss the appeal in relation to OFSTED but allow the appeals in relation to the Secretary of State and Haringey, making declarations as indicated in paragraphs 129 (Secretary of State) and 131 (Haringey). I would remit the case to the [Administrative Court](#) for consideration of further relief but impose a stay for 6 weeks to enable negotiation and, if necessary, mediation to take place.*

Lord Justice Maurice Kay also commented (para 135): *Those involved in areas such as social work and healthcare are particularly vulnerable to such treatment. This is not to say that I consider Ms Shoemith to be blameless or that I have a view as to the extent of her or anyone else's blameworthiness. That is not the business of this Court. However, it is our task to adjudicate upon the application and fairness of procedures adopted by public authorities when legitimate causes for concern arise, as they plainly did in this case. Whatever her shortcomings may have been (and, I repeat, I cannot say), **she was entitled to be treated lawfully and fairly and not simply and summarily scapegoated.***

**Philip Henson, Employment Law expert at Bargate Murray comments as follows:**

*I am sure that Mr Balls will now realise that firing Ms Shoemith live at a televised press conference back in 2008 was not such an erudite idea after all.*

*Ms Shoemith's case has a wider lesson for all employers of the need to make sure that they carry out a fair investigation and procedure, affording staff the opportunity to put their case forward, rather than pandering to public and media pressure and making a knee jerk decision to fire members of staff.*

*Although the Court of Appeal Judges did not make a ruling on compensation, instead referring the case back to the High Court for "further consideration", Ms Shoemith is likely to receive compensation approaching, or hitting, the £1million mark taking into consideration reinstatement of her pension rights.*

*The Government have announced that they intend to appeal the decision to the Supreme Court.*

*My personal view is that the Government may want to try and reach a negotiated settlement, before Ms Shoemith's case goes back to the High Court, especially in view of the likely legal costs involved. - a view that seems to be shared by the Court of Appeal who have imposed a 6 week stay, and have suggested mediation.*

*Although I think it is incredibly unlikely that Mr Balls will ever apologise for the thoughtless way that he sacked Ms Shoemith live on TV; if Mr Balls did apologise then it may help to put an end to this lengthy, and expensive, litigation*

**Media coverage**

*My comments on the Shoemith case have already been picked up by The [Financial Times](#); [The Guardian](#); [The Independent](#) newspaper, [Sky News](#), the [Daily Telegraph](#), and The Times.*

**Philip Henson, Partner and Head of Employment Law at Bargate Murray solicitors (London, UK)**

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We welcome your comments on this update, and look forward to hearing from you.

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