JD and MAK, parents of children with severe medical conditions, were wrongly suspected of child abuse through the misdiagnosis of their children by doctors. The ensuing investigation was conducted negligently. Each parent in consequence suffered psychiatric disorder and their family life was disrupted and they issued proceedings against the respective health authorities and individual doctors and social workers claiming damages for negligence. Their claims were struck out by the High Court and they appealed unsuccessfully to the Court of Appeal, which held that no duty of care could be held by a doctor or social worker to the parent. Both appeals were joined. Although the events occurred before the Human Rights Act 1998 came into force, thereby preventing JD and MAK from seeking damages for any possible breach of their right to family life under Article 8 of the European Convention on Human Rights, the House of Lords was required to consider whether the potential interference with their family life could justify according them a higher level of protection than other suspected perpetrators of child abuse.

In dismissing the appeals (Lord Bingham dissenting), it was held that:

(1) Interference with family life does not justify according a parent a higher level of protection than any other suspected perpetrator. To hold otherwise would be inconsistent with the principle that in order to ensure proper and effective discharge of their duties, those responsible for the care of children should not be subjected to any conflict of interest or duty in seeking to protect them from the source of harm (Sullivan v Moody (2001) 207 CLR 562 applied).

(2) The seriousness of child abuse as a social problem demands that health professionals, acting in good faith in what they believe are the best interests of the child, should not be subject to potentially conflicting duties when deciding whether a child may have been abused, or when deciding whether their doubts should be communicated to others, or when deciding what further investigatory or protective steps should be taken. The duty they owe to the child in making these decisions should not be obscured by imposing a conflicting duty in favour of parents or other suspected of having abused the child.

(3) The appropriate level of protection for a parent suspected of abusing his child is that clinical and other investigations must be conducted in good faith.

(4) That is not to say that the parents should not be consulted by the relevant authorities when decisions are taken about their children and in some circumstances a failure to do so can result in a breach of the parents’ rights under Article 8 of the Convention since the mutual enjoyment by parent and child of each other’s company constitutes a fundamental element of family life (W v UK (1987) 10 EHRR 29; McMichael v UK (1995) 20 EHRR 205; TP and KM v UK (2001) 34 EHRR 42; P, C and S v UK (2002) 35 EHRR 1075 and Venema v Netherlands (2002) 39 EHRR 102 considered).

Per Lord Rodger of Earlsferry concurring.
Decision Excerpts