GROUNDS OF APPEAL IN APPLICATION TO REOPEN PERMISSION TO APPEAL IN CASE A2/2015/2839

1. These Grounds of Appeal relate to four Judgements made in the High Court of England and Wales in the same case, 3SA90091:
   - The Judgement of HHJ Seys Llewellyn of 2nd February 2015 and;
   - The Judgement of HHJ Seys Llewellyn of 15th July 2015;

   And the Judgements in the Court of Appeal for cases
   - A2/2015/2839 of 22nd March 2016 by Lord Justice Simon and;
   - A2/2015/2839A of 30th November 2016 by Lord Justice Simon following his unreasonable refusal to recuse himself in spite of actual and perceived bias, now compounded again.

2. In the case of each judgement, yet more fresh and incontrovertible evidence of fraud, perjury and malice has come to light showing the deliberate harassment of the Applicants by the 1st Respondent with malicious slander at an advertised “open” public meeting in Bath on 14th May 2013 in order to subvert democratic communication. This new evidence, yet again makes reopening the appeal an urgent necessity to avoid serious injustice under CPR Pt 52.17(1).

3. The Applicants request an *urgent* stay of execution and a setting aside of the Costs Order of HHJ Seys Llewellyn of 15th July 2015 and finalised with case C00SA374, in order to begin to ameliorate serious injustice as a result of this new evidence. The Respondents have broken into the Appellants' home, in spite of themselves being in unsanctioned breach of a court order to provide emails that would further show malice in all the matters of the claim.

4. The video evidence in question can be found at this link - www.stopdefamation.net/bath.mp4 - and the transcript of it is attached to these grounds [AF-11 - AF-16]. Alternate video evidence of the Respondent refusing to abide by pre-action protocol at this meeting has already been disclosed in the case, but on moving due to being forced out of their home, the Applicants discovered secondary equipment, which had earlier appeared to be broken, but which had in fact recorded the same interchange/refusal including additional footage extending some minutes beyond that already disclosed.

5. In this fresh evidence, the fraud perpetrated upon the court of a reluctance to undertake legal action and a claimed ‘honest belief’ in a mental health condition is exposed as the 1st Respondent deliberately obfuscates reasonable and genuine attempts to resolve issues by malicious smearing of both the Applicants as criminals and dangerous to children, and shows

his preference to smear the Applicants at a public meeting on shared interests rather than arbitrate, forcing them to take the legal action which they had gone to that public meeting to try to avoid.

6. In this video clip, the 1st Applicant is heard stating that the envelope the 1st Respondent refused to take contains a letter that had already been sent to him:

   "We've emailed that to you as well, so it's on your computer by the way. We just wanted to make sure you had it."

   The Respondent was therefore fully aware that it could not have been service of a claim, but this did not stop him from yet again altering the facts to suit his purposes.

7. As an example of this**,** two months later on the 16th of July 2013, in order to have the Applicants barred from another supposedly public meeting, the 1st Respondent lied about that to Jo Torres of Skeptics in the Pub [AF-17]:

   "I thought they lived in new zealand but showed up in Bath to 'serve papers on me'. Idiots. But they may show up in Plymouth. They are now living in Bristol. Wanted to warn you. I do not want them allowed admittance and will not speak if they are there. Their behaviour is quite disturbing and they may try to film or record or disrupt in some way. I hope you understand."

Stalking

8. The 1st Respondent is clearly heard at this public meeting emphatically repeating his desire to have*"nothing to do with you"*. This public claim of disinterest is incontrovertibly shown to be both fraudulent and malicious, not least by the same email to Jo Torres at paragraph 7 above, where he gives private information about the Applicants that he could only have inaccurately surmised by monitoring them online, where the 2nd Applicant had mentioned Bristol as a place where her film "birth-trust" was being shown.

9. The fraudulence of his malicious and untrue statement of disinterest is further incontrovertibly exposed by all the other comments showing monitoring by both Respondents, already shown at trial and submitted to the Court of Appeal. The Applicants knew at all times that they were being monitored while the Respondents publicly claimed disinterest. The considerable and cumulative alarm and distress caused by knowledge of this targeting, while also being blocked from any democratic communication whatsoever, characterises the course of conduct as the spying, stalking behaviour defined in PHA Section 4 A 1 b ii "stalking causing alarm and

distress".

10. The Applicants submit the denial of malice is fraudulent and should re-open Appeals into both the decisions of HHJ Seys Llewellyn of 2nd February 2015, and 15th July 2015 in Defamation.

Malice

11. In his final Judgement for case 3SA90091, HHJ Seys Llewellyn stated at paragraph 229 that:
    "In the case of each Defendant the defence will be defeated if malice is shown."
    And at paragraph 231 ii:
    "To establish malice, the Claimant must show the desire to injure him or her was the dominant motive for the defamatory publication."

12. The letter proffered to the 1st Respondent was yet another further attempt to avoid legal action by seeking arbitration to resolve issues between the parties in line with the overriding objective. As stated, it had already been emailed to him some weeks before. The letter was previously disclosed in the case and is attached to these grounds [AF-19-20]. It contains the following:
    "*Andy, you're a savvy bloke, and a canny wordsmith. Let's sort this matter out now through diplomacy before we are forced, to protect our reputations, to take actions that will make that option unavailable.*

    "We believe, however difficult it may seem given the entrenched views of some of your acquaintances, that you are up to this job, and we do mean that sincerely, as well as being aware that protocol demands that we make every effort to try and persuade you to willingly retract your unsubstantiated defamatory allegations against us and settle this matter in order to avoid possible legal action.

    "Should you choose to engage, you will find us ready and willing to negotiate a way out of any further hostility, and this would be our preferred avenue, especially given the struggle we've just finished with the school, with its effects on our family, as well as the necessity to come back to the UK, all of which is highly stressful."

13. The fraud perpetrated upon the court and maintained throughout proceedings of being an innocent victim of unnecessary legal action is shown by the obvious malice in his smears on refusing to engage about shared interests, and further incontrovertibly evidenced by the Memorandum he submitted for the Written Evidence of the Joint Committee on the Draft

Defamation Bill, in which he portrays himself as being extremely open to debate [AF-26-27]:

> *"In reforming libel law, I will be looking for changes that allow me to feel confident that an honest, public discussion of controversial areas where there are potential vested interests involved need not expose me to arbitrary legal threats that could financially ruin me. The health of democracy requires ordinary citizens to be able to participate in public debate without fear of capricious and crippling harms."*

And:

> *"there is a duty to contact the authors of the material in preference to any other party that may be involved in the chain of publication, that the nature of the complaint is made clear and that simple and fast remedies are offered that do not involve attempts to silence beyond the scope of the complaint."*

14. In this case however, he is clearly seen to behave in an opposite manner, attempting to cause total shunning of a family addressing, in an appropriate public setting, the very issues he seeks public influence on.

15. At trial, during the cross-examination of Ms Garden, Jonathan Price QC claimed that she "marched up to" the 1st Respondent with this letter. At the time, the 2nd Applicant commented that being physically disabled, she was not able to "march up" anywhere at all, but this video, even more than the one disclosed in 2014, shows the quiet and reasonable manner that the 1st Respondent was invited, and in the letter really implored, yet again, to behave exactly as he publicly advertises himself above, in order to avoid legal action.

16. The Applicants believe the 1st Respondent's displayed apparent fearful reaction seen in the video was for show, to provide an excuse for not engaging with the issues, where his lies about the Applicants would be exposed. The Applicants clearly did nothing to warrant such a reaction. If it was a response to their request for him to discuss matters, the Applicants showed in court how the 1st Respondent is vastly more confrontational when he decides to challenge individuals either on twitter, on his website, or elsewhere, including in paragraph 13 above.

17. Even if this theatrical display was genuine however, that only goes to show the strength, power and malice of the smear the 2nd respondent spread, a smear which she admitted to be conscious harassment, "understandably distressing", and a complete fabrication as per the documents submitted to the court on the 4 October 2016 for case A2/2015/2839A.

18. HHJ Seys Llewellyn dismissed the case of malice, citing at paragraph 252 that the Appellants had failed to show malice. This fresh evidence *yet again* clearly shows the malice that has

been hitherto denied in this case, the fraud that has been perpetrated upon the Court and that in refusing to acknowledge it, the Court is currently continuing the perpetration of it.

19. Further, his deliberate and malicious smearing comment before leaving:

    "If I ever see you again, if I ever see you near any of my family or anything like that, I will call the police, ok? I will call the police"

    could only have been maliciously intended to cause those present to believe the Applicants to be criminally dangerous and likely to harm children, in order to disguise his inability to speak to them in a public place. There is no evidence for this whatsoever and in fact the Applicants had *only ever published and offered him right of reply*, which he refused and never offered himself, and his obviously malicious attack on their personal integrity cannot reasonably be denied.

20. Following Lord Justice Simon's serious misrepresentation of the Applicants' grounds of Appeal in this most distorted case (an issue which has already been appropriately complained about), the case was nevertheless handed back to him when the Applicants presented fresh evidence of the 2nd Respondent's admission of perjury (A2/2015/2839/A, already submitted to the court). On realising this, the Applicants immediately objected and requested directly to Lord Simon on the 14th of November 2016 that he recuse himself on grounds of perceived and actual bias. After an unnecessary delay, Lord Simon's comments concerning not only the request for recusal, the status of the fresh evidence in regards to privilege, but also the fresh evidence itself, show a level of bias in direct conflict with the public interest in justice being done and being seen to be done.

21. Based on this, a formal request for Lord Justice Simon to recuse himself was made on the 5th of December 2016 (already submitted to the court), but this was again refused on the grounds that since Lord Justice Simon himself saw no bias, there was no bias to act upon. How can justice be seen to be done if the judge accused of bias is the only one to examine the evidence of his perceived and actual bias, and can therefore simply ignore or deny it?

22. The Applicants and their children have had to pay a truly massive price for the lack of attention to proof beyond reasonable doubt of the Respondents' malice, and the number of misrepresentations in this case, including the continued daily publication under jurisdiction of the Defamation Act 2008, of untruths concerning minors. In the interests of justice, the Applicants therefore request that this fresh evidence not be put in front of Lord Justice Simon but be examined by a different judge.

23. The Applicants also submit that, that the new judge should look again at the evidence submitted on 4th October 2016 [AD-1 - AD-73], including the response to the Respondents' response sent on the 29th November 2016, both of which are already in the court's possession. In light of Lord Justice Simon's perceived and actual bias, if this is not done, then unfortunately misrepresentations are being held up as justice.

24. The Judgement in favour of the Respondents in Defamation, was achieved by means of fraud, and in view of this yet further incontrovertible evidence of the comprehensively denied malice, should therefore be immediately set aside, under CPR Pt 52.17(1) and the reopening of the appeal allowed.

Harassment

25. With regard to the Protection of Harassment Act, the Applicants were refused re-amendment of the particulars to re-include those claims during the PTR Hearing on the 2nd of February 2015, All the evidence presented to HHJ Seys Llewellyn at that time led him to identify a *"number of obvious candidates"* of *"covertly inciting individuals and organisations to shun the Claimants by portraying them as dangerous and mentally unstable"*, but he chose not to allow the re-inclusion of these claims to save court time and cost. At trial, the same judge used the lack of these claims to prevent adequate questioning to prove malice. Yet, this very quote describes exactly the course of conduct shown in this video, but fraudulently denied in court.

26. The deliberate imputation of danger and criminality at a public meeting, on a subject of shared interests, also again throws into a new and concerning light the pejorative comments of HHJ Seys Llewellyn regarding the 2nd Applicant's demeanour in court in his final Judgement in the Defamation case at paragraph 106:

> *"Over time during the hearing before me the impression became irresistible that in truth the Second Claimant finds it extremely difficult to accept that others may rationally form any view different from her own; and naturally, repeatedly, and very rapidly leaps to the conclusion and settled belief that if they do, they can have done so only out of personal hostility to her."*

27. Any person, however sanguine, knowing someone had spread lies about them in such a manner as to completely destroy their personal integrity, and force them into legal action, and knowing that the person who had instigated those lies was now trying to mislead a Judge, would be made severely uncomfortable and, not to overstate it, paranoid. Justice cannot be

achieved by divorcing that fear from the reasons behind it, and by sanctioning the Applicants because of it when the evidence incontrovertibly shows the Respondents' incitement to ostracise them as a serious potential danger to others, including children.

28. LJ Simon's unreasonable dismissal of Suddock v The Nursing and Midwifery Council is again highlighted by this fresh evidence of fraud. When several lies adopted by both Respondents, have been incontrovertibly exposed and/or admitted and promoted by their representatives, the high bar for reopening a case should not be used as an impediment to justice, and the whole testimony of those parties must be subject to the strictest suspicion, in the interest of avoiding further serious injustice. The evident willingness to mislead UK Judges by perjury, which was a ground of the Appellants' original appeal but actively misrepresented as not being one by Lord Justice Simon, has obviously had the desired effect: persuading judges of the Respondents' 'honesty' by means of fraud. This must throw the whole Judgements of HHJ Seys Llewellyn, Lord Justice Floyd, and Lord Justice Simon into question, and reopening of the appeal must be allowed.

29. In addition, the harassment campaign instigated by the Respondents is widely furthered by others, as stated by the Applicants from the beginning. The already disclosed tweets from Flatsquid on 31st December 2014 [AF-28-30] are of particular interest with relation to this new evidence. In it, Flatsquid states:

    "She's fucking mental & I don't use the term lightly having the unfortunate experience of talking to her in person."

    "It's pointless pontificating. She's obsessive, she stalks online & irl, an absolute nutjob & one of the few I've blocked here"

    "very good idea, her boyfriend/husband will probably appear at some point, Mr Parris iirc, block him too, just as mad."

    The man in the fresh video evidence seen asking questions was the only man the Applicants had spoken to in person about this situation at the time. The discussion clearly shows that the 2nd Applicant is not in any way "fucking mental" nor "an absolute nutjob". These smears were just another means of convincing others to shun and ostracise the Applicants based on alleged "first-hand" experience with the Applicants, and the smearer's association with the Respondents, originating from the 2nd Respondent's admission of fraudulently using medical credentials to promote a smear (as per the evidence submitted on 4th October 2016 [AD-1 - AD-73]).

Original Permission to Appeal

30. On seeking permission to Appeal, Rt. Hon. Lord Justice Floyd's reasons for refusal included the *"careful judgement"* of HHJ Seys Llewellyn, now incontrovertibly proven by two pieces of fresh evidence to have been persuaded by means of fraud. Rt. Hon. Lord Justice Floyd made special mention of how difficult it would be for Appeal judges to make any assessment, not having had the advantage of seeing the parties in court. Unfortunately it was precisely in court that Judge Seys Llewellyn was so severely mislead. The application to Appeal was dismissed as *"an attempt to re-argue the case on the facts"*, notwithstanding statements by the Judiciary to the media that *"If a judge errs in law or on the facts, the remedy is to appeal."* [AF-33]. The amount of facts misrepresented to the Judge is beyond the Applicants' control, and if the facts are wrong, they must be argued again to correct them. Contrary to the above statement, and in face of all the evidence, this has been denied at every stage of this case's appeal processes.

31. The Applicants strongly re-assert their Article 6 right to a fair trial, that further respects rights under Articles 8, 10, 14 and 17 and respectfully request that the Court of Appeal honours its positive obligation under the Human Rights Act to ensure one, by reopening the Appeals.

Extent of Fraud

32. HHJ Seys Llewellyn's Judgement has allowed the Respondents to "benefit from their own wrong" (page 598 of Gatley on Libel and Slander), in a manner not allowed in law, as previously argued in the Appellants' Original Permission to Appeal's Grounds and Skeleton:

    "A publishes words which B considers defame him.

    B publishes a response in self defence.

    A then publishes further defamatory material, purportedly by way of rejoinder to B's response.

    It has been held in Australia that A's second publication is not protected by qualified privilege because (1) it would inhibit B's right of self-defence, since by exercising it he would be laying himself open to further privileged attacks; and (2) assuming the original attack to be unjustified, A would be gaining benefit from his own wrong."

    Lord Justice Simon heard and verbally agreed that due to the Respondents' prior covert attacks, the Applicants' publications were in fact 'replies to attacks', and the Respondents' further publications were therefore 'retorts' and not 'replies to attacks' as claimed. This clearly defeats their claim of qualified privilege. In spite of concurring with this, Lord Justice Simon nevertheless refused the appeal.

Reopening Appeal

33. Regarding the Court's jurisdiction in reopening Appeals or allowing a new Appeal on the basis of fresh information, the Applicants are mindful of the findings in Bishop v Choker [2015] EWCA in which the Court of Appeal exercised its jurisdiction to reopen an order refusing permission to appeal when it was alleged that a judgment was obtained by fraud.

34. The Applicants understand the cumulative effects of the conditions upon CPR Pt 52.17(1) in the court's consideration of the necessity to reopen appeals:

    a) that it is necessary to do so to avoid real injustice;

    b) the circumstances are exceptional and make it appropriate to reopen the application for permission to appeal;

    c) there is no alternative effective remedy.

35. The Applicants also cite as grounds case-law regarding the Court's inherent jurisdiction in deciding that there is no alternative effective remedy in forcing Applicants to issue new proceedings to prove fraud before setting aside orders and re-opening an appeal under CPR Pt 52.17(1). That is especially true in this case, as this evidence has yet again come to light as part of the Respondents' pursuit of the Applicants' family's home while the Respondent remains unsanctioned in breach of an Order to supply communications to "the big hitters", emails likely to contain further similar harassment, malicious communications and defamation. .

36. Judge Smith LJ gave judgment in Noble v Owens that the 'true principle of law' to be derived from Joesco v Beard is that:

    "where fresh evidence is adduced in the Court of Appeal tending to show that the judge at first instance was deliberately misled, the court will only allow the appeal and order a retrial where the fraud is either admitted or the evidence of it is is incontrovertible. In any other case the fraud must be determined before the judgement of the court below can be set aside".

37. For the second time, to an unbiased Judge, the further fresh evidence in this Application shows incontrovertible evidence of fraud. The Applicants therefore submit that this is such an exceptional case and that the Orders of HHJ Seys Llewellyn should be urgently set aside to ameliorate and attempt to begin to reverse real injustice. The Appeals should be reopened, both of the refusal to re-amend to include claims under the PHA, and of the findings in Defamation following the five day hearing, in absence of any alternative effective remedy.

38. This is already a serious injustice and will remain so until such time as the costs order is set aside, the Charging Order upon the Applicants' home is removed, and until the reopening of the Appeal of both Judgements based on the fresh evidence is allowed.

39. In view of the extent of this fraud and the length of time the Applicants have lived under this harassment, and the constant threat of losing their family home because of it, now actioned, the Applicants urgently request that the Court of Appeal give Costs protection to the Applicants going forward.

6th January 2017
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