

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

1. These Grounds of Appeal relate to two Judgements made in the High Court of England and Wales in the same case:

- The Judgement of HHJ Seys Llewellyn of 15th July 2015 and;
- The Judgement of HHJ Seys Llewellyn of 2nd February 2015.

It is in addition to the Grounds originally submitted on the 14/9/2016 (AD-9 - AD-25)

2. In order to avoid serious injustice, the Applicants urgently seek to re-open Appeals into both the decision of HHJ Seys Llewellyn of 15th July 2015 in Defamation, and his earlier decision at the PTR not to allow re-amendment of the Particulars of Claim to re-include harassment, based on newly released and incontrovertible evidence that the Respondents have spread malicious lies about the Applicants. This throws into disrepute their testimony and demeanour in court, and defeats their Defence.

3. The evidence in question can be found on page 102 of the Respondents' exhibit bundle for case C00SA374 released on the 9/8/2016, a copy of which is attached with this submission. This is part of mediation correspondence which had been until now unavailable to the courts due to being confidential. The statement in question is as follows:

*"I want to make it clear that there has been no clinical assessment of Angel Garden's mental health by my husband, Ms Garden is not his patient and he has never diagnosed her with any mental health issue. Any comments I have made which might suggest otherwise are untrue and understandably distressing to Ms Garden."* (AD-14)

**Malice**

4. In spite of copious mental health smearing perpetrated by the Respondents, HHJ Seys Llewellyn dismissed the case of malice, citing at paragraph 252 that the Applicants had failed to prove that the dominant motive was to harm them, and expressly citing the lack of malice to be due to the 2nd Respondent's "honest belief" in the 2nd Applicant's

mental illness, stemming from the 2nd Respondent's own understanding.

5. This is despite the 2nd Respondent's disclosure clearly showing her using her husband's position as a mental health professional to encourage others to be convinced that the 2nd Applicant was mentally ill:

*"At the end of this is his clinical judgement, which she seems to have forgotten."* (AB-291)

*"Angel has a borderline personality disorder. This is a clinical judgement, not a personal opinion. It isn't simply depression. It makes her very dangerous"* (AB-296)

*"A couple of incidents (which had little to do with their project) convinced us that she is unstable"* (AB-297)

*"my husband Richard had had a long phone conversation with Angel about her mother's cancer treatment, from which he'd drawn a few conclusions. Richard is a GP & academic & an expert in primary care mental health, including personality disorder."* (AB-298)

6. This was explored at trial, where the 2nd Respondent is shown to clearly contradict what she had admitted in this fresh evidence. But HHJ Seys Llewellyn was eventually convinced by the 2nd Respondent's demeanour, following keen questioning on the very point, by him, that these smears were merely her "honest belief", as, for instance:

*"I have my own thoughts about this which are not to do with my husband. My husband's diagnosis, if such a thing had existed, which it certainly did not, would have been immensely complex."* (AD-35)

And:

*"My friend Sam knows Richard very, very well. If what you are saying is that I am pretending that Richard has made a diagnosis of Ms. Garden, it is completely untrue."* (AD-36)

7. Distressingly, the Applicants knew what the 2nd Respondent had admitted but were unable to reveal it in court because this admission was bound by confidentiality. They were faced with seeing that the Respondents were so confident as to openly lie in court, blatantly convincing the judge of the truthfulness of their lie, which led HHJ Seys Llewellyn to conclude in his final judgement that:

*"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.” (AB-84)*

The Applicants would like the Court of Appeal to seriously consider whether the Respondents using the medical credentials of Professor Byng to spread the lie that the 2nd Applicant has a dangerous clinical judgement has nothing to do with “personal hostility” to the 2nd Applicant.

8. Lord Justice Peregrine Simon, dismissed the case of *Suddock v The Nursing and Midwifery Council* at para 37 of his judgement:

*“The judge's view of a witness is relevant. Nor is there any proper basis for saying that the judge placed too much weight on the witness's demeanour.” (AD-53)*

Yet when taking into account the 2nd Respondent's fresh admission, the case of *Suddock v The Nursing and Midwifery Council* becomes obvious:

*“§154. However, it may have looked at her behaviour in a very different light if it had appreciated that there was clear evidence that someone was trying to frame her, and that one of the witnesses against her was demonstrably untruthful, not just muddled. An innocent person facing that situation might well have presented as assertive and challenging, especially if she was trying to represent herself. A decision based substantially on Ms Suddock's attitude and behaviour, taken in the absence of an appreciation that there might have been justification for it, cannot fairly be allowed to stand.”*

9. The demeanour, now shown to be a fraud, has at every stage prevented the Court from recognising that the facts don't add up, and corroborates all the points made by the Applicants in their original appeals. The Applicants' original permission to appeal failed because Rt. Hon. Lord Justice Floyd decreed that:

*“It is not realistic to suppose that this court, which has not had the advantage of seeing the witnesses who gave oral evidence, or the benefit of a lengthy trial, could interfere with the judge's detailed findings” (AD-59)*

10. Likewise in Lord Justice Simon's Judgement, refusing the Applicants' oral permission to appeal:

*“There is nothing in this point. When assessing the issue of malice, a judge is fully entitled to take into account his view of a witness giving evidence and being subjected to cross-examination, including demeanour.” (AD-53)*

11. Yet unbeknownst to all the judges in this case, the 2nd Respondent had admitted in mediation that comments made by her, using her husband’s credentials to convince others the 2nd Applicant had a clinical judgement of Borderline Personality Disorder were untrue, and that she knew these actions would cause distress to the 2nd Applicant. This admission was bound by confidentiality until the Respondents’ solicitors released it on the 8/9/2016 for use in case C00SA374. This admission proves that her demeanour in court was shrouded in lies.

12. The malicious lie was used to convince friends and associates to distance themselves from the Applicants. By way of example only, here is what the 2nd Respondent said about her friend Dr Samantha Brooks, who was initially critical of the 2nd Respondent’s treatment of a grieving family exiting a cult, on 14/10/2011:

*“Sam seems to think that I could diffuse the whole business by having a chat with Angel, I think she feels it’s my fault for not talking to Angel after Joe got home. I can’t get her to understand the pathology. It’s very painful.” (AD-66)*

*“She feels, I think, that it was initially my business to sort it out so that others didn’t have to become involved. She is afraid of the consequences. She is so good a friend in other ways, I just have to accept that this is what she thinks.” (AD-67)*

Three months later, the discomfort caused by this difference of opinion caused her to tell Dr Brooks on the 12/1/2012:

*“Angel has a borderline personality disorder. This is a clinical judgement, not a personal opinion. It isn’t simply depression. It makes her very dangerous” (AB-297)*

This had a marked effect, and Dr Brooks was then fully behind the 2nd Respondent’s efforts to ostracise the Applicants, as shown from this email from 20/9/2012:

*“is there any news of the translation? Surely if Andy asks Singh he’d agree, the doc could be in the public domain by the end of next week. I think we should try pushing for an account to donate asap. I guess the difficulty with that is if the account goes public, it’s going to get nasty. I worry it will prompt A and S to promote their translation. I imagine they’ll also try and make out they were the original source and demand royalties or something. Plus when the genuine translation*

*comes out Angel will be furious, cue more pages and films ranting about critics which could potentially include Gregoire, they could seriously derail things for him.”* (Tab 145, 20/9/2012 at 22:30) (AD-70 - AD-71)

13. This about face, from an honest criticism of Mrs Byng’s exploitation of the family, to being 100% involved in the networked co-ordinated campaign shows the power of labelling someone with a risk diagnosis using medical credentials. As stated in Yeo v Times by Mr Justice Warby:

*“§145. A defamatory attack can, it appears, undermine personal integrity if it has “an inevitable direct effect” on private life which is quite severe, such as ostracisation from a section of society.”*

14. By allowing the Respondent “honest belief” in the lie she was spreading, and being persuaded of a lack of maliciousness in her actions due to her demeanour in court, HHJ Seys Llewellyn was unknowingly creating a real injustice, by allowing their defence to stand. Yet, in his own statements in his Final Judgement for case 3SA90091 at para 229 (AB-112):

*“in the case of each Defendant the defence will be defeated if malice is shown.”*

And at paragraph 231 ii (AB-112):

*“To establish malice, the Claimant must show the desire to injure him or her was the dominant motive for the defamatory publication.”*

For this reason, this judgment must be overturned by allowing the appeal to be reopened.

15. The circumstances are exceptional as it shows not only that the 2nd Respondent openly lied in court, but that the 1st Respondent, Professor Byng, and their solicitors were complicit in the deception, knowing full well that what she was saying under oath was a lie.

16. The lie itself shows malice on the part of both Respondents, since the 1st Respondent was only too happy to believe it himself, referring to the Applicants as:

*“Just wanted to check he was not part of the personality disorder team.”* (Tab 90 - C8-3904) (AD-72)

And:

*“Hard to tell someone straight up that it is the politeness of the psychopath.” (AB-347)*

### **Covert Harassment**

17. This fresh evidence of the 2nd Respondent’s admission also clearly demonstrates the covert harassment the Respondents were perpetrating on the Applicants, and is exactly what HHJ Seys Llewellyn recognised at the PTR as:

*“Covertly inciting organisations and individuals to shun the Claimants by portraying them as dangerous and mentally unstable.” (AB-58)*

Yet, not being allowed to view this clear and incontrovertible admission at the time, he denied the Applicants’ request to re-include the claims of harassment, which had been originally removed on the advice of lawyers because no evidence would be seen that this harassment existed, due to its covert nature.

18. This also makes this case exceptional as this admission makes the Respondents’ course of conduct in covert harassment, matching that detailed in the refused covert harassment claims, clearly visible, and it would be unjust not to overturn HHJ Seys Llewellyn’s PTR decision not to allow re-amendment as the course of conduct is proven as well as admitted.

19. It is impossible to know how many have been told this admitted malicious lie, as the 2nd Respondent said herself:

*“There was a big Guardian open festival last weekend, with lots of journos meeting and discussing and debating. So who knows what got about.” (AD-73)*

*“Just remember - there are lots of people who know about this now and they will tell each other.” (AB-302)*

As ruled in *Slipper V BBC* [1991]:

*“Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs.”*

20. Regarding Professor Byng, Lord Justice Simon stated in his refusal to grant the Applicants’ permission to appeal that:

*“It is sufficient to observe that the judge was entitled to the view that this was a*

*deliberate attempt to damage his reputation with his employers on a wholly unjustifiable basis” (AD-48)*

Yet this admission by the 2nd Respondent shows that the Applicants were right to seek help from Professor Byng’s employer, as they have been advised was the proper course of action by the police. It is impossible to think Professor Byng was unaware of this newly admitted lie, or of the covert harassment being perpetrated with it, and should therefore never have been amended out of the case.

21. Should this application succeed, the Applicants request that Professor Byng be reinstated into the case. His involvement was already shown from the 2nd Respondent’s disclosure, such as:

*“Richard is happy to write to this org inclosing their email to the Dean of the Peninsula Medical School, and so on.” (AB-360)*

*“R says she certainly has constructed her own reality.” (AB-361)*

*“I think he made that analysis in his spare time” (AB-361)*

*“Exactly our thoughts. R is going to write (with his uni email) asking this very question.” (AB-361)*

22. In order to avoid real injustice and prevent the Respondents from exceptionally *“benefiting from their own wrong” (Gatley)* by rewarding covert harassment and malice with the Claimants’ home, which is happening right now, there is no alternative effective remedy than to put the Order of HHJ Seys-Lewellyn aside, including the costs order, which he himself said was “a matter of last resort”. To avoid serious injustice this must in turn overturn the charge on the Applicants’ home, and the Order for Sale from case C00SA374 (AD-64 - AD-65), which would make this family give their home on the people perpetrating a malicious lie, and allow these two appeals based on this fresh evidence of Mrs Byng’s frank admission.

23. As enforcement steps are underway, and the Applicants must vacate their home by the 15th of October 2016, the injustice is imminent and the stay of application is urgent.

24. Finally, this case is exceptional and extremely important to properly balance Article rights in the new media environment, while tackling covert online abuse. The Respondents’ barrister has admitted himself that this case has the potential to change

the law, and a police officer has told us it has the potential of becoming a stated case.

25. For all the reasons stated above, the Applicants' request to reopen both the appeals in Defamation, due to malice, and in Harassment due to the admission of it, meet the conditions in CPR 52.17(1).

4th October 2016

Stéphane Paris

Angel Garden