IN THE ////////////////// COUNTY COURT

NO OF MATTER //////////////

BETWEEN

Applicant

MR. ////////////////////////////

and

Ms. ////////////////////////// Respondent

// RESPONDENT

Statement of the Applicant father

I, ////////////, of //////// do make this statement to the extent that facts and matters set out are true within my own knowledge. Insofar as such facts and matters that are not within my own knowledge, they are true to the best of my knowledge and belief:-

1. By granting parental responsibility to the mother simply by virtue of her sex the question arises whether the Court and the UK State is acting in a manner which is compatible with the Applicant's Convention Rights as defined under the Human Rights Act 1998?

2. In particular was the Applicant deprived of and still being deprived of the right to a loving and caring relationship as well as the society of his child/ children and further delay due to an imbalance in the law and an incompatibility with the Human Rights Act 1998?

3. Applicant father submits that the Children and Adoption Act 2002 Part 2 Amendments of the Children Act 1989 111 subsection (2) grants the father parental responsibility if, as an unmarried father, he and the children's mother make an agreement providing for him to have parental responsibility or the Court orders that he shall have parental responsibility or by signing the birth certificate.

4. Applicant's name is/ is not on the birth certificate. Yet the law is acting in arbitrary manner since this only applies after an arbitrary date which denies me automatic parental responsibility as my name is on the birth certificate.

5. This section is in breach of article 8, article 6.1 HRA 1998 and article 14 taking into account 6 and/ or 8 HRA 1998.

6. Why should the Applicant father, [**when all accept that he is the biological father** and no argument has been submitted that he is not the father], **have to persuade a Court that he should have parental responsibility when the mother has it as of right and without regard to any of the factors that the father is being forced to show**? Quite clearly there is a breach of article 14 taking into account 6 and/ or 8 HRA 1998 as to the need to have an order for parental responsibility.

7. This law is not only discriminatory, but is arbitrary and does not comply with the requirements of article 6 and 8 HRA 1988. The necessity in law for me to show grounds for the Court to order that I have parental responsibility is discriminatory based on my sex, the mother does not have to, simply on the grounds of her sex.

8. Delaying giving parental responsibility is contrary to the welfare of the children and contrary to section 1 and 2 Children's Act 1989, and the best interests of the children.

9. This is another hurdle to be faced solely by fathers in their pursuit for their article 8 rights and those of their children enforced in breach of article 14 taking into account 6 and/ or 8 HRA 1998.

10. The denial of parental responsibility for fathers as opposed to mothers who get it automatically is arbitrary. The in-depth research shows that mothers are more likely to abuse their children than the biological father.

11. In-depth impartial research also shows that Domestic violence is not a gender issue as so often portrayed but that incidents of Domestic Violence are more or less 50/ 50.

12. The case law of the European courts recognise that it is permissible for a State to impose rules of procedure that will in some circumstances restrict access by a litigant to the Courts. The test is whether the restriction pursues a legitimate aim and complies with the principles of proportionality. (Osman v UK) (2000) 29 EHRR; Z v UK 2392/95, May 10 2001.

13. In ECHR practise the process must be in accordance with the law, pursue a legitimate aim and be necessary in a democratic society.

14. Accordance to the law; the Children's Act 1989 gave parental responsibility automatically to women by virtue of their sex. This was amended with the Children and Adoption Act 2002 section 111.

15. Legitimate aim: It is not and cannot be legitimate to give a legal right to all women but only fathers who were married at the time of the children's birth and now due to the Adoption and Children's Act 2002 to those fathers who had signed the birth certificate [with the mother's consent] after coming into force.

16. I have to ask the Court for a right I would have had automatically if I had been a woman! A straightforward case of sex discrimination contrary to article 14 taking into account 6 and/ or 8 HRA 1998.

17. Was it "Necessary in a democratic society?" It is not and cannot be necessary when mothers are statically more likely to abuse their children than fathers, and when sex discrimination is unlawful.

18. In the case of CASE OF GÖRGÜLÜ v. GERMANY (Application no. 74969/01) 26 February 2004 it is stated that ''**Although the essential object of Article 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in an effective "respect" for family life. Thus, where the existence of a family tie has been established, the State must in principle act in a manner calculated to enable that tie to be developed and take measures that will enable parent and child to be reunited** (see, among other authorities, the following judgments: Eriksson cited above, pp. 26-27, § 71; Margareta and Roger Andersson cited above, p. 30, § 91; Olsson v. Sweden (no. 2), 27 November 1992, Series A no. 250, pp. 35-36, § 90; Keegan cited above, p. 19, §§ 49-50; Hokkanen cited above, p. 20, § 55; and Ignaccolo-Zenide v. Romania, no. 31679, § 94, ECHR 2000-I).''

19. In A & D and B & E, the Court established, requirements of Article 8 of the Human Rights Convention. It is in these terms : "Right to respect for private and family life: Every one has the right to respect for his private and family life, his home and his correspondence. **There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder**

or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." The court may interfere with the rights of both parents and children where to do so is to protect the child. I maintain that this is not necessary in this case, I would never harm my own child and in-depth research shows that mothers are statistically more likely to abuse children, then stepfathers and the safest person is the biological father.

20. Article 6 of the Convention provides as relevant: “1 In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law....”

21. Article 8 of the Convention provides as relevant: “1. Everyone has the right to respect for his ...family life...There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of health ... or for the protection of the rights and freedoms of others.”

22. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life, and **domestic measures hindering such enjoyment amount to an interference with the right protected by Article 8 of the Convention** (see, amongst others, the Johansen v. Norway judgment of 7 August 1996, *Reports of Judgments and Decisions* 1996-III, § 52). Any such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under paragraph 2 of Article 8 and can be regarded as “necessary in a democratic society”.

23. In determining whether the impugned measures were “necessary in a democratic society”, the Court will consider whether, in the light of the case as a whole, the reasons adduced to justify these measures were relevant and sufficient for the purpose of paragraph 2 of Article 8 of the Convention (see, *inter alia*, the Olsson v. Sweden (no. 1) judgment of 24 March 1988, Series A no 130, § 68).

24. The margin of appreciation so to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake. While the authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care, in particular where an emergency situation arises, the Court must still be satisfied in the circumstances of the case that there existed circumstances justifying the removal of the child, and it is for the respondent State to establish that a careful assessment of the impact of the proposed care measure on the parents and the child, as well as of the possible alternatives to taking the child into public care, was carried out prior to implementation of a care measure (see *K. and T. v. Finland*, no. 25702/94, [GC], ECHR 2001-VII, § 166; *Kutzner v. Germany*, no. 46544/99, § 67, judgment of 26 February 2002, unreported). Furthermore, the taking of a new-born baby into public care at the moment of its birth is an extremely harsh measure. There must be extraordinarily compelling reasons before a baby can be physically removed from its mother, against her will, immediately after birth as a consequence of a procedure in which neither she nor her partner has been involved (*K. and T*. judgment cited above, § 168).

25. Following any removal into care, a stricter scrutiny is called for in respect of any further limitations by the authorities, for example **on parental rights of access, as**

such further restrictions entail the danger that the family relations between the parents and a young child are effectively curtailed (the above-mentioned judgments, Johansen, § 64, and *Kutzner,* § 67). The taking into care of a child should normally be regarded as a temporary measure to be discontinued **as soon as the circumstances permit, and any measures of implementation of temporary care should be consistent with the ultimate aim of reuniting the natural parent and child** (Olsson (no. 1) judgment, p. 36, § 81; Johansen judgment, p. 1008, § 78; *E.P. v. Italy,* no. 31127/96, § 69, judgment of 16 September 1999, unpublished).

26. I also refer to PROTOCOL No. 12 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS WHICH PROVIDES FOR A GENERAL PROHIBITION OF DISCRIMINATION with respect to ethnic origin, **sex**, race and culture: The Court took the view, however, that Protocol No. 12 provides clear legal grounding for the examination of issues of discrimination not covered by the provision of Article 14, and that it constitutes a further substantive step towards ensuring the implementation of fundamental rights by means of the ECHR.

27. *Article 1: General prohibition of discrimination* This article includes the main operative-substantive provisions of the Protocol: *The enjoyment of any right set forth by law shall be **secured without discrimination on any ground such as sex**, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

    ***No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1**.*

28. Public Authorities now include social services, CAFCASS and even the Courts.

29. The grounds for discrimination in Para. 1 of Article 1 of the Protocol follow the wording of Article 14 ECHR, without, however, the restriction of the "rights recognised by the Convention" being repeated, since the Protocol provides a general clause against discrimination. In any event, apart from membership of a national minority, the other grounds are the same as those of the Universal Declaration and of the International Covenants of 1966. This is because of the option of the provision to make use of the ECtHR case law which had already taken shape as to the delimitation of the field protected by the Convention, according to which not every distinction or difference in behaviour means *discrimination*.

30. The meaning of the term "*discrimination*" in Article 1 of the Protocol is intended to be identical with that in Article 14 ECHR. The French text ("*sans discrimination aucune*"), though differing from that of Article 14 ("*sans distinction aucune*"), does not give grounds for any semantic difference, but merely attempts to bring the French text in line with the English. In other words, the Convention, and, by extension, the Protocol do not prohibit any distinction in matters of rights and freedoms, but prohibit any *arbitrary* distinction (= *discrimination*). The problem, then, lies in the question of when a distinction is discrimination.

31. The listing of the grounds in Article 1, as in Article 14 ECHR, is indicative and not restrictive. Consequently, to establish the existence of one of the grounds listed is not sufficient to conclude that there is discrimination.

32. The inclusion of the ground in question in each instance among those of Article 1 justifies a presumption of the existence of behaviour prohibited by the provision. However, it is not out of the question for distinction based on a ground not listed in Article 1 to also be discrimination. This is because the ground in itself is not on its own the deciding factor in establishing a form of discrimination; it must be put to the test of comparison with the right protected. At the same time, the Court recognises to states a margin for appreciation which depends upon the circumstances and the nature of the object of the dispute.

33. ECtHR recognises that "*the national authorities are naturally in a better position than the international judge*" to assess the interest at risk. "*The Court should not, therefore, substitute its own view for that of the national courts, unless the measures in question clearly lack justification or are arbitrary*". In the same case, *proportionality* between the means used and the aim pursued was held to be such a justification.

34. The provision of Article 1 foresees, as has already been stated, a general non-discrimination clause, thus covering ground beyond that of the rights and freedoms protected by the ECHR. More specifically, the general clause covers:

    The enjoyment of any right which the national law grants to an individual.
    The enjoyment of rights which a public authority is, in accordance with national law, bound to recognise.
    Non-discrimination in the exercise, by a public authority, of discretion in the granting of rights.
    Any other act or omission of a public authority with an effect on the enjoyment of rights.

35. The wording of the first paragraph of Article 1 "*any right set forth by law*" is taken in conjunction with that of the second paragraph "*by any public authority*" and has as its purpose the delimitation of the field of application of the Protocol, particularly in view of the possibility of an indirect effect being ascribed to the provision which would go beyond the intentions of its authors.

36. Furthermore, the term *law* may also include the rules of international law, to the extent that these are applied in the specific national legal order.

37. The term *public authority*, in paragraph 2 of Article 1, is derived from the provisions of Articles 8, para. 2 and 10, para. 1 ECHR and should be deemed to have the same sense as in the earlier provisions. It includes, therefore, both the administrative and the judicial and legislative authorities - functions of each state party.

38. The wording of the provisions of the two paragraphs of Article 1 expresses a subtle compromise, a balancing, as to the question of the *positive obligations* of the states parties, over and above the *negative* obligation - basic to them - to refrain - themselves and their organs - from any discriminatory behaviour. This is the obligation to take measures to prevent and combat discrimination even in cases where this manifests itself in relations between private individuals, that is, in the event of an *indirect effect* or *Drittwirkung* of the provisions in question.

39. The provision of Article 53, which will also be applied to the relations between the ECHR and the Protocol, should also be noted: *Nothing in this Convention shall be*

construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

40. I therefore submit that:

    1. I, the father should be given parental responsibility as of right, equal to that of the mother with no further ado.

    2. That the Children's Act 1989 subsection 1 and the amendments under section 111 of the Children's Act 1989 are arbitrary, in breach of article 14 taking into account 6 and/ or 8 HRA 1998 and incompatible with the European Convention of Human Rights. It only increases costs to the father, the public purse and further delay in proceedings contrary to the welfare of the children and their best interests when mothers get parental responsibility **automatically based solely on their sex regardless of marital status or any other factor.**

    3. **If the Court refuses me Parental responsibility I request that this point of law is transferred to the High Court for determination of incompatibility with the European Convention of Human Rights enshrined in part in the Human Rights Act 1998 articles 3, 6, 8, 17 and 14 taking into account 8.**

41. In re O and N (minors) (FC) In re B (minors) (2002) (FC) House of Lords on Thursday 3rd April 2003 it was stated: 24. This has long been axiomatic in this area of the law. The matters the court may take into account are bounded only by the need for them to be relevant, that is, they must be such that, to a greater or lesser extent, they will assist the court in deciding which course is in the child's best interests. I can see no reason of legal policy why, in principle, any other limitation should be placed on the matters the judge may take into account when making this decision. If authority is needed for this conclusion I need refer only to the wide, all embracing language of Lord MacDermott in *J v C* [1970] AC 668, 710-711. Section 1 of the Guardianship of Infants Act 1925 required the court, in proceedings where the upbringing of an infant was in question, to regard the welfare of the infant 'as the first and paramount consideration'. Regarding these words, Lord MacDermott said: "I think they connote a process whereby, when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood." In principle the same approach is equally applicable under section 1 of the Children Act 1989. 25. The Children Act directs the court, when making a decision regarding a child's welfare, to have particular regard to the factors set out in the welfare checklist in section 1(3).

42. **Section 1 the child's welfare shall be the Court's paramount consideration** and 1(3) a the **ascertainable wishes and feelings of the child**, 1(3)b his **physical**, **emotional** and **educational needs**, 1(3)**c the likely effect on him of any change of circumstances, 1(3)e any harm which he has suffered or is at risk of suffering, 1(3)f how capable each of his parents and any other person in relation to whom the Court considers the question to be relevant is of meeting**

their needs, and 1(3) g the range of powers available to the court under this act in the proceedings in question.

I make this statement knowing that it will be placed before the Court and used as evidence in Court. I fully realise the consequences if in this statement I have misled the Court and/ or attempted to pervert the course of justice.

Signed Dated

(/////////////////) October 2006

Requested disclosure:

Decision making process of Chris Penney;

All files and document referred to in his report including;

Initial Social Services assessment and decision making documents for report dated 5.02.04. [Para 4].

Social Services records referring to allegations, actual domestic violence and intimidation. [Para 5].

Originating concerns from health services, educational settings Police and the respondent [Para 5].

Portsmouth police records [Para 5]

Early intervention project at Fratton Police Station [para 5]

All records, notes and communications with Chris Penney acting as duty social worker and supervising manager [Para 9].

Therapeutic notes of the respondent provided by Portsmouth SS, therapeutic notes of Rachael, my daughter with Ms. Drake and Mr. Robert Carson with Portsmouth SS.

Social services file dating back to October 2003 [para 38]

The reports and/ or notes from Lyndhurst school claiming my daughter is presenting as tearful and clingy [Para 34 and 39].

Research and material relating to the idea of low level identity contact [para 47].

Social Services record dating back to 1998 when I reported concerns for the respondent mother as to her drinking and to the GP.

Contemporaneous notes of phone calls and meetings with Ms. Carson, Rachael Barker-Vaizey, Mr. Vaizey, Mr. Robert Carson and any other communications with them.

From the Chronology;

43. Re Para 1. Ms. Carson's GP was informed by me of my concerns for her abuse of alcohol I sought help for her. GP notes from this time.

44. Para 2. Child protection file evidence of concerns for physical abuse and emotional abuse including decision making process.

45. Para 3. Mrs Carson was not seen to be in drink. Police records.

46. Re Para 4. Contact between Ms. Carson and SS.

47. Re Para 5. My daughter's full medical records.

48. Re Para 7. Contact on 27th September 2004 by Ms. Carson to SS.

49. Re Para 9 Contact on 22nd September 2004 refusing to permit Social worker to see Robert alone.

50. Re Para 11. Christmas card found.

51. Re Para 10 and 11 the counsellor that I am alleged to have had.

52. Re Para 13. The warrant for my arrest and reported assault.

53. Re Para 14. Police investigation into breaking and entering, harassment and attempted burglary.

54. Re Para 15 school reporting my daughter being weepy, clingy and emotionally fragile.

55. Re Para 17. notes of meeting with my daughter and mother.

56. Re Para 18. Disclosures by my daughter to Social worker.

57. Re Para 19. Notes and correspondence concerning meeting on 18th July.

58. Re Para 20 and 22. The Court reports and respondent's statement.

59. Re Para 23. The respondent's photos she claims to have taken of Rachel and also Robert with the claims of bruising around throat and chest area.

60. Re Para 23. Counselling sessions notes of the respondent mother.

61. Re Para 25. Report to WaterlooVille police station by myself on 11th January 2006 that I was being followed by Ms. Carson.

62. Re Para 27. Mental health assessment and detention under the mental health Act Reasons for putting children into foster care and any other notes on this.

63. Re Para 29. Notes of meeting with social worker, Rachel and the mother.

64. Re Para 30 Contact by Ms. Carson of reporting to SS I had been following her.

65. Re Para 30, 31, 32 and 33. Contemporaneous notes of the meeting with SS on 17th July 2006 and CCTV coverage.

66. Re Para 34. CCTV coverage of date unknown when alleged to be following and intimidating social worker when unaware of when this is alleged to have happened.

Further;

Evidence that I have been threatening, hostile and intimidating to SS staff.

Core assessments on the children.

All notes and minutes of child protection conferences,

Portsmouth Child protection procedures.

Policy, guidance and procedure on investigating emotional abuse.

Policy, procedure and guidance on investigating allegations.

Chris Penney's qualifications as child psychologist.

Chris Penney's qualifications as adult psychologist.

Social Service's investigative process as to the allegations consistently being made.