Case No. 3SA90091

IN THE COURT OF APPEAL
CIVIL DIVISION
BETWEEN

(1) STEPHANE PARIS
(2) ANGEL GARDEN

Applicants/Claimants

-and-

(1) ANDREW LEWIS
(2) MELANIE BYNG

Respondents/Defendants

APPLICATION TO APPEAL THE REFUSAL TO REINSTATE HARASSMENT CLAIMS
GROUNDS

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1. Two pieces of fresh evidence, not available to the Applicants at the time of either the PTR or the trial, due to circumstance and honest belief, both provide further grounds to urgently appeal the extreme prejudicial decision, foreseeably leading to injustice, not to allow the harassment claims into case 3SA90091 in February 2015. The fresh evidence forcefully supports all the Applicants' previous submissions about the extent of the covert harassment campaign against them. Having included this cause in all appeal documents, it was only on the 16th of January 2017 that the Applicants were told that it has never actually, technically been appealed. [AF-63]

2. The fresh evidence demonstrates forcefully that this decision at the PTR foreseeably and fatally undermined justice in all subsequent elements of the case in defamation, leading to
   a) inaccurate, and insufficient examination of the true issues at trial including malice;
   b) failure to balance the parties' Human Rights in an appropriate, proportionate or fair manner according to law;
   c) injustice including a wildly disproportionate costs order against a family, only made possible by this decision, leading to trial only in defamation, then blamed on the victims;
   d) Interference with the family's rights under the Human Rights Act including leaving

harassing defamation online about minors, with no right of reply.

3. The level of malice fully visible in both these fresh pieces of evidence, demonstrates that to unreasonably exclude the covert harassment claims in sight of so much evidence at the time of the PTR, was itself an injustice that led fatally to further severe injustice. The foreseeable insufficiency of defamation alone to investigate the malice in the case led to insufficient examination of a course of conduct closely fitting Section 4A 1 b i and ii of the Protection of Harassment Act, in its combination of absolute shunning, including the public incitement to shun evidenced here, combined with previously well-evidenced and undeniable monitoring and spying online, these being characteristics of stalking as defined in the Act.

   It was precisely the prejudicial and unjust exclusion of these claims which led the Judge to ignore the course of conduct, including the chronology of it, saying at trial that he was not trying

   "*below the surface there was this campaign and participation"* [AC-89]

   He then stated his belief, against every word of the Applicants', that it was *"common ground"* between the parties*, "that there was this degree of communication"* in the background saying that it might help the 2nd Applicant to have that written down so she could "*make sure yourself*".

   The unjust exclusion of these claims, without making a single enquiry as to the effect of such a course of conduct upon a target, thus inevitably trivialised the desperate motives of the Applicants in seeking relief from such tortuous and unremitting harassment. There is *no mention whatsoever* by any Judge of the effect upon the Applicants of such a course of conduct, except at this PTR hearing when that effect was claimed to be the "*essence*" of harassment. Therefore it was the exclusion of the covert harassment claims at this stage that led to the unlawful failure to examine those effects *at all* in the case.

4. By this decision, not only has the family, including three young children, been denied relief from the persecuting course of conduct they have been subjected to since 2011, but the foreseeably dangerous trivialisation of harassment, and the execution of a punitive costs order against the victims of it, resulting from the evidenced claims' exclusion, has created a cumulatively urgent need to address it. This in itself prevents the Court from properly exercising its duties under CPR 1.1 and including the duty to finish cases to allow parties to move on.

5. Because of the insufficiency of justice applied to this case, the children who remain subject to harassing defamation about them are now prevented from addressing it by other means until

reaching maturity. At no point in proceedings has the Court considered the effect upon the children who achieved such a landmark Human Rights Settlement of having to grow up knowing they are being lied about by unknown adults, that these people want their parents dead, or incarcerated, because the family successfully addressed a failure by a school to deal with bullying, which has since been admitted by that school. This is a failure to uphold the family's Article 8 rights.

6. The Court's obligations under CPR1.1 are further exacerbated by the continuing failure to execute an order of which the Respondents remain in breach, namely to disclose emails written to "*the big-hitters*", an important class of publishee to the Applicants who are publishers themselves. These emails allege to contain further absolute incitement to shun by mental health smearing, similar to the evidence already before the Judge when he ordered their disclosure. In not even enforcing this order, but making judgement without doing so, and then unequally enforcing the punitive Costs order against the Applicants' home, the full extent of the insufficiency of justice foreseeably arising out of the decision at the PTR can be clearly seen.

7. As to the extent of the harassment, the first and second fresh pieces of evidence both expose the fraud of the Respondents' Barrister's claim, accepted by the Judge, that there was any *limit* whatsoever to the *degree* of covert communications about the Applicants. The Judge was shown full evidence of the lack of limits with regard to the reach of the Respondents' campaign, and in fact the only limit upon the course of conduct remains his refusal to execute his own order to produce further evidence of it, again foreseeably leading to premature and insufficient judgement. The incitement to shun, already fully obvious in what was before him on making that decision, is again shown by both pieces of fresh evidence to be not limited but absolute.

8. The foreseeable injustice of refusing re-inclusion of claims clearly evidenced to a criminal standard in front of him, and which had previously been excluded due to the covert nature of the harassment, is at odds with all authority, civil and criminal. It does not accord with CPS guidelines, Human Rights law, natural justice, or common sense. It was the Judge, not the Applicants, that was in a position to foresee the inevitable resulting insufficiency of a sole cause of action in defamation to apply appropriate focus to such a deceitful course of conduct.

9. The first fresh evidence shows beyond denial that the claims of 'honest belief' by the Respondents that the 2nd Applicants had a Borderline Personality Disorder (BPD) were a malicious fraud perpetrated upon the court as part of their covert harassment of the Applicants and their family. Even when exploring the fictitious validity of this 'honest belief', based on the Respondents' own claims to know about BPD's well-documented high suicide rate and

sensitivity to rejection, this can only be an admission that the course of conduct was deliberately intended to cause injury and death to the 2nd Applicant, or both of them and their family; i.e. malice. [AD-15]

10. The second fresh evidence demonstrates gratuitous, fraudulent incitement to shun absolutely parents who spoke out against a Steiner school, by use of the same smears [AF-32]. This again incontrovertibly shows the fraud of any claim of a "confined dispute", "unpleasant exchanges" [AD-54] and "limited" emailing. [AC-88]

11. The decision not to allow the harassment claims back in at the time of the PTR, and as a consequence, failing to deal with the substantive elements of the case has therefore foreseeably caused the very waste of resources that the Judge said he was trying to avoid. This problem has also led to considerable bias in the case, also foreseeable, given the Judge's reliance on demeanour in preference to the evidence before him, or even **not** requiring all the evidence he himself had ordered, followed by Judge's compounding failure to rectify.

12. The court has not only jurisdiction but lawful obligation to reopen the case to address bias, lack of proportionality and failure to balance rights with these effects upon the human rights of the family including the children involved, including Article 6, 8, 10, 11, 14, and 17 and rights to property and home.

13. The fresh evidence weighs exceptionally heavily upon the punitive costs order awarded against the Applicants' family for seeking to defend themselves, their children, and their Human Rights settlement about bullying they had worked so hard to achieve. Emphasising HHJ Seys-Llewlellyn's privileged view of the parties at trial and his confidence in their honest belief, Lord Justice Simon actually blamed the Applicants themselves for the lack of the harassment claims and for having trusted HHJ Seys Llewellyn assurance that defamation would be sufficient, given his refusal to examine an obvious, unbounded covert campaign.

14. In his judgement after the permission to appeal hearing in case A2/2015/2839 Lord Justice Simon said:

    "That difficulty is that they allowed a relatively confined dispute to escalate into unpleasant exchanges. That was unfortunate enough, but for the claimants to then have embarked on an expensive libel action, acting on their own behalf in a difficult and relatively complex area of the law, can only be viewed as a mistake." [AD-54]

    " Dispute" meaning a "disagreement or argument" unarguably requires a two way communication, not the total shutting down of any discussion, evidenced before the Judge at

the PTR, which was and remains the pleaded case. There being no two way dispute, it could not therefore have “escalated into unpleasant exchanges”. There were no such events with either of the respondents precisely because it was their well-evidenced and stated course of conduct to block all such communication, the better to practise the covert harassment fully evidenced in both pieces of fresh evidence.

15. The absolute lack of right of reply, which the Court has an obligation under Article 10 of the Human Rights Act, including horizontally, between citizens was, and is still achieved by allowing absolute incitement to shun by mental health smearing. This, so fully evidenced in these two pieces of fresh evidence, is and remains the exact cause of action of the disallowed covert harassment claims and the total lack of attention to the necessity for such right of reply, or publication of facts by the court is an unlawful breach of the Article 10 and Article 8 rights of the whole family who had no other way whatsoever to counter smears against any of them.

16. Because of those breaches, the public interest is fully aroused by this case, as without protection from covert smears, which by definition must be secret till discovered, there is no remedy whatsoever for what is a clear criminal course of conduct. The public interest cannot be served by this disproportionate mis-management of a case in the new media environment in which, had the court upheld and respected Human Rights principles at any time, would have very simply required the Respondents to cease to publish falsehoods, show the facts they are contesting, and to offer right of reply. None of these respected principles of authority in criminal, civil, Human Rights and natural justice, have been applied in this case. This is utterly dangerous to all users of the internet and needs the urgent application of true justice.

17. In spite of the undeniable work involved in restoring justice in this case, which even opposing Barrister stated could “change the law”, the fault cannot be laid at the Applicants’ door, and it is both proportionate and urgent to undo this persecutory anomaly and apply justice. The decision of HHJ Seys Llewellyn should therefore be set aside along with pursuant costs orders, and the case retried, including covert harassment claims, the missing evidence through breached orders, and Professor Byng, who clearly has lent his participation to the harassment. [AB-46/7]

18. Due to the injustice and heavy material losses already sustained by the Applicants and their children in this case, the Applicants submit it would be fair to give them costs protection going forward.

10th May 2017
Stéphane Paris Angel Garden

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Applicants/Claimants

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(1) ANDREW LEWIS
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Respondents/Defendants

APPLICATION TO APPEAL THE REFUSAL TO REINSTATE HARASSMENT CLAIMS
SKELETON

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1. This is an Appeal, based on fresh evidence by the Claimants Mr Paris and Ms Garden against the decision of JJH Seys Llewellyn not to allow re-amendment of claims of covert-harassment shortly before trial. These had already been amended out of the case earlier because the evidence was hidden, and disclosure had not yet taken place**.** Nevertheless the Judge recognised the course of conduct then, and it is now further corroborated by two pieces of compelling fresh evidence. This evidence shows that the Judge's persuasion of the "honest belief" of the Defendants, Dr Lewis, Mrs Byng and their witness Dr Byng, was engendered by means of fraud.

2. Mr Paris and Ms Garden and their children ask the Court to urgently set aside this decision in recognition of the necessity to recognise covert harassment and stalking in the public interest, the Courts obligation to ensure a right of reply, protect family integrity under the Human Rights Act, CPS guidelines, and natural justice.

3. This decision has foreseeably prevented justice overall in the case because:

(a) The fresh evidence, in extent and reach of malice, confirms yet again the foreseeable impossibility of fairly judging a case in defamation alone, where the covert course of conduct involves these extreme types of harassing and undemocratic actions involving subverting free speech in order to shut it down. The fresh evidence, in the observable absolute repudiation and stigmatising of the Applicants, the evidenced subsequent lies about the exchange at trial**,** demonstrates how the decision not to allow such accurate claims caused the case to be fatally undermined, resulting in an unlawful decision concerning children, where there was no other remedy possible.

(b) The course of conduct in the covert harassment claims was already clearly visible when the claims were refused, and were acknowledged by the Judge at 43(v) of that judgement: *“"Covertly inciting organisations and individuals to shun the Claimants by portraying them as dangerous and mentally unstable." I could, by going through the 24 pages of appendices, pick out a number of obvious candidates for this”.* [AB-58]

(c) Having prejudicially refused claims that were already evidenced, questioning to prove malice in defamation during the trial was prevented by the same Judge because:
“My ruling is that we are dealing with the defamation case. We are not dealing with a case in harassment, namely, below the surface there was this campaign and participation, collusion in setting out an array of comments which might make people less fully pay attention to us. So that is not the case that I am trying.” [AC-89]
This was contrary to assurances at the PTR, namely at paragraph 35 of that Judgement:
“having considered with care those pages, if this is simply an exploration of whether qualified privilege exists or is undone by malice then I am satisfied that that can be done in a focused way […] with appropriate focus, and controlled by a trial judge, and managed within the present time estimate.” [AB-56]
The impossibility of achieving “appropriate focus” to the undeniable and now also admitted malice through defamation only, was easily foreseeable.

(d) In spite of the Judge stating, at Paragraph 38 of the PTR judgement that:
“the essence of the tort is the tormenting of and the direct effect upon a Claimant” [AB-57]
no effect of any action or inaction of the Respondents or their witness were examined at all at any time. The essence of harassment itself was therefore *left out* of consideration of the proportionality of whether or not to include the claims, and was *never mentioned again* by any Judge in this hearing or at any other point. The effects were not even acknowledged when visible in court where the anguished Claimant broke down when confronted with questioning the Defendant whose hatred she now knew extended to have included saying

that she was *"happy to give her a hole in the head anytime"*. [AC-13]

(e) Defamation proving foreseeably insufficient, there is no other remedy whatsoever for a combined course of conduct of covert networked harassment together with open dismissive defamation with no right of reply. Ignoring the harassment both unlawfully enables and rewards a severely oppressive course of conduct**,** it also reflects **t**he techniques and severity of Zerzetzung - or 'social murder' - state degradation of the lives of citizens in Nazi Germany and later Eastern Germany, causing misery and death. This course of conduct, by the necessity to monitor targets to interfere with their free association also clearly demonstrates the *characteristics of stalking* described in the PHA, Section 4A i b i and ii.

(f) Ignoring the fact that right of reply was denied by the Defendants Dr Lewis and Mrs Byng, compounded by refusal to examine precisely their 'covert' activities, has led to a breach in the Court's obligation to ensure right of reply under Article 10, as per page 5 of "Positive Obligations Under Article 10 To Protect Journalists and Prevent Injury":
"The Court has arguably conceded that a positive obligation arises for the State to protect the right to freedom of expression by ensuring a reasonable opportunity to exercise a right of reply and an opportunity to contest a newspaper's refusal suing for a right to reply in courts (see Melnychuk v. Ukraine (dec.), no. 28743/03, ECHR 2005-IX)."
http://www.echr.coe.int/Documents/Research_report_article_10_ENG.pdf

(g) The fresh evidence undeniably contradicts statements made by Dr Lewis and Mrs Byng concerning their innocence of harassment, and honest belief in court, showing fraud.

4. The extent of foreseeable injustice caused by this one decision, on claims so difficult to prove due to the course of conduct being covert, makes it urgently proportionate to allow this appeal, to re-include the claims and to retry the case in the public interest, since otherwise there is no remedy whatsoever for a recognised course of conduct of networked covert harassment attacking the personal integrity of targets by far more numerous and powerful people. The public are put at risk without a remedy for the course of conduct shown in the fresh evidence, exactly as claimed and evidenced during the case.

5. The tormenting covert harassment of the type in the fresh evidence, has always been alleged. The claims had already been excluded for lack of visible evidence and were then refused again after the evidence for the allegations had turned up through disclosure. At that point it was to any trained legal person foreseeably impossible to apply "appropriate focus" to the course of conduct in Defamation alone, and the fresh evidence shows just how far this decision has

undermined justice in the case. This situation was not caused at all by the Applicants, but against all their work and efforts.

6. Without restoring justice, the eventual judgement by Seys Llewellyn also leaves harassing defamation about these children on the internet on an influential site which they are prevented from addressing until coming of age.

7. The judgement, hiding the nature of the covert course of conduct within the case and misrepresenting the facts of the case, makes it impossible for the court to uphold its obligation to finish cases so that parties can move on.

ISSUES

Foreseeability

8. The foreseeable sabotaging of the Mr Paris and Ms Garden's case by refusing to re-include the harassment claims and later refusing to explore harassment in the context of defamation (see 3(c) above), has eventually inevitably led to this application. Neither have Dr Lewis and Mrs Byng made any undertaking at any time to cease from harassment.

9. Although Mr Paris and Ms Garden have tried to appeal this PTR decision at every juncture, including their permission to appeal (A2/2015/2839) and permission to reopen the appeal (A2/2015/2839/A), it was only in the 16th of January 2017 that they were informed by the Court of Appeal that this had not yet in fact been properly appealed. [AF-63]

10. To quote the Appellants' Submission prior to Oral Hearing on 22nd March 2016:

    [2] "The Appellants will be relying on the evidence contained in their permission to appeal bundle as well as that submitted with this document (AC-09 - AC-90). The matters to be raised concern two previous hearings:

        i. the PTR, at which the re-instatement of claims of covert harassment following disclosure was not allowed on the basis of the Overriding Objective of avoiding legal action, and of time and cost savings, and the firm premise that a recognised course of conduct identified by the Judge could be examined as background to defamation, used to dismantle the "reply to attack" defence, and to prove malice"

11. Lord Justice Simon referred to the claims' re-inclusion at the Permission to Appeal Hearing:

    [32] First, there is a criticism that they were unfairly prevented from reintroducing claims for

covert harassment. This, it is said, prevented them from exploring the issue of malice to the fullest extent in cross-examination. [AD-52]

12. HHJ Seys Llewellyn's decision was again appealed in the Applicants' Grounds of Appeal in Application to Reopen Permission to Appeal in Case A2/2015/2839:

    [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. [AD-1]

13. The Applicants have also been blamed for not appealing the decision not to re-include the harassment claims after the PTR Judgement, following the Judge's assurances, when there were merely weeks before trial. This effectively blames the Applicants as LiPs for trusting the Judge's assurance of applying "appropriate focus" to precisely the covert actions he himself quoted, which he then claimed he was not examining at trial, where he was in a position to foresee the inevitability of injustice and the Applicants were not.

Bias

14. In October 2016, the Applicants presented part of the fresh evidence here, namely Mrs Byng admitting to having used her husband's medical credentials to spread a fake mental health clinical judgement in order to have Mr Paris and Ms Garden shunned, when they tried to reopen the appeal in Defamation [AD-01-73].

15. Lord Justice Simon unjustly dismissed the evidence in defamation by saying that a private admission that [AD-15]:

    "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****"* [emphasis added]

    was the same as stating in court that [AD-36]:

    "If what you are saying is that I am pretending that Richard has made a diagnosis of Ms. Garden, it is completely untrue."

    Lord Justice Simon rules that:

    "the evidence given by the 2nd defendant was consistent with the contents of the letter, namely, that the 2nd claimant was not her husband's patient and he had

never diagnosed her. Such views as the 2nd defendant expressed as to the 2nd claimants' state of mind were her own." [AE-28]

16. LJ Simon's statement therefore directly contradicts the open admission in the letter of Mrs Byng having expressed "views as to the Claimants' state of mind" that *did* suggest that Ms Garden had in fact been diagnosed by Mrs Byng's husband with a mental health issue [for example, AB-296/7/8]. She further stated these admitted comments "are untrue and understandably distressing to Ms Garden." Therefore LJ Simon's statement misrepresented the fact that only some of the evidence given by the 2nd defendant in court was consistent with the contents of the letter, while another part of the letter contradicted that evidence, clearly indicating that not all the 2nd Defendant's expressed views were her own. The Applicants can only hope that fresh eyes will be able and willing to see such an obvious anomaly which is immediately apparent to others.

17. The unfortunate level of bias in this case has therefore forced more than one application for recusal of Lord Justice Simon since the permission to appeal hearing and the court has asked for yet another application for recusal, together with these Appeal applications [AE-1-31 and AH-1-6]. The application has been made for a number is reasons, including, but not limited to:
    a) relying on HHJ Seys Llewellyn's persuasion of 'honest belief' regarding the 2nd Applicant's fake mental health clinical judgement;
    b) falsely denying that tampered evidence was an original ground of appeal as detailed in the grounds and skeleton, and refusing to hear that claim in court;
    c) refusing to put parties on equal footing - Lord Justice Simon refused the Applicants' legal representation;
    d) mischaracterising evidence by ruling that an admission of lying in private was the same as denying having lied in court.

18. The Respondents have argued that the Applicants should've known that they should have used Mrs Byng's admission sooner if they so wished, going against the obvious fact that the Appellants are LIPs are cannot know all the minutiae of the law, a fact used many times by the Respondents to the detriment of the Appellants. The Appellants have already fully answered this in Point 3 from page AE-23:
    The Applicants had been advised and cautioned severally by both their lawyers and the Respondents' solicitors that this admission, made during mediation, could not be revealed at any time. Based on this advice they felt unable to do anything about it. Barrister Jonathan Price states at Paragraph 26 that:
        "The line of authorities applying Unilever PLC v The Proctor & Gamble Co. [2000] 1 WLR 2436 makes it clear that any privilege in "without prejudice" communications cannot "act as a cloak for perjury, blackmail or other "unambiguous impropriety"". In such circumstances, it is open to a litigant to apply to the court to waive any

privilege in the material."

The Applicants are Litigants in Person, and as HHJ Seys Llewellyn said himself at the Pre-Trail Review, when he denied them their request to release disclosure material from confidentiality, that the opposing Barrister has a duty to inform LiPs or any case law which may be of benefit to their case since LiPs cannot be expected to be aware of all legal matters which could pertain to them. The fact that Barrister Jonathan Price remained silent about this until now, cannot and must not be used against the Applicants.

It must further be realised that as well as the contradictory intimidation practised by the Barrister, the Applicants could not possibly know that the Respondents would lie about what they had admitted in mediation, until they actually heard it in court.

19. The Respondents have also argued in contradiction of themselves, stating that this admission should remain confidential as it hasn't been released in a public document but solely to resolve cost issues. As the Court and the opposition are quite well aware, that point is moot due to the documentary evidence having been referred to in open court during the hearing of case C00SA374.

Respondents in Breach of Court Order

20. In addition to the fresh evidence submitted with this application, the Respondents - Mrs Byng and Dr Lewis - still remain in breach of an Order made at the PTR hearing in question, to disclose further substantive evidence, which was ordered to be in the case.

21. The fresh evidence submitted here yet again shows the likely nature of those still undisclosed emails, sent to "the big-hitters" (top British journalists and other influencers) [AB-304], which is an obvious important class of publishee**,** since the Applicants are publishers themselves**.**

22. The lack of insistence on executing this order by the court further foreseeably prejudiced the trial, even in defamation alone, making the judgement entirely premature, without all the evidence. This prejudicial decision once again underlines the injustice of disallowing the re-inclusion of the covert harassment claims when the evidence proved that everything the Applicants had alleged was true. It is totally unbalanced for the Court to allow these influential Respondents who have secretly harassed and defamed, to wilfully breach an order for substantive evidence in the case, while allowing them to take the Applicants' family home to fulfil a punitive costs order while still re-publishing harassing defamation about the children daily.

Evidence Tampering

23. It is also important to remind the court that the Respondents - Mrs Byng and Dr Lewis - and their representatives, have tampered with evidence, cutting up the Applicants' words to change their meaning, removing the obvious expressed context, and applying an extreme and damaging meaning which could only reasonably be inferred by that tampering, and which obfuscates the clear cultic connection to this abuse. This fit-up was then used to persuade the Judge of the Respondents' "honest belief" which the fresh evidence again shows to have been achieved by fraud.

24. Such determined and repeated layering of obfuscation, in spite of the Applicants' constant protests, of something so easy to prove, is a gross and unlawful interference with the Applicants' Article 10 Rights. It completely goes against the findings in BCA v Singh, where the same solicitor argued and won the Appeal: as Judge Justice Sedley said during the oral appeal for that case, *"in deciding the meaning of the words the judge overlooked their context; he paraphrased them damagingly"* http://www.bailii.org/ew/cases/EWCA/Civ/2010/350.html

THE FACTS

First Piece of Fresh Evidence - Mrs Byng's Admission

25. In both cases this fresh evidence 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, in spite of seeing "several obvious candidates" for this criminal course of conduct in the revealed disclosure at the time, he denied the Applicants' request to re-include the claims of harassment.

26. The first fresh piece of evidence was released on the 9th of August 2016 by Dr Lewis and Mrs Byng's Representatives at page 102 of their exhibit bundle for case C00SA374. This evidence was since referred to in open court and is no longer bound by mediation confidentiality.
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-15]

27. This contradicts the claim she made at trial not to have done any such thing, even when the Judge suggested that it did look as if she had, by comments such as :

    "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]

28. The evidence clearly shows that comments were made to others suggesting that her husband had made such a diagnosis, which are fully evidenced, and were at the time:

    "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]

29. This harassment perpetrated by Mrs Byng shows malice on her part as she knew how distressing her actions would've been to the Applicants and particularly to Ms Garden. As Mrs Byng said herself in the first fresh piece of evidence:

    "Any comments I have made which might suggest otherwise are untrue and understandably distressing to Ms Garden." [AD-15]

30. In spite of this evidence, and without benefit of this open admission, HHJ Seys Llewellyn was eventually convinced by Mrs Byng's demeanour, following keen questioning on the very point, by him, that these smears were merely her "honest belief". The fresh evidence shows her admitting her perjury and conscious harassment.

31. HHJ Seys Llewellyn's dismissal of the case of malice, citing at paragraph 252 that the Applicants had failed to prove that the dominant motive was to harm them, is shown yet again by this fresh evidence to have been achieved by fraud. There is no other possible motive for the actions of the Respondents, and of their representatives, but to hurt the Applicants and their children. It is not to be imagined that Mrs Byng would have made such an admission in mediation unless she knew that it was so obvious as to be pointless to deny - yet she nevertheless went into court and denied it to the Judge.

32. Regarding Professor Byng, Lord Justice Simon, again applying very different standards to the parties, 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]

33. Yet the 2nd Respondent's admission in the fresh evidence shows that the Applicants were right to seek help from Professor Byng's employer (they have also been advised by the police was this was the proper course of action to take). It is impossible to think Professor Byng was unaware of this now admitted lie, or of the covert harassment being perpetrated with it, and he should therefore never have been amended out of the case. This happened solely by virtue of the covert nature of his course of conduct in betraying his oath, and use his power to harm. This contradicts the evidence - as Richard Byng had met the person thus described once only, through their own unsolicited offering of "help" due to Ms Garden's imminent sudden loss of her mother. The harassment began during that bereavement in 2011, and continues with no relief.

34. Dr Byng*'s* 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]

35. It is furthermore an obvious double standard to ignore such a vicious lie by such a powerful figure going to the personal integrity of the Applicants in order to damage their reputations, and even to state that it was "unjustifiable" to seek help over it without even mentioning that the Byng's had persuaded them to accept "help", approaches made on the basis of understanding the stress of bereavement.

Second Piece of Fresh Evidence - Dr Lewis' Public Harassment

36. The 2nd piece of fresh evidence is a video clip which can be found at this link - www.stopdefamation.net/bath.mp4. The transcript of it is attached to these grounds [AF-32-37]. 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, Mr Paris and Ms Garden discovered secondary equipment, which had earlier appeared to be broken, but which had in fact recorded the same interchange including additional footage extending some minutes beyond that already disclosed.

37. In this fresh evidence, the fraud perpetrated upon the court is again exposed, as Dr Lewis deliberately obfuscates reasonable, genuine and almost desperate attempts to resolve issues and avoid legal action. Dr Lewis chose instead to maliciously smear both the Applicants as criminals and dangerous to children, thereby forcing the Applicants to serve a claim, after all their efforts not to.

38. As just one example of the lies perpetrated by Dr Lewis, Mr Paris is heard in the clip stating that the envelope that Dr Lewis refused to touch 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."* [AF-33]

Dr Lewis was therefore fully aware that the letter could not have been a service of a claim, but this did not stop him from yet again altering the facts to suit his purposes: two months later on the 16th of July 2013, in order to have the Applicants barred from another supposedly public meeting about Steiner education, the 1st Respondent told Jo Torres of Skeptics in the Pub [AF-48]:

> *"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."*

39. The 1st Respondent is also 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 above, where he shared private information about the Applicants that he could only have inaccurately assumed by monitoring the Applicants online, where Ms Garden had mentioned Bristol around that time,

as a place where her documentary video “birth-trust” was being shown.

40. Other examples include secret communication with Sid Rodriguez where Dr Lewis solicited information from him for a file he is gathering against the Applicants *“should it come to the point when authorities need to be involved”* [AB-346], and the communication with Animals in Suits, when Dr Lewis threatened that person with ostracisation if he continued to interact with the Applicants: *“there is very low tolerance with some people for anyone who is engaged with [Mr Paris] or [Ms Garden]”.* [AB-326]. It is submitted that none of this represents wanting “nothing to do with them” as it is not necessary to incite shunning or seek information of those you simply want nothing to do with. Further, wanting nothing personal to do with someone does not necessitate shutting down public debate of controversial subjects which they have interest in.

41. That the 1st Respondent knew exactly what he was doing to the Applicants is 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:

> *“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.”* [AF-43]

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.”* [AF-44]

42. In this case however, he is clearly seen to deliberately behave in an opposite manner, attempting to cause absolute shunning of a family seeking to address, in an appropriate public setting, the very issues he seeks public influence on. The video itself provides several further examples of irrefutably fraudulent statements in addition to those already highlighted here.

43. In fact, the letter proffered to the 1st Respondent as seen in the second piece of fresh evidence, was yet another attempt to avoid legal action by seeking ADR to resolve issues between the parties, in line with the overriding objective. As stated, it had already been emailed to him some time before. The letter was previously disclosed in the case and is attached to these grounds [AF-46-47]. It contains the following which, given the Applicants had already had

to transglobally relocate their whole family, could not be any more reasonable:

"*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."

44. The 1st Respondent's displayed apparent fearful reaction seen in the video was for show, i.e. a lie, to provide an excuse for not engaging with the issues, where his copious lies about the Applicants would be exposed. The Applicants clearly did nothing to warrant such a reaction. As a response to a request for discussion, the Applicants showed in court how extremely confrontational the 1st Respondent is when he challenges individuals on twitter, his website, or elsewhere.

45. Even if the Respondents would continue to claim that the theatrical display of Dr Lewis was genuine however, that would only go to show the strength, power and malice of the smear Mrs Byng - the 2nd Respondent - admittedly spread, evidenced by the first piece of fresh evidence, a smear which she also admitted was *"understandably distressing"*, and therefore, harassment. This position in any case also proves malice, as honest belief in BPD, on the basis of his stated knowledge of it, would render his actions as only designed to provoke such a sufferer to suicide or murder. These effects and characteristics of BPD are well documented.

Jurisdiction

46. The Court's duty under CPR 1.1 to see that cases are finished, and to balance that with the need for justice to be done and to be seen to be done obliges the Court to put right public interest judgements achieved by fraud and bias, especially where their effects on children, and the unlawful allowance of harassing defamation against them remains on the internet, will

stretch into the future, and be likely to involve further litigation, distress, expense and resources down the line. The duty to finish cases obliges, rather than excuses the court from the protection of children from such malicious eventuality.

47. The extent of the court's jurisdiction to protect children's family integrity was shown in PJS v News Group Newspapers Ltd where the Supreme Court upheld an injection to publish true facts about their parent because of the distress and embarrassment it might cause, even though the information had already been published in many other jurisdictions. https://www.supremecourt.uk/cases/docs/uksc-2016-0080-judgment.pdf

48. In departing from this recent authority from the highest source, the court has allowed children to be personally and continually defamed, with publication recurring each day under the 1998 Defamation Act. Dr Lewis clearly admitted at trial that he knew of the Human Rights settlement the Applicants had achieved, that the eldest child's accounts were now admitted to be "honest", yet nevertheless he had since arrogantly republished his blog post on another website implying the contrary, and the court has rewritten the dictionary to allow him to do so [AB-36/7].

49. HHJ Seys Llewellyn also exposed the name of one of the Applicants' children in court, to parties who have made threats to kill and incarcerate, something which the Appellants had managed to avoid for years, even during their dealings with the Steiner School through Human Rights mediation.

50. It is therefore submitted that the court has jurisdiction in this matter of appeal against the decision to exclude harassment from the trial for the following reasons:
    (a) This is fresh evidence not available to the applicants previously, by circumstance and honest belief.
    (b) Both pieces of evidence were found during the unjust wresting of the Applicants' family home by the Respondents and their representatives who know full well the extent of their own perjury and have not even supplied all evidence as ordered.
    (c) Both weigh heavily on the Judge's decision not to allow harassment claims for which he could already see "several obvious candidates" of evidence but did not examine whatsoever the effect upon the Claimant. This fresh evidence fits that course of conduct completely, as well as evidence already in front of the court, all matching the Applicants' own allegations in open publications which were all offered with right of reply.
    (d) the evidence shows that the judgments were achieved by fraud.
    (e) the Applicants were not to blame for the foreseeable insufficiency of the defamation trial to justly try the extreme and well evidenced course of conduct.

52. While failing to examine the essence of the claims at all, but nevertheless disallowing them, he also stated that he 'doubted' that harassment went to a criminal standard. In fact this was misleading as there can be no reasonable doubt about what harassment was disseminated, or the monitoring of the Applicants: a criminal standard of proof. This meant that the Applicants had to go to trial in a severely prejudiced state, and were directly told by HHJ Seys Llewellyn himself that the only way the Applicants could gain relief from this recognised stalking and harassment was solely by winning a case in defamation.

53. At trial, around the time HHJ Seys Llewellyn prevented the Applicants from exploring the malice of Mrs Byng's lies concerning the Applicants publications further (see 3(c) above), Barrister Jonathan Price admitted:

> *"There were behind the scenes - it is in a very limited way and they do not accept it is limited but there were behind the scenes – both defendants occasionally emailing each other and/or third parties about the claimants."* [AC-88]

54. Despite the fact that this admission goes against Mrs Byng's own statements to the extend of the covert harassment, including her admission in court of using the phone and face to face, and including statements such as:

> *"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]

and:

> *"Just remember - there are lots of people who know about this now and they will tell each other. But let me know the minute you see anything because I can probably do something about it"* [AB-302]

Barrister Jonathan Price did admit to this harassing course of conduct, but falsely claimed it was "very limited".

55. In contradiction to all the evidence and the Applicants' case, on refusing to allow further questioning the Judge concurred "*I think actually it is common ground just looking at the disclosure; but, it might help you, as it were, to have it written out and then you can make sure yourself. It is accepted that there was* ***this degree*** *of communication and we can also save a lot of time, actually"* [AC-89]

56. If Price and the Judge were going to admit that there was a background campaign at the exact point in the trial, where examination of it was to be refused, why did he not admit this during the application to have the claims restored at the PTR when he and the Judge were telling the Applicants of their duty to inform them, even of matters detrimental to their own case? The fresh evidence itself shows why: what he was belatedly admitting as a limited course of conduct, trying to bury it as not requiring further examination, was in fact known full well by him to be not "limited" at all but absolute, limitless and unremitting: a campaign of social murder

including stalking and death threats. The campaign is shown to be “absolute” both in extent of personal damage and reach of the lies, which the court has not even seen fit to quantify (re the breached order regarding the “big-hitters” referred to in 21 and 22 above).

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.”

57. For example, the already disclosed tweets from Flatsquid on 31st December 2014 [AF-52-54] are of particular interest with relation to this fresh video 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 in the video 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.

58. The fraudulence of malicious and untrue statements of disinterest by the Respondents is further evidenced by all the other comments showing monitoring by both Respondents, already disclosed at trial and submitted to the Court of Appeal [AB-31, for instance]. The refusal of the harassment claims describing that course of conduct so accurately is shown to have directly downgraded the facts, and the course of conduct in a manner prejudicial to justice & dismissive of the relevant effects by not ever asking how such harassment affected the Applicants.

59. In fact, the effects upon a target of knowing they are being monitored while a perpetrator publicly claims disinterest and blocks or repudiates them has been well documented in the course of the Stasi’s practising of Zerzetzung, for which targets who managed to survive the tortuous harassment (many did not) were eventually compensated.

60. The considerable and cumulative alarm and distress caused by knowledge of this monitoring and targeting, with public statements about children and public attacks on family integrity, while also being blocked from any democratic communication whatsoever, also particularly characterises the course of conduct of the targeted spying, stalking behaviour defined in PHA

Section 4 A 1 b ii “stalking causing alarm and distress”. The appropriateness of that offence was likewise obfuscated by the lack of these claims at trial and the avoidance of asking what the effect of such a course of conduct would be on targets.

61. The Court’s obligation with regard to finishing cases cannot therefore be achieved at all without setting aside this judgement, as failure to balance the rights of parties and of the affected children, allows the much more influential Respondents to be relieved of any obligation not to defame and harass children until they grow up, and in fact to be rewarded for it by taking those children’s home, thus also causing them serious harm.

62. The Applicants’ children are all personally misrepresented and harassed by the Respondents’ privacy breaches and defamation of the Titirangi Settlement, itself the result of respectable enquiry into bullying by the Human Rights Commission of New Zealand. This includes the blog post denying the Applicants and their children right of reply to the several statements about them that the Respondents have admitted at trial to know to be false.

    The factual personal position of the child who is referred to as, *“[the Applicants] claim their children were expelled because they were being bullied”* [AB-348] is that the school accepts her personal accounts of bullying as “honest” which included, as an 8 year old, an account of being threatened with an axe by an older boy [AB-356]. The misrepresentation about that in this still-published post has not been considered at all by the Court. Likewise the personal positions of the Applicants’ two other children who were “very happy” and “happy” at the school [AB-348] are both misrepresented by Dr Lewis’ statement saying it was claimed they too were bullied at the school. This is a clear misrepresentation of the exact mechanism practised by Steiner schools, which he then claimed not to be able to see in this case. He has showed no such reticence with any other similar, yet anecdotal and/or unevidenced accounts from other survivors of Steiner education.

    Children successfully participating in a respectable Human Rights process have a right to be believed by judges, and the Court is not at liberty to discriminate against them by allowing continuing harassing defamation of them by adults who hate their parents to a murderous degree, all while seeking personal influence by claiming that such processes undertaken by the family are not possible. As Dr Lewis said himself regarding Steiner education:

    > *“No one will call them out. It requires too much work to expose them!”* [AF-49] and
    > *“My own research on Steiner suggests *nothing* should be taken at face value when looking at Anthroposophical institutions.”* [AB-366]

    The unlawful discrimination against the children for being related to their parents therefore also forces each child to reopen all these matters, each on coming of age, over a period therefore from 2018 - 2024, should they wish not to live under the shadow of lies told about them by powerful adults. In the meantime this injustice forces them to live under the severe oppression

of the British Courts allowing their agency against bullying to be misrepresented and their home taken by the perpetrators, all without allowing any right of reply and misrepresentation. This is extremely abusive and a severe breach of the whole family's Article 8 rights.

63. The Court should therefore open this appeal not to prejudice law against exposure of the true course of conduct in the case, so that matters can finally be dealt with properly.

64. On seeking permission to Appeal the decision in Defamation, 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-57].

    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.

HARASSMENT

65. According to Majrowski v Guy's and St Thomas' NHS Trust [2006], it is important to make a distinction between:

    "the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour".

    Lord Phillips defined harassment in Thomas v News Group Newspapers as:

    "a conduct targeted at an individual which is calculated to produce the consequences described in section 7 and which is oppressive and unreasonable"

    In Yeo v Times, Mr Justice Warby stated at Paragraph 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."

66. Bearing all of the above, the Respondents' actions, particularly emphasised by the two pieces of fresh evidence, show the malice behind their actions and their deliberate course of conduct

of causing alarm, distress and physical harm to the Applicants through harassment and ostracisation. Spreading a fake clinical judgement of mental illness and inferring that the Applicants are a danger to children and should be arrested is as far from *"ordinary banter and badinage of life"* as one can get. These actions are *"genuinely offensive and unacceptable behaviour"*, have *""an inevitable direct effect" on private life which is quite severe"*, and are *"oppressive and unreasonable".* The Court has a duty to recognise this obvious truth.

67. Scientific research into shunning and ostracisation show the damaging effects such actions have on a target (any target, not just one being bereaved), for instance:

    "Like bullying, ostracism causes pain and distress. Its targets either attempt compensatory behavior, aimed at being likeable and included, or they retaliate, provoke, and aggress. Qualitative interviews suggest that frequent exposures to ostracism make targets become depressed, exhibit helplessness, and engage in suicidal ideation and/or attempts. Unlike bullying, ostracism need not be persistent or unwanted, is difficult to monitor and penalize, and negatively affects basic human needs for acknowledgment and meaning." [AC-103]

    "Even trivial episodes of ostracism can shatter your sense of self" [AC-111]

    "Social exclusion crushes self-esteem, because it suggests that you did something wrong. You feel powerless: whatever you do, you will be met with silence. You are invisible, irrelevant-- and, studies show, in physical pain." [AC-114]

    "Being ignored and left out activates the dorsal anterior cingulate cortex, a region linked with the emotional aspects of physical agony, and the insula, which judges pain severity." [AC-115]

68. HHJ Seys Llewellyn totally failed to understand the effects of ostracisation as described above, dismissing it at paragraph 205 by saying

    "the Claimant stated that [Mrs Byng's] silence was "highly aggressive". This is quite remarkable." [AB-105]

    This unfortunately shows the judge's lack of understanding of the harassment, in deciding to exclude the claims, and his failure to take into account the appalling traumatic effects of years of such harassment and ostracisation on any person, let alone one being actively bereaved, which led him to misjudge the case entirely, both when he refused to allow the claims back into the case despite seeing *"obvious candidates"* of it, during the trial, and in the judgement when that foreseeable insufficiency prevented the application of "appropriate focus" to try the Respondents' true course of conduct.

69. This lack of understanding of the nature of covert harassment, or its effects, led him to make pejorative and discriminatory comments 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." [AB-84]

All studies of ostracisation markedly show that all people are effected by ostracisation regardless of their mental health. Knowing someone had spread lies about them in such a manner as to completely destroy their personal integrity, forcing them into legal action, and knowing that that person was now trying to mislead a Judge, would make anyone severely uncomfortable and, not to overstate it, paranoid. His comments above highlight the foreseeability of injustice, making such a decision having not understood the case.

70. Unjust exclusion of these claims foreseeably pushed litigation forward into a situation of injustice failing to meet any objectives laid out in CPR 1.1a -e:

a) The parties have not been on equal footing, substantial disability hate-crime has been completely ignored, both in spreading lies about the actual physical impairment of the 2nd Applicant, and smearing her as mentally ill. The parties' rights have not in any sense been balanced equally and this has resulted in discrimination towards the family.

b) The foreseeable result of excluding these claims having observed the evidence is to cause expense. The court failed to recognise at all the stringent efforts the Applicants made to avoid legal action over many years, against the deliberate ramping up of it by the Respondents and their expensive representatives, who constantly told the Applicants throughout these proceedings that they were not charging their clients.

c)The case has not been dealt with proportionately with regard:

i) **Amount of money involved** - This decision foreseeably prevented a fair trial, and a massive costs order without recognising even the massive expense of the Applicants' relocation from New Zealand to have to bring it. Given the Order for loss of their family home, it was disproportionate to disallow the Applicants legal representation at the permission to appeal hearing.

ii) **Importance of case** - Opposing Barrister said this case could "change the law", which it should as currently, using this judgement as precedent, it allows gangs to target individuals overly and covertly with no right of reply, and has actually punished those individuals for defending themselves, including as publishers, with open free speech and right of reply, which goes against the Human Rights Act.

iii) **Complexity of issues** has been ignored at the same time as inevitably

exacerbated by the decision not to allow re-introduction of the harassment prior to trial. The mistake shows how covert harassment can fatally obfuscate even obvious issues: the substantive issue is and always should have been right of reply, both in defamation, where it should have been a tried element, and in harassment, as covert harassment *requires* blocking to enable smearing. The undeniable fact that Ms Garden - the 2nd Applicant - does not actually suffer from the fabricated mental health problem was completely ignored. In fact, if she had one, this course of conduct by people claiming to know about this medical condition, could only have been designed to cause her degradation and ultimate suicide. Spreading the fake clinical judgement using the medical credentials of her husband was excused as "honest belief". This decision is highly dangerous as it means it is legally acceptable for anyone to smear others in this way with complete disregard to the truth, in order to shun and ostracise.

iv) **Financial positions of each Party** - The Applicants are one family defending themselves and their children from covert attack. The Respondents are two families, deliberately refusing open debate or right of reply, and where no minors are involved in the public arena of debate. Further the Applicants' family is a disabled family with only one able-bodied adult whereas the Respondents family has four able-bodied adults. Notwithstanding the Respondents frequent misrepresentation of these facts, the costs order would have been unjust even without this imbalance.

d) **Dealing with the case expeditiously and fairly** - In all the circumstances and especially the foreseeability of the decision to interfere with justice was not expeditious or fair. This includes the complete lack of attention to the essence of harassment (i.e., the effect upon the claimant), not requiring all the evidence, or upholding the positive obligation to ensure right of reply.

e) **Appropriate Court Resources** The decision to exclude the covert course of conduct on stated reason of saving costs and court time was not efficient but a false economy. It resulted in the opposite of what was claimed, a lack of appropriate focus on the very obvious malice in the course of conduct as a whole, to undermine democratic exchange. It was at the PTR that the Judge had the possibility to put the parties on equal footing by allowing claims he could clearly see the evidence for right in front of him. The fresh evidence here shows how wrong this decision was.

f) **Enforcing compliance with rules, practice directions and orders**. In not asking what effect the harassment would be likely to have on targets, not enforcing the order for more evidence to be revealed at trial, allowing evidence tampering, misrepresenting the Applicant's case, and all other anomalies, this section has very obviously not been

complied with except in the most discriminatory manner.

Human Rights

71. The fresh evidence illustrates how the decision at the PTR to re-exlude these claims in spite of the copious evidence before the judge foreseeably resulted in a severe lack of balance in competing Human Rights of the parties in so many regards.

72. With regard to Article 8, the Applicants' family and their privacy and reputation are, by the nature of the Human Rights process with the school, conducted under Article 8 discrimination, intrinsically and inseparably tied up with the Human Rights settlement as it was made by the family, as a family. Even without the harassment claims, the defamation should have been looked at in that context, and not as other cases about matters between and concerning adults only.

73. Having refused these claims the ensuing minute examination of the Applicants' own publications at trial, absent of any counter-claim whatsoever, and without any attention to the Respondents' lack of a right of reply, or the Applicants' status either as part of a family action or as publishers, was itself a breach of the Applicants' rights as a party so reluctant over years to have to seek legal remedy at all.

74. Failing to justify their defamation the Respondents were nevertheless awarded qualified privilege, relying entirely on the PTR decision to exclude the factual chronology provided by the evidenced covert harassment claims, seen and recognised by the Judge.

75. It is clear to any unbiased observer that this legal action was caused only and entirely by the trenchant refusal of the respondents to behave democratically. Instead they chose to cook up a fake mental health diagnosis of a grieving person leaving a cult in order to make sure that right of reply was never given, and to justify to others their shunning by creating "danger". Had they not done this there would have been no need for any legal action whatsoever. There has never, at any time, been ANY effort whatsoever by the Respondents to make amends in any way.

76. In this way the normally competing rights of 8 and 10, have both been unbalanced in favour of the Respondents with no regard to normal authority. This is unlawful under 14, and 17 and has led to a substantial breach of Article 6 again denied by Lord Justice Simon, even while actively misrepresenting the case himself!

Submissions

77. This Court's true jurisdiction obliges a retrial of the case with the harassment claims reinstated, and with Dr Byng also re-instated as a defendant to them, in order to rebalance the rights of the parties, and give the family relief from further harassment as well as affording publishers the required protections under Article 10.

78. It would be a denial of the court's proper jurisdiction to leave such a prejudicial and flawed judgement, achieved by fraud, and unfortunately subject to bias, or to refuse appeal, where this decision can clearly be seen by this fresh evidence to have been the factor causing such a dangerous injustice, and subjecting a party and children are subject to ongoing harassment.

79. It is therefore impossible to claim that the Respondents have any right to be finished with the case and move on where the other parties' children will be forced to try and re-open it later. All the facts of this case show that it was necessary to bring the case, that there was no other option for the Applicants: the Respondents' course of conduct was exactly as they alleged.

80. All the facts show that the Applicants are not responsible for the failure to judge the case expediently or not to waste court resources.

81. To reward covert harassment in this manner is both unlawful, unjust and persecutory to the Applicants and their children as well as being an exceptional breach of public trust.

82. Leaving harassing defamation of three young girls on the internet to be dealt with by them on reaching majority is an act of rank injustice that requires immediate correction.

83. The huge and punitive costs order, only made possible at all by the removal of these claims, resulting in the home of the Applicants and their children being given to those threatening their family to this extent has become a continuation of the tortuous harassment as any other element, and the court should urgently take the necessary steps to correct it.

84. The fresh evidence shows that the course of conduct was exactly as described, both in the case of each Respondent - Dr Lewis and Mrs Byng - and their witness Dr Richard Byng. It shows the fraud in their Barrister's claim that it was only "limited emailing" and the Judge's unreasonable adoption of that "degree" on the course of conduct. This foreseeably obfuscated the reality of what emerges under these covert harassment claims as organised hate-crime, freshly and compellingly evidenced here with regard to each defendant and their witness.

85. The court's failure to acknowledge that Lord Justice Simon misrepresented the Applicants' grounds of appeal when he stated that evidence tampering wasn't a ground they had raised,

has aided in obfuscating that it was this tampered evidence, easily checkable online, that had been the basis for the mental health smear in the first place, following the Byngs' over-enthusiastic but dishonest offers of help to a family on the basis of bereavement. This bias needs to be recognised and fresh eyes set upon the case.

86. Claims by the Respondents that the Applicants should have known case-law showing that their intimidation should be overlooked, are no more than further evidence of their willing perpetration of fraud upon the court and their continued use of vexatious procedure to harass.

Conclusion

87. Serious injustice has already occurred in this case. With no apparent will in defamation alone to remedy the Respondents' present situation of exceptionally *"benefiting from their own wrong"* (page 598 of Gatley on Libel and Slander) by rewarding covert harassment and malice with the Claimants' home, the foreseeably unjust Judgment of HHJ Seys-Lewellyn should be set aside, including the huge costs order. The real issues should be retried, fairly balancing the rights of the parties, in the public interest.

88. Benefitting from their own wrong is not allowed in law, as previously argued in the Appellants' Original Permission to Appeal's Grounds and Skeleton [AC-02]:

    "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."

    When squarely faced with the chronology, Lord Justice Simon heard and verbally agreed that due to the Respondents' prior covert attacks, the Applicants' publications were in fact 'replies to attacks', contrary to the incorrect chronology adopted in HHJ's Judgement, due to not understanding or enquiring into the effects of covert harassment. When this is corrected it is impossible not to see that 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. This means that both the PHA and the Defamation Act have conspicuously failed to apprehend and address a judicially observed, criminal course of conduct.

89. Public interest justice demands that, however far down the rabbit hole injustice has gone, nevertheless it should be corrected and seen to be corrected especially in cases of fraud,

cases concerning children, and cases of bias. The Paris Garden family should not be held responsible for the foreseeable injustice resulting from mismanagement of the case at the PTR.

90. In view of the extent of fraud and the length of time the Applicants have lived under this harassment, the constant threat of losing their family home because of it, now actioned, as well as overturning those unjust, punitive and discriminatory Orders, the Applicants urgently repeat their request for Costs protection going forward.

91. Without having to even publish the settlement agreement next to online statements about children which the Respondents have admitted in Court not to be true, and without allowing right of reply, the court has improperly used the Rights of the Respondents' to deny the family's rights. The family have been allowed neither privacy nor protection in publication whereas the Respondents have been allowed to feel harassed by open publication (about correct allegations) and exposed by having this pointed out. This is not in any way equal treatment.

92. Lack of recognition and trial of evidenced covert harassment, of the type compellingly evidenced here again, has resulted in ongoing harassing defamation of children achieving Human Rights agency. Although prevented from addressing that now, they will be forced to re-approach these same hostile, anti-democratic, influential people, on coming of age, due to the Courts' refusal to allow fully evidenced claims of harassment to proceed. This alone obliges continual requests that the Court of Appeal address the matter, until the injustice is corrected.

93. The Applicants request that the Court properly address what other remedy exists for such a long pernicious course of conduct, telling unknown numbers that someone is dangerously mentally ill, attributing a fake diagnosis to a doctor, and without allowing the victim to defend themselves at all to an extent where, years later she can say:

    "I'm occasionally forced into warning others if they're being prolific (as they are today)." [AC-12]

    How else can it be explained that third parties were told:

    "let me know the minute you see anything because I can probably do something about it." [AB-302]

94. The public interest requires the Applicants to again humbly ask the court to acknowledge the criminal necessity, for those perpetrating targeted covert harassment, to monitor and spy on targets, where denial of right of reply is being used to spread background smears. Absolute incitement to shun can *only* be achieved by means of contacting those the target speaks to, and this can *only* be achieved by monitoring and spying on them in spite of having them blocked, actions and omissions which have the characteristics of stalking under Section 4A bi and ii of the PHA.

95. The public need to see justice done: in this case they have seen the opposite. Consequently free speech has been chilled on all the issues contained here - the exact and stated intention of the Respondents. As Diana Winters said in January 2013: *"It's truly bugging me that we can't write up our thoughts on their so-called mediation."* [AF-99] and as someone told the Applicants in January 2017: *"I have just left a comment re the recent mob rule article, yet after reading your previous article on the skeptics who took that family to court and seized their home, I have lost my balls."* [AF-100]
    Justice requires the court to publicly uphold its positive obligation under the HRA to ensure a right of reply, even between bloggers. This is the obvious antidote to any campaign relying on keeping targets silent. As the 1st Respondent said, after publishing malicious lies about their children without a right of reply, *"let her scream into the void".* [AC-11]

96. The opposing Barrister's remark that the case could change the law highlights the need for such change where adults can harass and defame a family including specific statements about children with no right of reply, and the court gives them the family's home. Appropriate lines need to be drawn around the use of free-speech and this decision was the point where accepted principles were lost, in an injustice which the Court has an undeniable duty to repair.

97. The relative burden of repairing this easily foreseeable injustice is proportionate in all the circumstances and should furthermore serve to create the necessary guidance in the new media environment: where right of reply is deliberately blocked in order to spread lies in the background, claims specifically dealing with that covert harassment cannot be excluded without creating severe injustice. With so much public uncertainty about the Human Rights Act, the Court must independently uphold those rights. Where the press is full of cyber-bullying, this discrimination against children countering that by creating agency from their own awful experience, is not only grossly unfair to them, but a missed opportunity to help the public by providing clear lines in the social media environment in accord with both Civil and Criminal harassment, also emphasised in CPS guidelines, of balancing Article 8 and10 rights to free-speech and reputation.

98. This is why a policeman also commented that due to the covert nature of harassment, this could become a stated case. Due to the covert nature of it however, the evidence corroborating all publications was in email disclosure, and because HHJ Seys Llewellyn refused to allow that disclosure to be taken to the CPS, *at the same time* as disallowing the claims, the Applicants continue to be subject to intolerable harassment. Nevertheless, due to the covert nature of it forcing civil procedure in the first instance, the police have been very clear that they can only take their lead, in dealing with absolute undemocratic networked and coordinated stalking, harassment, and social murder, from you.

10th May 2017 Stéphane Paris Angel Garden