

1 IN THE HIGH COURT OF JUSTICE
2 QUEEN'S BENCH DIVISION
3 SWANSEA DISTRICT REGISTRY

Case No: 3SA90091

4 Swansea Civil Justice Centre,
5 Caravella House, Quay West,
6 Quay Parade, Swansea SA1 1SP

7 Friday, 20th March, 2015

8 Before:

9 HIS HONOUR JUDGE SEYS-LLEWELLYN QC

10 B E T W E E N:

11 (1) STEPHANE (A.K.A. STEVE) PARIS
12 (2) ANGEL GARDEN

Claimants

13 - and -

14 (1) DR. ANDREW LEWIS
15 (2) MRS. MELANIE BYNG

Defendants

16 (Digital Transcription by Marten Walsh Cherer Limited,
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21 THE CLAIMANTS appeared in Person.

22 MR. JONATHAN PRICE appeared on behalf of the Defendants.

23 EVIDENCE OF:
24 PROFESSOR RICHARD BYNG

1 **PROFESSOR RICHARD BYNG, AFFIRMED**

2 **EXAMINED BY MR. PRICE**

3 Q. Professor, you have in front of you bundle B2, I believe.

4 A. That is correct.

5 Q. Could you please turn to tab 46.

6 A. Yes.

7 Q. Could you please tell the court your name and address?

8 A. Richard Byng of Woodcote, Staverton, Totnes.

9 Q. And is that on the witness statement?

10 A. That is.

11 Q. Thank you. Could you please turn to the end of tab 46 which
12 is -- it is not the end, it is page 1273. Is that your
13 signature?

14 A. That is.

15 Q. Did you read the witness statement through before you signed
16 it?

17 A. I did.

18 Q. And you are happy to say that the contents of it are true?

19 A. That is right, I am.

20 Q. Yes. Would you like to make any changes to what is said?

21 A. No, there is no need.

22 MR. PRICE: Thank you. Then ----

23 JUDGE SEYS-LLEWELLYN: Thank you.

24 MR. PRICE: ---- unless, my Lord ----

25 JUDGE SEYS-LLEWELLYN: Mr. Paris?

CROSS-EXAMINED BY MR. PARIS

1
2 MR. PARIS: Your Honour, I am going to be comparing the witness
3 statement of -- would I need to call him Professor Byng? What
4 is your preference?

5 THE WITNESS: I think Dr. Byng, I prefer.

6 MR. PARIS: Dr. Byng, okay. So the witness statement of Dr. Byng
7 with the email correspondence Dr. Byng had with his son when
8 he was in France since this comprises the biggest chunk of his
9 witness statement.

10 JUDGE SEYS-LLEWELLYN: Yes, subject to the fact that I am not
11 going to be making rulings of fact about what happened in
12 France.

13 MR. PARIS: No, you are not, your Honour. I am just exploring the
14 voracity of some things.

15 JUDGE SEYS-LLEWELLYN: Yes.

16 MR. PARIS: The email correspondence is in bundle C7 and starts at
17 3466.

18 JUDGE SEYS-LLEWELLYN: We need to go there, do we, because we have
19 some emails ----

20 MR. PARIS: It is just because I am going to be going through a
21 few of them. I am not sure how many. I have not got a bundle
22 for them, I am afraid, your Honour. I did not ----

23 JUDGE SEYS-LLEWELLYN: That is all right. It is simply that
24 Professor Byng produces a number of emails and I was not sure
25 that ----

1 MR. PARIS: Okay, there might be ----

2 JUDGE SEYS-LLEWELLYN: If we need to go to another bundle,
3 then ----

4 MR. PARIS: No, they might be the same, your Honour. I did not
5 notice. To be honest, your Honour, since I have not checked,
6 and I know we do not have much time, is it at all possible to
7 get the C7 bundle rather than waste any time looking to see if
8 all the emails are in here?

9 JUDGE SEYS-LLEWELLYN: I may be looking at both to make sure that
10 I do not have to take other bundles to ----

11 MR. PARIS: I am not even sure where this one starts. Okay,
12 Dr. Byng, can I ask you to have a look at paragraph 7 of your
13 witness statement, please. You say in the middle of it that
14 after about a week you received an email from your son saying
15 that he was getting on fine with the children but he was not
16 happy and he wanted to come home. Is that correct?

17 A. Yes.

18 Q. The reason I just want to compare this is because I mean the
19 disclosure has been available to us for some time and I am
20 curious because that does not seem to be the same thing as
21 what happened. If we go to page -- I am sorry, I do not know
22 the pages for the small bundles of Richard Byng's exhibit,
23 I only know for C7/3466, your son did write to you on 3465; it
24 ends on 3466, saying he was not happy. That is very correct.
25 And he described what he was not happy with. But his main

1 thing at the end is that he did not know what to do. My
2 point, Dr. Byng, is that it was you, was it not, that
3 suggested that he might have to leave sooner because you said
4 so in an email just above that on 3465: "It sounds that you
5 might need to leave sooner than planned"?

6 A. I did write that. I think you are indeed right that Joe did
7 not say in that email that he wanted to leave and I cannot
8 remember whether we had a conversation with him in-between
9 that email and the response to him. I remember actually
10 thinking at that time, well, you know, maybe, Joe, you need to
11 stick in there and see how it goes and I do not remember at
12 all me suggesting to him that he would need to leave earlier.
13 I actually disagree with your point that I was making the
14 suggestion to him primarily that he leave. The impetus to
15 leave came primarily from himself and not from me. I am quite
16 clear about that.

17 Q. But you did write that, though, and he did ----

18 A. I did, but what I am saying is that I do not know whether
19 there was an intervening conversation in-between that.

20 Q. You mean subsequent to this because this seems to be the first
21 email where he says, I am not happy here.

22 A. What I have been clear about, I think, my Lord, is that there
23 may have been conversations between us in-between those two
24 emails.

25 Q. Okay. This conversation happened on 13th August, which, to my

1 collection, was a Saturday, I think, was it not?

2 JUDGE SEYS-LLEWELLYN: That is what it says on the ----

3 MR. PARIS: It says "Saturday".

4 THE WITNESS: Yes.

5 MR. PARIS: Sorry, your Honour.

6 JUDGE SEYS-LLEWELLYN: That is okay.

7 MR. PARIS: I missed that. One thing that puzzled me because
8 obviously reading this for the first time I could see your
9 son's thought processes which I was not privy to when it
10 happened because I was the only one there that is in this room
11 that has any experience of it, what he said in his email at
12 the bottom of 3465 is: "I pretended everything was fine for as
13 long as I could hoping it would get better." Now, that was
14 quite upsetting because, as I said in my own witness
15 statement -- did you read my witness statement, Dr. Byng?

16 A. I believe I have read it, yes.

17 Q. Because I had talked to him, had I not, two days prior to
18 check how things were because I had been very busy and had not
19 been able to spend much time with him so I would ask him, is
20 everything okay and he said, yes, did he not?

21 A. I do not know what he said to you.

22 Q. Well, based on my witness statement.

23 A. I think you indicated that in your witness statement but I did
24 not study it in great detail. I apologise.

25 Q. Because it was difficult for me to be able to fix things if

1 I did not know that there was anything to be fixed. If you do
2 not know that there is a problem, you cannot fix it?

3 A. Indeed, that is the case that if you do not know there is a
4 problem, then it is hard to fix things. I agree with you
5 entirely.

6 Q. Thank you. Another thing that he said in that email was that
7 it was a "pointless non-holiday". Was your son aware that he
8 was coming to help us at a time of great stress for my family?

9 A. I think he was aware that it was a difficult time for your
10 family because he was very aware that Angel was visiting her
11 mother who was very unwell in France, yes.

12 Q. So why do you think he is referring to this as a pointless
13 non-holiday?

14 A. Because I think he was a bit fed up that he had gone to France
15 during his holiday, so this was holiday time for him, and then
16 he had hoped, in exchange for learning a bit more French, to
17 provide some child care and tutoring and that for him that was
18 not working out. I think it was quite clear.

19 Q. He was aware, was he not, that Angel was not going to be here
20 for the first week of his stay?

21 A. Indeed, I suspect he was. I cannot remember the exact details
22 of what he knew.

23 Q. We will refer to the bundle, your Honour, because it is in
24 another bundle. I will just read the email that my wife wrote
25 before the holiday started on 2nd August. It is in C1/1334,

1 your Honour, for reference. Angel says in this: "Joe is
2 still very welcome. I probably won't be here as I feel I must
3 go to mum who was in hospital over the weekend and is in sharp
4 decline. Actually, that makes Joe even more valuable as Steve
5 has a lot of work to do and will have to come over probably
6 around the end of the month." This was a letter sent to your
7 wife, Melanie Byng, so there must have been a discussion, was
8 there not, that the first week was going to be probably a
9 little bit tricky?

10 A. I suspect there might have been but I was not privy to that
11 discussion, I suspect.

12 Q. All right. The reason I am asking you these questions is
13 because your witness statement is all about that visit, not on
14 many things, and when I tried to ask Melanie she said, refer
15 to you.

16 A. I think my wife suggested that you refer to me about the
17 travel arrangements, not about every issue with respect to the
18 trip which has been gone into in some detail.

19 Q. It has, yes. I am just referring to what it is saying in your
20 witness statement, just a few paragraphs. What you said in
21 paragraph 8, though, is puzzling. You say that after your son
22 has written to you saying that he was unhappy, which is this
23 email here that we have just been exploring, it a pointless
24 non-holiday, pretending everything was fine, you say: "After
25 a day or two with no improvement in the situation we agreed he

1 should return home." But that is not what happened, though,
2 is it?

3 A. I disagree, I stand by my own statement.

4 Q. Well, if you go to disclosure C7, page 3463, this is another
5 email, I would imagine from you, Dr. Byng. It says it is from
6 Melanie but the first one was signed "Dad". Is it still you
7 who has written this?

8 A. So this is the second email on 3463?

9 Q. There is only one. The first one is just you forwarding.

10 A. Just forwarding.

11 Q. Yes. It is the one dated 13th August 2011 at 2.12 p.m.

12 A. Well, I suspect it was Melanie because she has forwarded it to
13 me, has she not?

14 Q. Well, they have all been forwarded to you. It is the whole
15 conversation thread.

16 A. The forwarding happened later, did it not?

17 Q. Yes. The whole conversation took place on Melanie Byng's
18 email address.

19 A. Let me have a look.

20 Q. I am only interested in the last line, Dr. Byng.

21 A. Sorry, can you repeat exactly what the question is.

22 Q. Your witness statement says: "After a day or two with no
23 improvement in the situation we agreed he should return home."
24 You said that you stand by this. I am pointing out to you
25 that your son wrote to you saying he did not know what to do

1 at 9.32 a.m. on 13th August and then you said: "Sounds like
2 you need to leave sooner than planned." And then at 2.12 p.m.
3 on the same day: "Let us know ASAP that is okay so we can
4 book the flight."

5 A. Yes, I believe you are correct.

6 Q. So you did not really wait a day or two?

7 A. Yes, I believe you are correct.

8 Q. Because to be honest, highlighting a problem, it makes perfect
9 sense to wait a day or two to see once the problem has been
10 highlighted if changes are going to happen. So I would agree
11 with you there, Dr. Byng, that is a nice thing to do, but that
12 is not what happened in this case, then?

13 A. Looking at the dates it appears that we got an email in the
14 morning and then by the afternoon after some exchange, both by
15 phone and -- that we decided that we would book a flight.
16 I think you are correct that although it might have felt like
17 a couple of days that ----

18 Q. It was just half a day?

19 A. It was just half a day, yes.

20 Q. Okay. I would like to check something with you as well,
21 Dr. Byng. The next page, the previous, because the whole
22 thread goes backwards, so 3462, this is a redacted email from
23 your son at 12.26, the next day on 14th August, with his
24 passport number and the expiry date, 28th July 2021. The
25 passport number is redacted obviously. Could you tell me why

1 he was giving you his passport number. Is it because you were
2 booking his flight?

3 A. That may be the case. We may have thought we would need it,
4 yes.

5 Q. Can you confirm that it was you or Mrs. Byng that booked the
6 flight and not your son?

7 A. It was me that booked the flight, but I am not sure whether it
8 was me that sent the email.

9 Q. Fair enough. I am just curious because from my experience can
10 you book a flight without a passport number?

11 A. I think you can now but in the past I think certain airlines
12 required it particularly to do the booking afterwards -- to do
13 the checking-in.

14 Q. For the one in Bergerac I think it was required I think, so
15 that must be why he gave you his passport number so that you
16 could buy a ticket on his behalf?

17 A. I suspect it was because we were anticipating it or -- yes.

18 Q. So you had not bought a ticket then. So is it fair to assume
19 that by August 14th at 12.26 p.m. you had not bought a ticket
20 for your son to come home?

21 A. I am not sure about that because as I said, sometimes the
22 passport you can put in after you buy the ticket, so I do not
23 think it is fair to assume that, no.

24 Q. Could you have bought the ticket on 13th August, the day
25 before?

1 A. It is possible.

2 Q. So that fast that you would have bought it that quickly, not
3 waiting a day or two?

4 A. Well, the email does suggest that we were wanting to book it.
5 I did not check the date that I booked the ticket when I wrote
6 my witness statement so ----

7 Q. I would not have expected you to, Dr. Byng. It is just
8 because that puzzled me simply because in my experience, like
9 you said yourself, and I think the airline that goes to
10 Bergerac insists on ----

11 JUDGE SEYS-LLEWELLYN: This is ----

12 MR. PARIS: Okay, fair enough.

13 JUDGE SEYS-LLEWELLYN: ---- a gentle café discussion, but can we
14 get back to the voracity of Professor Byng.

15 MR. PARIS: It kind of does go to it because I think it is
16 important to know when the aeroplane ticket had been booked
17 and this was, I think, a very big clue that it might have been
18 booked from 14th August. *(To the witness)* The reason I am
19 asking you this, Dr. Byng, because it is a possibility, is,
20 when I talked to your son, and unfortunately he is not here to
21 do a witness statement so we cannot verify that, but later on
22 in the day on 13th August when I told your son that actually
23 it would not be advisable for him to go on the same day as my
24 wife, he told me, I had already bought the ticket. Now,
25 obviously that is just me who says this. Your son is not

1 here. I think we have actually email correspondence with my
2 wife and I that could confirm this because Angel became quite
3 upset about this which is why we discussed when I took your
4 son to the fair in that evening, there was a local special
5 event at the village, I took my children and your son with us,
6 even after I thought he had bought the ticket. You read my
7 witness statement, have you? Did your son mention that that
8 he went to a fair when he came back? Did he mention that?

9 A. Sorry, is this a relevant question?

10 Q. Yes, it is relevant, actually. It is very relevant.

11 A. He mentioned that he had been taken out by you on, I do not
12 know, a small number of occasions.

13 Q. I know, but I am talking about ----

14 A. He did not particularly mention the fair on that day.

15 Q. Right. That fair was on that day. I have to point this out,
16 your Honour. After he told me that he was leaving, even
17 though it was not going to be convenient, I still took
18 Dr. Byng's son to a special event and we still had a good
19 time.

20 A. That was very kind of you.

21 Q. I know you do not think that we are ----

22 JUDGE SEYS-LLEWELLYN: Fine. If it makes any difference, since
23 the message on the Saturday at 2.12 p.m. says: "Jim will
24 collect you from Southampton Airport on Tuesday from the
25 flight that gets in at ...", that looks to me as though

1 somebody had got on with it and booked it, does it not?

2 MR. PARIS: Pretty fast, yes.

3 A. Yes.

4 Q. That was another question I would like to ask, your Honour.

5 When I suggested to your son that if we paid the difference
6 could he leave a couple of days later to make it easier for my
7 wife, your son then told me, I have booked a train ticket and
8 I cannot change that. Did he mention that to you?

9 A. No, he did not.

10 Q. Because that would not have been true, would it, because a
11 friend was picking him up at the airport, was he not?

12 JUDGE SEYS-LLEWELLYN: Right, I come back to you, I am not trying
13 what happened in France.

14 MR. PARIS: Okay, I am moving on.

15 MS. GARDEN: Sorry, your Honour, the young person involved is not
16 here to speak for himself. He is an adult but he has not come
17 to talk about it, so we can only deal with it through ----

18 JUDGE SEYS-LLEWELLYN: I am well aware of that but that is not
19 something which I am trying.

20 MS. GARDEN: Okay.

21 MR. PARIS: I am just looking through my notes. (Pause) Okay,
22 I am going to move on to paragraph 11 of your witness
23 statement, Dr. Byng. This is the paragraph that said that you
24 and I were trying to discuss how to sort out the situation now
25 that your son was leaving on Tuesday and it became very

1 inconvenient for my wife to come on the same day. You and
2 I agreed, did we not, after a conversation, to split the cost
3 of my wife's change of ticket?

4 A. That is correct.

5 Q. Now, you say in your witness statement that you had not
6 anticipated that I would have asked your son for that money.
7 You thought you would give it to me by bank transfer.

8 A. That is correct.

9 Q. Had you asked for my bank details?

10 A. I do not believe I had asked for them, but I do not think we
11 came to any agreement as to when the transfer would take place
12 and I assumed that we would make a transfer between ourselves
13 as we were the ones who were exchanging money and not my son.

14 Q. Fair enough. I can concede that asking your son for the money
15 could have been a faux pas but I was totally unaware of it
16 because from my point of view, Dr. Byng, we were in different
17 countries, were we not, different currencies? Correct?

18 A. Yes.

19 Q. If we needed money where we were it would have been much
20 easier to ask your son for the money, if he had it, and if it
21 was to spare.

22 A. Is that a question?

23 Q. Yes, it was. Would it have been easier ----

24 A. It was clearly easier for you to ask my son for the money,
25 I agree.

1 Q. What I am leading on to, Dr. Byng, is, there was an email that
2 we have looked at already -- I am not going to go back into it
3 -- where your wife says that she blocked us the moment Joe was
4 on the plane and at the time is it not true that your son did
5 not have a phone on him?

6 A. He did not have a phone, you are correct.

7 Q. Actually, he had ordered a phone from Amazon and it had not
8 arrived yet at our property?

9 A. Yes, that is correct, as I believe it.

10 Q. The phone arrived afterwards once he left.

11 A. That is correct.

12 Q. Your son was without being able to contact you, so therefore
13 I know your wife has been very upset about me having asked for
14 the money from your son saying that I fleeced him which is
15 very strong language, do you not think? I mean ----

16 A. I do not think we were very upset about that and I do not
17 think she was very upset about that. I think it was a little
18 bit surprising that you had not gone through a kind of normal
19 adult-adult exchange of money between the two adults who owed
20 each other money rather than asking a third party, the
21 son ----

22 Q. Related. The son, yes.

23 A. ---- a related third party to take -- for Joe it was a bit
24 surprising at the time that he felt he needed to do that,
25 particularly as I have not said that he should give you the

1 money and we had not arranged that he should give you the
2 money. But it was not a huge deal.

3 Q. It was not a huge detail, exactly, because it is something
4 that a sorry would have been easily fixed for that, would it
5 not? I mean, sorry, I was not aware ----

6 A. No, that is exactly right. I think that is one of the things
7 that we were surprised about that there was not any kind of
8 recognition. Absolutely, you are right.

9 Q. Okay. However, because your wife said that she blocked us the
10 moment Joe was on the plane and you and I had not exchanged
11 bank details, am I to assume that -- how would we have got the
12 amount that we had agreed?

13 A. I am not sure in what way Melanie blocked you. It was not
14 something I think that we particularly discussed, but I
15 certainly had no intention of not giving you the money if that
16 is what you are suggesting.

17 Q. Because the reason I am asking is, is it not true that when
18 your son's phone finally arrived in my house, I text you a
19 couple of times to ask you what I should do with it. I never
20 got an answer.

21 A. That is correct. My phone at home often does not receive
22 texts until I leave and by the time I received them we had
23 made a decision not to contact you any further and we decided
24 that we would just forget about the phone because I think it
25 had cost £14 or something.

1 Q. Okay, but you just told me, Dr. Byng, that, for example,
2 regarding the money, that it would have been something that
3 should have been dealt with adult-to-adult to come to an
4 understanding and ----

5 A. Yes, that is correct and we probably should have arranged that
6 when we spoke ----

7 Q. I am not talking about the money now, Dr. Byng.

8 A. ---- but we did not.

9 Q. I just want to move on to that because you had agreed in
10 saying that when this was an issue, it would have been better
11 for two adults to discuss it together. Could you explain to
12 me why then you did not decide to discuss this adult-to-adult
13 about what happened to your son in France rather than blocking
14 us and never talking to us again and leaving us in limbo?

15 A. Yes. There were a combination of factors that came together
16 after Joe had had the experience of leaving France which
17 included a combination of your slightly sort of bizarre
18 insistence on all the solutions of getting him out were
19 problematic so that we had quite a lot of discussions over how
20 to get him to leave and each of the solutions we offered
21 seemed to be problematic and just the fact that the day of the
22 plane we still did not quite understand why that would not
23 have been simpler, so there were the issues with Joe. There
24 was the conversation that I had had with Angel about her
25 mother's illness, as I have stated in my witness statement,

1 and then my wife's I think reflections on various other
2 issues. And putting those together, I think particularly with
3 the email from your wife that she had not indicated that there
4 was anything that had gone amiss in France and was business as
5 usual, let us get on with the other business, so we put all of
6 those together, we actually thought about it a lot and we did
7 not know what the best thing was to do, but we felt that, as a
8 couple, you were people we did not want anything to do with
9 and the options included sending you an immediate message to
10 that extent or ignoring you. I think the fact of knowing some
11 of the things you had done with material online may have had a
12 bearing on that, but I am not sure whether we were aware of
13 that at that time. That is perhaps not one of the main
14 reasons, but altogether we felt that there were behaviours
15 that we thought were not entirely reasonable and we therefore
16 decided on balance that it was best not to make any further
17 contact.

18 Q. If you were worried about a paper trail, Dr. Byng, could you
19 not have just called us?

20 A. As I said, we were concerned about -- well, we made a decision
21 not to -- we could have just called you, you are right. I do
22 not think there was a worry about a paper trail, we just
23 decided not to have any further contact, I think, as is our
24 right. I do not remember whether there was a specific worry
25 about a paper trail.

1 Q. Well, even when I text you about your son's phone, even if you
2 got it days later, was that not enough to say, well, even a
3 simple text, do not contact us again, we are very unhappy with
4 you, anything to give us an idea ----

5 A. I agree, we could have done that and we chose not to.

6 Q. Were you aware that your wife had invited my daughter and
7 possibly one of us to come and stay for a week at your place
8 to try the ----

9 A. Of course, yes.

10 Q. So did you think that was acceptable then to just leave her
11 not knowing whether or not this offer was still open? I need
12 to remind you that the last email we got from your wife, which
13 was on the 13th in the afternoon, when you may or may not have
14 already bought a ticket, she said that the offer was still
15 open.

16 A. That is right. As Melanie explained yesterday, at that stage
17 there were some minor issues around the trip in France not
18 being ideal, but at that stage we were not particularly
19 concerned, it was only your behaviour in the 24 hours or so
20 leading up to Joe's departure that had alerted us to any
21 significant issues.

22 Q. Did you know how much stress we were under?

23 A. I did not know how much stress you were under, but we were
24 aware that your wife's mother was dying, yes.

25 Q. You were also aware we were not living in our home -- we lived

1 in New Zealand and we were currently staying abroad as far as
2 we were concerned. Actually, as far as we were all concerned,
3 the house in France was just a family home of my family's.

4 A. Which is why I think we made the offer initially of putting
5 one parent and one child up for a week, yes.

6 Q. Yes, and also why you made an offer for your son to come and
7 help us, to help relieve some of the pressure?

8 A. I do not remember it being so specifically about relieving
9 pressure. When the offer was first made, you made an offer as
10 a gesture of thanks, to say thank you for having us to stay in
11 England, why do you not come and stay with us in France, but
12 we were aware that Joe's help would be helpful for you in a
13 time of difficulty.

14 Q. So you were aware that his help would be beneficial. You just
15 said that. Yes?

16 A. We were aware that Joe's help might be beneficial to you, yes.

17 Q. Okay. And yet you felt that the stress we were under was
18 unjustified in terms of our reaction or trying to work around
19 the situation. I will not go any further, your Honour,
20 because I know we have tread on this. I would like to move
21 to -- actually, I had a point there. The trip to the airport
22 it has been explored with your wife, but I had a phone
23 conversation with you, Dr. Byng. When you called me, when you
24 were distressed that I was not leaving soon enough for what I
25 had already said was a two-hour trip ----

1 A. That is correct.

2 Q. ---- do you not recall that I had told you that my GPS was
3 wrong and it was a lot shorter than the machine had
4 anticipated during that phone conversation?

5 A. I do not recall you saying that, no. What I recall from that
6 conversation was wondering, I do not understand why having
7 made such a fuss about the time being so long, Steve is now
8 wanting to cut short the time to the airport. That was one of
9 the things that made we feel a bit uncertain because I did not
10 quite understand why you were cutting it so fine.

11 Q. I know. I guess as I said in my witness statement, I gathered
12 it was not getting through so we left as if it was not going
13 to be as long as it should have been but it was not. Okay.
14 I would like to move on to paragraph 14 when you had a phone
15 conversation with my wife about her mother's care.

16 A. That is right.

17 Q. In it -- sorry, it is a bit more difficult than this one for
18 me because I was not privy to that conversation. I just need
19 to think a little bit.

20 JUDGE SEYS-LLEWELLYN: You ought to just have a little discussion.

21 I think it is helpful that it is not the person who will feel
22 strongly about it.

23 MS. GARDEN: Thank you, your Honour.

24 MR. PARIS: I agree, too. For once it makes me in a difficult
25 position. *(To the witness)* Did you read my wife's accounts

1 in her witness statement about this particular phone call?

2 A. It was a long statement. I read it briefly but I do not
3 recall exactly what she said.

4 Q. It turns out, which is interesting, that the conversation is
5 actually different between what you remember and what she
6 remembers?

7 A. Okay.

8 Q. First of all, I want to make sure that we agree on one thing.
9 My wife did not call you directly, did she, she called your
10 wife and then your wife put you on the phone when it came to
11 talk about this?

12 A. I do not recall how we actually came to be talking together.

13 Q. Fair enough. In your witness statement, you said that my wife
14 was concerned that her mother's doctors (GP and oncologist)
15 were unwilling to prescribe an unlicensed treatment mainly
16 used in the US. You explained that the doctor could not be
17 expected to prescribe this in that way, nor could the NHS
18 oncologist, but that a private doctor could possibly help.

19 A. We explored that as a possibility, indeed.

20 Q. It is interesting because actually we have evidence to show
21 that my wife already had a private doctor. It has been
22 disclosed. We do not really need to look into it because it
23 is another bundle, but can I read it just to show you that
24 actually this was not accurate, that my wife would not have
25 discussed the possibility of getting another independent

1 doctor since she already had one on board.

2 A. I think I have said that it might be possible to find a
3 private doctor, so I think what I was suggesting is that I, as
4 a part of that conversation, might have suggested that a
5 private doctor might have been able to prescribe more easily
6 than someone within the NHS. I disagree with you with the
7 fact that your wife has a private doctor is at odds with the
8 statement I made.

9 Q. No, what I am saying is she had a private doctor already on
10 board for that particular prescription. Let me just read this
11 to you in that case: "Hello Bob, the form is filled in and
12 the cheque is in the post." Bob is the first name of the
13 doctor in question. That is from 24th July 2011. What I am
14 saying is, it is not ----

15 JUDGE SEYS-LLEWELLYN: Let us assume for the present purposes that
16 Ms. Garden had a private doctor.

17 A. Yes, I understand now that she did, yes.

18 MR. PARIS: And following on from that you said: "However, she
19 then said that her mother herself would not tell the doctor
20 that she wanted the treatment, but that she, Ms. Garden, still
21 thought it very wrong that it was not being provided." I am
22 afraid I have to disagree with you completely on that sentence
23 because what is in this letter as well is that the mother was
24 concerned that her GP would not allow it and my wife said, "I
25 am guessing it may not be, but we are working on a letter from

1 the family to explain mum's position and the decision she has
2 made."

3 So she was open to the idea and that was the whole
4 reason that we are doing this situation because it is not that
5 my wife's mother was not keen on taking this medicine, as
6 actually it has been reported by your wife to others, she was
7 actually very much open to the idea and she wanted it to be
8 more official. Do you agree to that?

9 A. Sorry, do I agree to what? I am not sure what the question
10 is.

11 Q. Do you agree that during that conversation with my wife it did
12 not transpire that my wife's mother did actually not want to
13 take this medicine?

14 A. I do not know what she wanted, but what I remember at the end
15 of the conversation very distinctly is the idea that your wife
16 had expressed to me which was that she would not agree to take
17 it which is slightly different from not wanting it. So she in
18 some way would not say upfront to the doctors, I want this
19 medication and will you prescribe it to me. It was a strange
20 thing because your wife had been talking about how important
21 this medicine was and then, when I talked about trying to
22 reach a shared agreement between the doctors, one of the
23 things your wife expressed to me was that it would be hard for
24 her to agree that she wanted to take the medication and it was
25 at that point that I thought this is a little bit odd. If the

1 patient does not want to agree to have the medication, then it
2 certainly makes things very complicated.

3 Q. Do you not remember instead you saying to my wife that if her
4 mother wanted to take the medicine that her GP had no right to
5 stop her from taking it and you advised my wife to go back to
6 the GP to ask again?

7 A. I think that was probably early in the conversation before the
8 subsequent issue had transpired.

9 Q. That she did not want the medicine?

10 A. That it was going to be difficult for her to in some way state
11 clearly to all parties that she wanted to be prescribed the
12 medicine.

13 Q. I think it might be because she was scared of GPs. It is
14 possible.

15 A. I think you may well be right. I think it was something along
16 those lines that your wife expressed that because of her -- so
17 that may well be the reason why she was not in a position to
18 actively say to the doctors, I want this medicine. You may
19 well be correct.

20 Q. That may make sense because that is why ----

21 A. That certainly does, yes.

22 Q. ---- the family said, we are going to write a letter to say
23 exactly what she wants. The only reason I am saying this,
24 Dr. Byng, is your wife did spread about -- recount your
25 conversation within which it has been mentioned that Angel's

1 mother did not want to take the treatment and it was implied
2 that Angel was essentially trying to force her to take it
3 against her wishes. The reason I was pursuing this line of
4 questioning with you is because it seemed to all stem from
5 you, but we seem to agree that actually it was not what was
6 happening in that conversation?

7 A. I am not sure we do agree. I think we certainly agree that
8 there was a difficulty in your wife expressing -- sorry,
9 Angel's mother expressing clearly to the doctors that she
10 wanted this treatment and that I then suggested that if that
11 was the case and she was not able to express clearly that she
12 wanted the treatment it was not surprising that the medical
13 professions involved would have difficulty in prescribing it.
14 My concerns were much more related to Angel not understanding
15 that that was a problem and being very angry with the doctors
16 thinking that they were acting wrongly not prescribing to her
17 mother.

18 Q. I do not think you could say that Angel was angry. She was
19 quite distressed. We are talking about her mother that is
20 dying.

21 A. I think she was distressed that she was also expressing
22 crossness with the medical profession.

23 Q. Could it be frustration?

24 A. I suspect there was frustration as well, I agree.

25 Q. I am just taking issue with the term "anger", Dr. Byng.

1 A. My memory of it was that there was some crossness involved,
2 yes.

3 Q. Do you remember, Dr. Byng, that this was the day that my
4 mother had just come from her doctor and her doctor had just
5 said, no? Do you remember?

6 A. I do not recall.

7 Q. If that were the case, could that probably explain her
8 heightened sense of distress?

9 A. Indeed it could, yes.

10 Q. I am nearly done. (Pause) Could you confirm that you had
11 nothing to do with the clinical judgment of borderline
12 personality disorder that your wife has told others that my
13 wife had?

14 A. I can confirm that I did not make a clinical judgment about
15 your wife's diagnosis, but I would not say that I had nothing
16 to do with it because over many years we have discussed the
17 diagnosis of personality disorder, one with which I actually
18 have some strong feelings that it is not a very useful
19 diagnosis. So for some years we have discussed the ins and
20 outs of that diagnosis and I suspect that Melanie used some of
21 that conversation in her knowledge about the diagnosis to make
22 her judgment.

23 Q. What is your opinion of the ethics of saying that there is a
24 clinical judgment when in fact there is not one?

25 A. I think, as my wife expressed, the form of words was clumsy.

1 I think the idea of clinical judgment and clinical diagnosis
2 is one that is very nuanced and there are no clear
3 definitions. At this point in our time clinical judgments are
4 made by a range of different people including the patient
5 referring to material online. You can diagnose yourself with
6 material online and people are encouraged to do that so the
7 term is used in a number of different ways.

8 Q. With the term "clinical judgment", you are saying?

9 A. Clinical judgment, clinical diagnosis, etc., yes.

10 Q. Is it correct that a borderline personality disorder or a
11 diagnosis of that, and saying that somebody has that, is one
12 of the most stigmatising diagnoses for mental health diseases?

13 A. I agree that the diagnosis of borderline personality disorder
14 is one that is associated with stigma, along with many other
15 mental health diagnoses, and that for that reason it can cause
16 an individual distress if they are not willing to accept it,
17 but that it is also for some people a useful shorthand,
18 although personally I much prefer to go into the complexities
19 of an individual's thinking, emotions and behaviour.

20 Q. Would you agree, then, if somebody were to say that about
21 somebody, I have heard X has got a borderline personality
22 disorder, it could be used to view that person in a more
23 negative way than any other?

24 A. I agree that the term borderline personality disorder is a
25 shorthand for a number of behaviours which can be viewed as

1 negative and indicate that that individual could be a risk to
2 themselves or others and can cause a general sense of problems
3 around them, yes.

4 JUDGE SEYS-LLEWELLYN: Well, here I am not dealing with what
5 actually conforms or does not conform with a diagnostic of
6 Manual DSM-IV, etc. It is the impression which somebody may
7 take who is normally (unclear) from that. In my experience,
8 people very readily make huge inferences from such a
9 description which are remote from the careful confines of a
10 clinical judgment. But there we are.

11 MS. GARDEN: Your Honour, I think in this case what we are trying
12 to establish is because there are so many references to
13 Richard Byng in the mentions of mental health smear, including
14 this borderline personality, that we want to -- clearly he
15 said he was not completely uninvolved in it, but can you
16 accept that your authority has been used ----

17 THE WITNESS: Sorry ----

18 JUDGE SEYS-LLEWELLYN: I am going to keep it to one at a time ----

19 MS. GARDEN: Sorry.

20 JUDGE SEYS-LLEWELLYN: ---- otherwise it is confusing.

21 MR. PARIS: My apologies, your Honour. Do you accept, Dr. Byng,
22 that using your credentials as an expert in mental health, to
23 hint at a possibility that somebody might have a borderline
24 personality disorder could reinforce the notion that that
25 possibility may be true?

1 A. Firstly, I do not consider myself as an expert in mental
2 health. I am much more of a generalist, although I do ----

3 Q. Why do you not describe yourself.

4 A. ---- practice in a team which deals with people with mental
5 health problems and I have a lot of experience with that.
6 I am also here not as an expert witness in the realm of mental
7 health.

8 Q. Of course not. But we have explored an email specifically
9 where your wife stresses your expertise in mental health and
10 then saying, from which he has drawn a few conclusions. Do
11 you accept that saying that would make somebody more inclined
12 to think, there might be a problem with that person's mental
13 health, than saying, for example, Joe, the butcher, has told
14 me that he has drawn some conclusions there might be mental
15 health?

16 A. I accept that my wife's contact over many years with me where
17 we have talked about mental health means that her making a
18 judgment about somebody's mental health could have a little
19 more voracity than somebody else, yes.

20 Q. I am sorry, Dr. Byng, that was not the question that I was
21 asking. I was asking, her using your credentials to back up
22 her opinion about somebody's mental health could strengthen
23 that opinion?

24 A. I am not sure whether she has used my credentials to back up
25 her ----

1 Q. Do we need to re-visit that email?

2 JUDGE SEYS-LLEWELLYN: For the moment let us just get an answer to
3 the question.

4 A. I mean, I think there was a -- sorry, so the question is, do
5 I think that it could add to the voracity?

6 MR. PARIS: Yes.

7 A. Yes, I think my previous answer was ----

8 Q. To the impression essentially that -- let me ----

9 A. Yes, so not only my experience but also if she states my
10 credentials ---

11 Q. Yes, if she states your credentials.

12 A. ---- in proximity to her own judgment ----

13 Q. Yes.

14 A. ---- then the person reading it could infer that there is more
15 voracity to my wife's claims, that is true. I think that is a
16 perfectly reasonable assumption.

17 MR. PARIS: Very well. Thank you very much, Dr. Byng. I have no
18 further questions, your Honour.

19 JUDGE SEYS-LLEWELLYN: Thank you very much.

20 **QUESTIONS BY THE JUDGE**

21 Q. When Joe came back, he was giving his account of what had
22 happened and you had had a period in which the ease or in
23 particular difficulty of various solutions for his return had
24 been somewhat exhaustively explored, how upset was your wife
25 about how she believed Joe had been treated?

1 A. My wife was upset about the way he had been treated and, yes,
2 she was -- I was surprised and upset and she was upset as
3 well.

4 Q. How upset?

5 A. We were both -- I am trying to work out -- we were upset
6 enough to think that this was pretty mean spirited behaviour
7 that we were quite shocked by and surprised by.

8 Q. I can re-read my notes, but I had the strong impression that
9 your own views as to Ms. Garden, as a result of your
10 discussion directly with her before ever there was a
11 difficulty with Joe but which came into the mix once Joe was
12 back ----

13 A. That is right.

14 Q. ---- I had the impression that she thought that was quite a
15 powerful component in your joint discussion to have no further
16 dealing. Was it?

17 A. It was a significant component, yes. As I said, I think there
18 were several things that came together after Joe had returned
19 and the three were the leading up to what happened in France,
20 leading up to Joe leaving, one; secondly, my recollections of
21 the conversation with Ms. Garden and putting that together
22 with the fact that I had also heard that she had in the past
23 made a claim against another practitioner; and, thirdly, the
24 email that did not seem to indicate that anything amiss had
25 happened in France. Those things together led us to believe

1 that these were individuals we wanted little to do with.

2 Q. So in your answer, my discussion with her was a significant
3 component ----

4 A. It is one of three significant components, yes.

5 Q. ---- you are quite consciously downgrading what is an
6 impression on my part that it was a powerful component. The
7 impression is for me, but what I want to know is what you
8 thought.

9 A. Yes. I thought that the three together were -- well, for me
10 the two significant components were, and I think they were
11 probably ranked in the order of, first, their behaviour
12 towards our son; secondly, a concern triggered by my memory of
13 the conversation about her mother and the litigation; and,
14 thirdly, what I had reported from memory about the
15 correspondence from Angel not recognising it. So I think it
16 was the second of, you know, not the most powerful.

17 Q. A married couple often arrive at a decision where one is more
18 or less enthusiastic than the other ----

19 A. Yes.

20 Q. ---- but it is a part of ensuring harmony for the future that
21 you make a decision and you get on with it.

22 A. Yes.

23 Q. Did one of you feel more powerfully than the other that the
24 decision should be no further contact and ignore?

25 A. Yes, I would agree that Melanie probably felt more powerful

1 than myself. I do not often get riled or made anxious by
2 people and I was on this occasion. We did think quite hard
3 about which way to go in terms of sending an immediate message
4 back or ignoring. I was very happy to go along with my wife
5 because I did not think at that time it would make much
6 difference either way. I assumed that our silence would speak
7 volumes and that Angel and Steve would realise that their
8 behaviour in France offended us and that that would be it. At
9 the time I did not think it was such a big deal either way.

10 JUDGE SEYS-LLEWELLYN: There we are. Any re-examination,
11 Mr. Price?

12 MR. PRICE: No re-examination. Thank you.

13 JUDGE SEYS-LLEWELLYN: Professor Byng, would you like to return to
14 the rear of the court.

15 (The witness withdrew)

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