Case No. A2/2015/2839

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

SECOND APPLICATION TO REOPEN
APPEAL ON FRESH EVIDENCE IN DEFAMATION CASE A2/2015/2839

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1. These Grounds of Appeal contain fresh evidence relating to three Judgements made in the High Court of England and Wales in the same case:

   - The Judgement of HHJ Seys Llewellyn of 15th July 2015 for case 3SA90091;

   And the Judgements in the Court of Appeal for cases

   - A2/2015/2839 of 22nd March 2016 by Lord Justice Simon and;

   - A2/2015/2839A of 30th November 2016 by Lord Justice Simon following his unreasonable refusal to recuse himself in spite of actual and perceived bias, now compounded again.

2. In the case of each judgement, yet more fresh and incontrovertible evidence of fraud, perjury and malice has come to light showing the Judgment of HHJ Seys-Llewellyn to have been obtained by fraud. This fresh evidence is based on video evidence of open slander (pages AJ-1-AJ-11) and the judgement of the Monroe v Hopkins (2017) trial (pages AJ-12-.AJ-25)

3. This information was originally submitted to the Court of Appeal on the 27th of February 2017 and the 15th of March 2017 respectively. The Applicants were only recently made aware on the 2nd of May [AJ-111] that a letter had been sent to them by the Court of Appeal on the 14th of

March, instructing them that changes had to be made to their application [AJ-112]. Until then, the Applicants were unaware of this fact, and have responded as soon as they could to the instructions provided.

VIDEO EVIDENCE

4. The malicious slandering of the Applicants at an advertised "open" public meeting in Bath on 14th May 2013 as shown in the fresh evidence, corroborates again the Applicants' claims of the deliberate subversion of democratic communication through malicious defamation and harassment by the 1st Respondent and makes reopening the appeal an urgent necessity to avoid serious injustice under CPR Pt 52.17(1).

5. The video evidence in question can be found at this link - www.stopdefamation.net/bath.mp4 - and the transcript of it is attached to these grounds [AJ-27]. Alternate video evidence of the 1st Respondent contemptuously ignoring pre-action protocol in order to shut down debate and smear strangers, contrary to what he publicly advocates, has already been disclosed in the case. But on moving, due to being forced out of their home, the Applicants discovered secondary equipment, which had earlier appeared to be broken, but which had in fact recorded the same interchange/refusal, including additional footage extending some minutes beyond that already disclosed.

6. The Applicants submit that the findings in Bishop v Choker [2015] EWCA, strongly indicate re-opening on the basis of an original judgment admittedly and/or irrefutably obtained by fraud and submit that the case reaches the bar of the cumulative effects of the conditions upon CPR Pt 52.17(1) in the court's consideration of the necessity to reopen appeals.
    a) that it is necessary to do so to avoid real injustice;
    b) the circumstances are exceptional and make it appropriate to reopen the application for permission to appeal;
    c) there is no alternative effective remedy.

NECESSARY TO AVOID REAL INJUSTICE

7. Although the Respondents' defence of justification in Defamation failed, specifically due to the finding that the Applicants had not lied, and this was re-emphasised by Lord Justice Simon, HHJ Seys-Llewellyn, having excluded evidenced claims of covert harassment, nevertheless

awarded the Respondents Qualified Privilege as reply to attack, and denied malice on the basis of their “honest belief” which is now shown yet again to have been a fraud.

8. This recognition of the truthfulness of the Applicants contrasts sharply with the dishonesty demonstrated in the fresh video evidence and again shows that:
    - Qualified Privilege was wrongly awarded in this case;
    - the Respondent was lying, as claimed;
    - he is motivated by malice;
    - the judgment to the contrary has been obtained by fraud.

    This is the second time to date that fresh evidence of this fraud has come to light. Yet although the Respondents’ remain in breach of a disclosure order in the case, regarding further potentially substantive evidence of similar smearing and harassment with no right of reply, the court has nevertheless sanctioned the Defendants to break into and take the home of those found *not* to have lied, in substantial interference with their Human Rights.

9. The fresh evidence shows the 1st Respondent deliberately subverting democracy. He took advantage of the presence of the Applicants at an open public meeting about Steiner Education, which the 1st Respondent was lecturing on, to smear them in front of the audience, as being an actual danger, including to children, and about whom the police should be called *if seen at all*.

10. In addition to that, the clip immediately exposes several specific material lies, including about:
    - the punishing efforts of the Applicants to avoid legal action;
    - the meeting where he claimed that the 2nd Applicant had “marched up to” the Defendant;
    - about the nature of the envelope the Applicants tried to give the Respondent;
    - not fomenting a gang to denigrate the Applicants,
    - his claims to want “nothing whatsoever to do with you”;
    - exposing his preaching of open communication on libel reform as likewise fraudulent.

11. This new evidence fits wholly with the Applicants’ testimony and evidence, corroborating again the malicious campaign against them, already exposed through all the comments revealed through disclosure. This monitoring of the Applicants by both Respondents was already shown at trial, and further submitted to the Court of Appeal in their original submission.

MALICE

12. Prior to the award of Qualified Privilege, HHJ Seys Llewellyn stated at paragraph 229 that: *"In the case of each Defendant the defence will be defeated if malice is shown."*
And at paragraph 231 ii:

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

There can be no other reason for the Respondents' smearing than to injure, not only the Applicants but their children. For example, this comment from the 1st Respondent shows that removing the Applicants from their children to punish them for publications offering him right of reply, was part of his plan:

> *"Your email was useful in that it provides extra evidence of her constant harassment, should it come to the point when authorities need to be involved."* [AB-346]

13. Further, his deliberate and malicious smearing comment made by the 1st Respondent before leaving the pub, as per the video recording:

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

could only have been maliciously intended to cause those present to believe the Applicants to be criminally dangerous, even likely to harm children. This was done in order to disguise his inability to speak to them in a public place without exposing his lies. No evidence exists to justify such smears. The obviously malicious attack on the Applicants' personal integrity in this fresh evidence cannot reasonably be denied.

14. The context of the background smearing and the subject of the heads in claim in defamation involves a landmark Human Rights Settlement [AB-354-357] which was achieved with the children in an action under Family Status Discrimination, Article 8. The simple statements in the Settlement agreement contradict the publication of Dr Lewis - the 1st Respondent - about it. Although entitled to his opinion, this cannot extend to publishing opinions about false facts which contradict the public record, without publishing or referring to the actual public record, and without lawfully offering any right of reply in matters concerning children and agency in bullying. The Settlement should mean that the children have a right to be believed by Judges and that such hatred-inciting harassing defamation, punishing children because of a hatred of their parents, should be urgently addressed [Appeal against refusing to re-include the harassment claims, submitted separately].

15. In fact the Applicants had *only ever published results of investigation and offered him right of reply*, which he refused, and never offered himself. This new evidence shows the injustice of HHJ Seys-LLewellyn's characterisation of that investigation and right of reply as "bullying". In spite of LJ Simon's acknowledgement that the Applicants are publishers, no protection, enhanced or otherwise has been accorded to them. This goes against the established and accepted principles of Article 10 of the Human Rights Act.

16. Yet the Memorandum the 1st Respondent submitted for the Written Evidence of the Joint Committee on the Draft Defamation Bill, portrays him as being extremely open to debate and having a clear understanding of the importance of ADR and pre-action protocol [AJ-34]:

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

    And:

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

17. The letter proffered to the 1st Respondent in the clip was precisely such an attempt to avoid legal action in line with the overriding objective as he described above, by seeking ADR to resolve issues between the parties in face of his constant and active obstruction of such. The letter was previously disclosed in the case and is attached to these grounds [AJ-78]. It contains the following:

    "*Andy, you're a savvy bloke, and a canny wordsmith. Let's sort this matter out now through diplomacy before we are forced, to protect our reputations, to take actions that will make that option unavailable.*

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

    "Should you choose to engage, you will find us ready and willing to negotiate a way out of

any further hostility, and this would be our preferred avenue, especially given the struggle we've just finished with the school, with its effects on our family, as well as the necessity to come back to the UK, all of which is highly stressful."

18. The fresh evidence shows Dr Lewis - the 1st Respondent - adopting hearsay to cause others the very *"capricious and crippling harm"* in his submission above by unnecessarily attacking the personal integrity of strangers who were trying to peacefully and reasonably communicate with him about Steiner Education, having been forced by his intransigence to transglobally relocate.

19. As well as contradicting his public statements on these matters, the clip shows several other specific lies: The 1st Applicant is heard stating that the envelope the 1st Respondent refused to take contains a letter that had already been sent to him:

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

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

20. Two months later on the 16th of July 2013, in order to have the Applicants barred from another supposedly public meeting (one they had no plans in attending), the 1st Respondent lied about that to Jo Torres of Skeptics in the Pub [AJ-81]:

    "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."

21. Another lie is the 1st Respondent's emphatic and repeated claim at this public meeting of his desire to have *"nothing to do with you"* and made to enable covert stalking and harassment. The public claim of disinterest is incontrovertibly shown to be both fraudulent and malicious, even here right in the same email to Jo Torres, where he gives private information about the Applicants that he could only have inaccurately surmised by monitoring them online: the 2nd Applicant had mentioned Bristol as a place where her film "birth-trust" was being shown and the 1st Respondent assumed the Applicants now lived there.

22. At trial, during the cross-examination of Ms Garden, Jonathan Price QC claimed that she "marched up to" the 1st Respondent with this letter. At the time, the 2nd Applicant commented that being physically disabled, she was not able to "march up" anywhere at all, but this video,

even more than the one disclosed in 2014, shows the distorted characterisation of the quiet and reasonable manner in which the 1st Respondent was invited, and in the letter really implored, yet again, to behave exactly as he publicly advertises himself above, in order to avoid legal action.

23. The fresh video evidence shows that the Applicants did nothing whatsoever to warrant the Respondent's slander, and the 1st Respondent's displayed apparent fearful reaction seen in the video was for show, to provide the necessary excuse for not engaging. If it was a response to their request for him to discuss matters, the Applicants showed in court how the 1st Respondent is vastly more confrontational when he decides to challenge individuals either on twitter, on his website, or elsewhere. For somebody so "reasonable" to absolutely repudiate someone on a shared paltform, is a proportionally very great incitement to shun, to over 10,000 followers, with no right of reply. This fresh evidence shows his reasonableness to be fraudulent.

24. If it should be claimed that his fear was genuine however, that only goes to show the strength, power and malice of the smear the 2nd respondent spread. This smear, which she admitted to be conscious harassment, "understandably distressing", and a complete fabrication as per the documents provided to the court for case A2/2015/2839A [AD-15], together with this fresh evidence of the 1st Respondents adoption of it, provides compelling evidence of the networked and coordinated covert harassment campaign, wrongly excluded from the case, and now Appealed in application with this one.

25. Had the 1st Respondent any honest belief in this fabricated smear and genuinely thought the 2nd Applicant suffered from Borderline Personality Disorder (something he claimed in court to have an understanding of), he would know that his action as shown in the video clip would be likely to provoke an actual sufferer of Borderline Personality Disorder intentionally towards suicide, or even murder - ostracisation is well documented as the worst thing once can do to a genuine sufferer of this condition, and leads to extreme reactions.

26. The heavy emphasis in Rt. Hon. Lord Justice Floyd's and Lord Justice Simon's reasons for refusal on HHJ Seys-Llewellyn's *"careful judgement"* is now incontrovertibly proven by two pieces of fresh evidence to have been obtained 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 is proven, now by more than one fresh piece of evidence to have been so severely misled.

27. 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." [AJ-90].

    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 unjustly denied at every stage of this case's appeal processes.

EXCEPTIONAL CIRCUMSTANCES

28. In spite of emphasising that the Applicants did not lie, they and their children have had to pay a truly massive price for the insufficiency of the trial parameters to try the course of conduct, leading to an extraordinary lack of attention to proof beyond reasonable doubt of the Respondents' malice, and the number of misrepresentations in this case, including the continued daily re-publication under jurisdiction of the Defamation Act 2008, of harassing defamation of the Applicants children, without publishing the facts of the public record and with no right of reply. All this stemmed from the foreseeable insufficiency of a trial in defamation to try a networked and coordinated campaign of covert harassment as submitted together with this application.

29. In the new media environment this case demonstrates findings which are prejudicial to democratic exchange and create danger for all internet users yet here is proof positive over and again that the respondents, their witness and their representatives have lied all the way through. Lord Justice Simon himself even baldly misrepresented these lies as not being part of the original appeal [see AH-1-6].

CHILLING EFFECT ON FREE SPEECH

30. Jo Torres response to the 1st Respondent's lies about the meeting in the pub at para x above, was to reply: *"I've been extensively briefed on Angel and Steve via Melanie. […] If it's any reassurance, Mike, my other half, was a bouncer for years so is well versed in efficient removal of crazies."* [AJ-81]

31. Further, 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. Tweets from Flatsquid on 31st December 2014 [AJ-85] are of particular interest with relation to this new evidence. In it, Flatsquid states:

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

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

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

If Flatsquid is the man in the video, the footage itself clearly shows that the 2nd Applicant is not in any way "fucking mental" nor "an absolute nutjob". If the man in the video is not Flatsquid, it is yet another example of the power of lies to shut down free-speech.

These smears were just another means of convincing others to shun and ostracise the Applicants either based on alleged "first-hand" experience with them, and the smearer's association with the Respondents, and/or originating from the 2nd Respondent's admission of fraudulently using medical credentials to promote a smear (as per the evidence submitted on 4th October 2016 [AD-1 - AD-73]).

32. The Human Rights Act and the ECHR state that a right of reply is seen as "necessary in a democratic society". The effects of harassment of this high order on a family achieving a landmark Human Rights settlement, have, in this case, been repeatedly dismissed without even requiring the other party to meet that basic standard. Moreover the tendency of the judgment in Defamation to chill free speech, by:

    - allowing tampered evidence, and misrepresenting evidence,
    - leaving defendants in breach of orders to disclose;
    - attributing extreme meanings to words;
    - denying the obvious hate-campaign designed precisely to subvert free-speech in order to hold onto a platform and remove unwanted 'competitors',

    means that restoring balance in this case is in the wider public interest.

33. This new video evidence emphasises once again how HHJ Seys Llewellyn's Judgement, ignoring the difficulties faced by those published about without being allowed any right of reply, has allowed the Respondents to *"benefit from their own wrong"* (page 598 of Gatley on Libel and Slander), in a manner dangerous to the public, as previously argued in the Appellants' Original Permission to Appeal's Grounds and Skeleton:

    "A publishes words which B considers defame him.

    B publishes a response in self defence.

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

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

34. The Applicants were constantly tortuously aware that they were (and are) being monitored while the Respondents simultaneously publicly claim disinterest and deny them right of reply, as this video evidence clearly shows. The seriousness and cumulative effects of this harassment in a democratic vacuum have been suffered now for six years, and since disclosure, these effects have been compounded by knowledge of statements of threat in an ongoing physical vendetta.
    For example, this from the 2nd Respondent:
    "I am happy to give her a hole in the head anytime" [AC-13]
    And this from the 1st Respondent,
    "There are children involved too - directly. The police is an option" [AB-346]

35. In face of the facts of chronology, Lord Justice Simon heard and verbally agreed that due to the Respondents' prior covert attacks, the Applicants' publications were in fact, as stated all along, 'replies to attacks'. The Respondents' further attacking publications with no right of reply were therefore violent 'retorts' and not 'replies to attacks', as claimed. This clearly defeats their claim of Qualified Privilege which was the basis of the Respondents' win. In spite of concurring with this, Lord Justice Simon nevertheless refused the appeal.

36. A Judgment made in such a prejudicial manner towards principles of democracy, prevents members of the public from defending themselves from being first blocked then subjected to networked coordinated attack of both overt defamation, and covert defamation, harassment, stalking and malicious communications in the new media environment including statements of intended harm. Such a judgment in face of the evidence, subverts the principles of the Human Rights Act and the necessity to carefully balance competing rights in a just manner.

37. A judgment subverting Human Rights is not in the spirit of UK legislation or legislative reform, either with regard to civil cases in defamation, press regulation, or criminal offences where the course of conduct demonstrated by the Respondents so clearly matches that described by Section 4 A i b ii and 4A i b i of the Protection from Harassment Act 1998 as detailed further in accompanying Application.

38. The Applicants strongly re-assert their Article 6 right to a fair trial, that further respects rights under Articles 8, 10, 14 and 17 and respectfully request that the Court of Appeal honours its positive obligation under the Human Rights Act to ensure one, by reopening the Appeal and to cease to deny the Applicants' Human Rights, essentially on convenient technicalities. Such denial is also working against the public interest in this case, and tends towards chilling free speech.

NO OTHER REMEDY

39. The Applicants also cite as grounds case-law regarding the Court's inherent jurisdiction in deciding that there is no alternative effective remedy in forcing Applicants to issue new proceedings to prove fraud before setting aside orders and re-opening an appeal under CPR Pt 52.17(1). Judge Smith LJ gave judgment in Noble v Owens that the 'true principle of law' to be derived from Joesco v Beard is that:

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

40. That is especially true in this case, as this evidence has yet again come to light as part of the Respondents' pursuit of the Applicants' family's home while the Respondent remains unsanctioned in breach of an Order to supply communications to "the big-hitters", emails likely to contain further similar harassment, malicious communications and defamation i.e to be substantive with regard to both Qualified Privilege and malice showing judgement to be made prematurely as well as foreseeably unjustly considering the refusal to include evidenced claims of a distinct course of conduct in covert harassment.

41. The Applicants submit that, in view of the judicial bias evidenced to date, including the misrepresentation of grounds and evidence, that their reasonable re-request for recusal of Lord Justice Simon (in a separate application with this bundle by request of the Court) be evaluated by a judge other than himself. Justice cannot be seen to be served if a judge accused of bias is the only one to rule on whether or not they were and are biased.

42. In view of the extent of this fraud and the length of time the Applicants have lived under this harassment, and the constant threat of losing their family home because of it, now actioned, the Applicants urgently request that the Court of Appeal put aside the Judgment of HHJ Seys

Llewellyn and all ensuing Judgements, including the costs order, reopen the case, and give Costs protection to the Applicants going forward.

MONROE V HOPKINS (2017)

43. In the case of each judgement, Monroe v Hopkins (2017) [AJ-41] provides yet more fresh and incontrovertible evidence of the unsafe and unjust management, trial and materially premature judgment of this case, and the resulting foreseeable danger both to individuals and the public at large, as well as making it impossible to properly finish the case in compliance with CPR 1.1.

44. The entire Monroe v Hopkins judgement, with markedly similar arguments from the same Barrister in defence of the defamation, is highly relevant to Mr Paris & Ms Garden's case. It shows the effects of defamation online and its repercussions. It also strikingly shows how misrepresenting the evidence in case 3SA90091, including the exclusion of relevant and evidenced claims, has resulted in a substantial and foreseeable injustice as detailed in recent applications already sent to the court on the 27th of February 2017 [AB-01-AH-06].

45. Mr Paris & Ms Garden have detailed the Court's jurisdiction and the satisfaction of the necessary and cumulative conditions for reopening Appeal in the already submitted application [AD-12], and above, and so will not repeat them here, save to say that the fresh evidence of Monroe v Hopkins adds to those pressing arguments regarding the Court's jurisdiction and the urgency of reopening this case on all necessary cumulative circumstances.

46. Serious and foreseeable injustice has occurred, through decisions and actions out of Mr Paris & Ms Garden's control. The injustice has wider significance, and is also ongoing for the children involved, making it impossible for them to either address or move beyond the harassing defamation still online. The miscarriage of justice has guaranteed and promoted ongoing covert harassment of the family causing fear and distress to them all. There is no other effective remedy for such abuse of process than to set the Judgment aside. The judgment itself was achieved by multiple frauds as detailed in the earlier applications. These grounds detail how the fresh evidence also meets all those criteria.

47. As well as the fresh evidence provided by the judgement of Monroe v Hopkins, the ongoing emergence of fresh evidence of fraud, and of further provocation and harassment, was entirely foreseeable due to the disproportionate decision not to try an observed and identified course of conduct of covert harassment as part of the case [AB-50-58]. For that reason, as well as Justice Warby's recent guidance, other instances should be seen as fresh evidence in their

own right, and it is inevitable, given the nature of the injustice, that more will ensue until justice steps in: a) the recent blog post by Dr Lewis detailing 10 'claims' of Steiner education.
b) the trolling by "supporters" on a site known to abuse disabled people.

48. A course of conduct in covert harassment has been recognised but deliberately not dealt with by the Court, as stated by HHJ Seys Llewellyn himself:

""'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]

It is inevitable that such conduct will continue, and proliferate further. Where injustice has gone too far as to allow the perpetrators to make off with the home of their victims, the public at large must be seen to be in grave danger from such injustice. The fact that Monroe vs Hopkins so clearly contradicts this case in defamation alone must now cause the Court to take swift action to remedy what otherwise can only be court-sanctioned harassment going forward.

DEFAMATORY MEANING

49. Some of the defamatory words in question were written by Dr Lewis on his Posterous blog in November 2012, and later moved to his main Quackometer blog in April 2013 when Posterous shut down. They are:

"They claim their children were expelled because they were being bullied. I understand the school says it was because of the parents' behaviour." [AB-348]

50. At paragraph 174 of the Judgement for case 3SA90091, HHJ Seys-Llewellyn stated:

"I consider that the passage complained of as defamatory is no more than a neutral statement" [AB-98]

Dr Lewis' statement was far from neutral. The deliberate sting is further highlighted by the lack of a right of reply, all his other publications on the same subject of Steiner education, and the rest of that particular post, as detailed in the case but ignored. Justice Warby states at paragraph 32 [AJ-50]:

"Context will also include any surrounding material in the same "publication" as the words complained of, that has some bearing on how the statement complained of would be read and understood."

This was already addressed in Mr Paris & Ms Garden's Reply, for example [AJ-96]:

73.2.1 On 5 November 2012 (a mere four days before publishing the malicious allegation), he wrote the following on his blog:

"The [sic] are consistent reports of how Steiner Schools have a laissez faire attitude

to problems such as bullying within schools. [...] Karmic influences need to be worked out and if a child is being bullied then intervention may interfere with the child's destiny."

51. Mr Paris & Ms Garden's experience matched that description exactly, but contrary to all other available anecdotal accounts, theirs was backed up by documentary evidence. Dr Lewis' position should have been aligned with theirs. Instead, and for no other reason than malice, Dr Lewis took the position that contrary to the available evidence, the school's version of events was accurate despite stating publicly [AB-366]:

    *"My own research on Steiner suggests *nothing* should be taken at face value when looking at Anthroposophical institutions."*

52. As Justice Warby also stated at paragraph 32 [AJ-50]:

    "a determination of meaning must always take into account the whole of the statement that contains the particular words complained of, and of the context in which that statement appears, and of the mode of publication: Charleston v News Group Newspapers Ltd [1995] 2 AC 65, esp at 70 (Lord Bridge)."

53. Monroe v Hopkins shows that the rest of Dr Lewis' statement makes it crystal clear that Mr Paris & Ms Garden were not to be trusted should have been taken into account. This post was designed to cast doubt as to the honesty of accounts of children's experience of bullying in Steiner, an account which was the only one in the world to be fully evidenced, well before they had secured their landmark Human Rights mediation. Dr Lewis post spread totally unsubstantiated and unprovable allegations solely based on hearsay. For example [AB-348]:

    "They appear to be very angry with anyone on the web who is critical of Steiner Schools who do not make their story the centre of the discussion. They write blogs, make videos and tweet to followers of critics - continuously - about the injustice they are supposedly suffering from a gang of Steiner critics trying to silence them (for what reason, it is never made clear.) […]

    "I am not the only person to have told them this. […]

    "I am told that they tweet at anyone who is mentioned in my tweets or tries to communicate with me by twitter. Their aim appears to be to discredit me by promulgating a partial account of events."

54. Dr Lewis publicly advertises a total reliance on evidence at the expense of all else, as Mr Paris & Ms Garden highlighted in their Reply, such as:

    "I am bound to a reality dictated by evidence and rationality" [AJ-97]

"more than willing to hear other viewpoints. Especially those based on some evidence" [AJ-98]

Due to this claim, his unsubstantiated hearsay allegations were totally believed. For example:

"So that's what the beef with you and Steve is about. Blatant egoising. I've now blocked him." [C20-63] [AJ-99]

"Andy was right. You're one very troubled individual." [C13-5341] [AJ-100]

55. Such actions continue unabated to this day. As but a single example and as another piece of fresh evidence, just recently an account unknown to Mr Paris & Ms Garden contacted them on Twitter and linked them to an article about them on a site renowned for spreading abuse, including disability abuse. That post linked to is the direct result of the mismanagement of this case and the misrepresentation of the evidence leading to ongoing injustice to the family [AJ-76]. That site also attacks Jonathan Bishop solely because of his association with them: he is the author of the expert report written for Mr Paris & Ms Garden's original permission to appeal [AB164-225].

56. In addition to this, the fresh evidence in the Judgment of Monroe v Hopkins of the correct application to context of public statements contradicts the judgment of the second publication of this blog post very starkly. The post was republished very shortly after the Settlement was reached, and after it had been front page news, on the TV and on the radio in New Zealand, but before Dr Lewis or Mrs Byng knew that Mr Paris & Ms Garden and their children had been forced to relocate by the refusal of Mrs Byng and Dr Lewis to stop lying about them. When Posterous shut down, Dr Lewis selectively moved that post without altering it, even though the Human Rights settlement clearly states Mr Paris & Ms Garden's child's accounts of the bullying were *"honest"*, and their actions *"arose out of their natural and dutiful concern as parents for the safety of their child and concern for the wellbeing of other children in the class."* [AB-356]

57. The injustice of ignoring, even only in defamation, the context of a respectable Human Rights process concerning bullying of children, is further highlighted by the lack of any such similar context in perceiving serious harm in Monroe v Hopkins. Although family was referred to in assessing damage, there were no written attacks on children. In this case, harassing defamation about Mr Paris & Ms Garden's children remains on the internet. The Human Rights Settlement, likewise defamed in Dr Lewis' blog post, clearly acknowledges that any actions taken by the parents were *"natural and dutiful"* in the context of the school's admitted abrogation of its fiduciary duty. It is therefore not only defamatory to say that the children were expelled 'because of' the parents behaviour, but discriminatory for the court to allow that in the context of the joint Human Rights statement. The children misrepresented in the publication,

are treated very much less favourably than other children, essentially because their parents have been so comprehensively trolled by Mrs Byng and Dr Lewis, influential humanists and skeptics respectively.

58. Dr Lewis' republication of this post on his main blog, again offered no right of reply, and again didn't put his comments next to any facts, link to the settlement or even mention it. It is extreme in comparison to what has been accepted as "serious harm" in Monroe v Hopkins.

59. In further stark contrast to Monroe vs Hopkins, where one of the tweets was only online for two hours, in this case it was claimed that no republication had occurred, by dint of him leaving the earlier date on the post when he republished it, and because HHJ Seys Llewellyn erroneously claimed in his judgement that:

    "the article was moved, and according to the First Defendant was moved to the Quackometer website, together with all other articles on the Posterous website, on closure of the Posterous site." [AB-85]

    (Dr Lewis states in his own Witness Statement that *"I migrated **some** of the posts from Posterous after its closure."*) [AJ-101] [emphasis added]

    Therefore damages for the extreme and spiteful defamatory retort in this blog post which remains online to this day, should date from that earlier publication in November 2012, which due to service of this claim under DA 1998, means that the harassing defamation of the family has been daily republished since then.

60. It must be noted that Monroe v Hopkins did not contain a background campaign of covert abuse, as this case was clearly proved in court but totally misrepresented and dismissed in the judgement, and the effects of which were completely ignored. This was in fact contrary to the attention to the serious harm done to Ms Monroe in Justice Warby's judgement.

61. Further, when deciding on the meaning of words in case 3SA90091, Judge Seys-Llewellyn not only ignored the natural and ordinary definition of words according to the dictionary, he also took them completely out of context, for instance at paragraph 168 [AB-97]:

    "If, for instance, the First Defendant had italicised or underlined the word "claim", then I consider that such might have implied doubt as to the claim or in certain circumstances the honesty of the claim; but he did not."

62. Dr Lewis' latest article on Steiner education, submitted as more fresh evidence of fraud [AJ-69], shows beyond doubt the importance he generally attaches to the word "claim", relying on its natural and ordinary dictionary meaning. Without needing to italicise or bold that word, he uses

"claim" to show what is not to be believed and then explains why, in the same structure as in the defamatory post, first the claim, then what he wants his readership to believe. The Judge's pronouncement on meaning is clearly flawed and has resulted in severe and obvious injustice.

EXTENT OF THE DAMAGE

63. Justice Warby stated at paragraph 51 [AJ-54]:

> *"The Judge's task is not to impose his or her own views. It can be put this way: to determine whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society. This again is a matter for judgment, not a matter for opinion polls or other evidence. It can be difficult. But one test is whether the conduct or view in question is illegal or, by the standards of society as a whole, immoral. In Thornton, Tugendhat J set out an ordering of the varieties of defamation. His summary of "personal defamation" included (at [33(ii)(a)]) "Imputations as to what ... would perhaps now be expressed as what is illegal, or unethical or immoral, or socially harmful.."*"

64. As shown above, Dr Lewis' description of Mr Paris & Ms Garden was sufficient for people to see them as "troubled" and worthy of being blocked and shunned. The covert element of harassment as explored at trial and throughout Mr Paris & Ms Garden's submission to seek permission to appeal and to reopen the appeal, included, but wasn't limited to, disability abuse with Mrs Byng claiming Ms Garden was pretending to be physically disabled [AJ-102], to stating Mr Paris & Ms Garden coerced survivors of Steiner education for their own ends [AJ-103], to using the medical credentials of a willing doctor to spread a fake clinical judgement of Borderline Personality Disorder to convince people Mr Paris and especially Ms Garden were dangerous and should be avoided [AJ-104].

65. As already stated in previous submissions [AB-24, AC-07, and page 11 above], Dr Lewis is still in breach of a court order and refuses to divulge further emails he sent to the "big-hitters" (top British journalists and other influential people) [AB-304] which he warns about Mr Paris & Ms Garden. It is impossible to know what those warnings are, but it should not be too difficult to surmise that since Dr Lewis preferred to breach an order rather than divulge them, it was more defamatory statements to convince others Mr Paris & Ms Garden were dangerous and should be avoided, most likely by convincing those "big-hitters" that Mr Paris & Ms Garden's actions were *"illegal, or unethical or immoral, or socially harmful."* Since these communications were specifically requested by the Judge before trial, but have not been provided, judgment should not have been made at all.

EXTENT OF PUBLICATION

66. The court for case 3SA90091 made an over-reliance on Jameel v Dow Jones [2005]. The Defence stated, without being able to prove it, that the number of people who saw the defamatory material was negligible at best. Yet Justice Warby stated at paragraph 47 [AJ-53]:

    "Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person."

67. As already Stated in Mr Paris & Ms Garden's original permission to appeal [AB-32], HHJ Seys Llewellyn also misrepresented the facts of how many people had potentially seen Dr Lewis' first publication on his Posterous Blog (now defunct since 2013). Also, the list of people who RTd the link as far as Mr Paris & Ms Garden could gather, was shown on pages AC-20 to AC-22.

68. Knowing how many people could've seen a tweet is not easily determined, as Mr Price stated for case 3SA90091. HHJ Seys Llewellyn believed that and even went as far as to state at paragraph 121 that [AB-86]:

    "The first is that tweets are an ephemeral form of publication in that they are designed to be of the moment […] This statement has not ever been contested, and indeed is close to something of which one may take judicial notice."

    If must be stressed that Mr Paris strongly contested this at trial, as this goes against every known notion of Twitter, and unless when they are deleted by the poster themselves, tweets are ever present and easily findable either through Twitter's own search feature, or even via other search engines, such as Google.

    Justice Warby stated at paragraph 58 [AJ-56]:

    "Precision is of course impossible, but nor is it necessary. It is enough if I can make a sound assessment of the overall scale of publication. The submissions for Ms Hopkins that this cannot be done are not only unattractive but also unrealistic in my view."

    And at paragraph 71(2) [AJ-59]:

    "Transience. It is true that the First Tweet was transient. The Second Tweet less so, although any tweet disappears from the reader's view as time goes on. But this is a weak point. What matters, when considering transience, is not the period of time for which a person is exposed to the message but the impact the message has. It is a commonplace of experience that live broadcasts can have a powerful impact, even if the viewer sees them once only. Print copies of newspapers are not often read more than once."

All of this was ignored in case 3SA90091, misrepresenting the facts of how this particular social media functions to the detriment of Mr Paris, Ms Garden, their children, justice in the case, and the wider public interest.

69. The extent of publication was also explored by Mr Paris & Ms Garden through Slipper v BBC [1991], which although ignored in their case was properly alluded to by Justice Warby at paragraph 68 of his Judgment [AJ-58]:

> *"Fifthly, as Bingham LJ stated in Slipper v BBC [1991] QB 283 at 300, the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity "to percolate through underground channels and contaminate hidden springs" through what has sometimes been called "the grapevine effect". However it must also be noted that Bingham LJ continued and said "Usually, in fairness to a defendant, such effects must be discounted or ignored for lack of proof" before going on to deal with further publications which had been proved to be natural, provable and perhaps even intentional results of the publication sued upon."*

With the help of disclosure proving their allegations, Mr Paris & Ms Garden showed again and again the extent of this *"propensity "to percolate through underground channels and contaminate hidden springs""*, and contrary to Slipper v BBC where the judge stated *""Usually, in fairness to a defendant, such effects must be discounted or ignored for lack of proof"*, the evidence in this case of such an effect was incontrovertible, yet completely ignored [AB-28 & AC-08].

THE EFFECT UPON THE APPLICANTS

70. At paragraph 63, Justice Warby states [AJ-57]:

> *"The evidence has convinced me that Ms Monroe was very upset by the First and Second Tweets. This is apparent from her angry reaction to the First Tweet. Some of what she tweeted afterwards to her own followers could be read as making light of what had been said, and as mocking Ms Hopkins and revelling in the prospect of suing her. But the case for the defence, that this was the true overall picture, is not made out. People can react in a variety of ways when wounded. This individual, in this situation, wrote some things that turned out to be unhelpful to her case in this action."*

He also states at paragraph 71(9) [AJ-61]:

> *"Ms Monroe's own responses on Twitter. These are said to have mitigated harm by making her position clear. There are several difficulties with this contention. One is that denials are*

not at all the same thing as corrections, retractions or apologies. The response of the accused is inherently unlikely to undo the damage caused initially. A second, and probably more significant point, is that Ms Monroe had no access to the followers of Ms Hopkins. The fact that the overlap in their followers was so small tends to undermine this submission."

71. Mr Paris & Ms Garden's publications alleging covert harassment and interference with their free association were written in defence of the attacks they were being subjected to, at the time these attacks were happening, while Ms Garden's mother was dying, and since then. At no point whatsoever has the court considered the effect of Mrs Byng & Dr Lewis' actions upon them having approached them with offers of help due to bereavement. The Court ignored how the normal reactive stress of bereavement was then very quickly encapsulated into a "risk" diagnosis and covertly spread to convince others Ms Garden was *"very dangerous"* [AB-296]. The effects of that, which included publishing the facts about these attacks, have been used extensively against Mr Paris and Ms Garden. Rather than seeing their publications as *"People can react in a variety of ways when wounded"*, they were punished by HHJ Seys Llewellyn for daring to stand up to people attacking them and convincing others to ostracise them, even though Mrs Byng and Dr Lewis' incomplete disclosure proves the shocking accuracy of Mr Paris & Ms Garden's defensive publications. The fact Mr Paris & Ms Garden defended themselves was used as justification for Mrs Byng & Dr Lewis' attacks upon them.

72. As Justice Warby stated at paragraph 65 [AJ-57],

    "There has been no apology, and I accept that this has allowed the claimant's injured feelings to remain raw."

    No apology has ever been forthcoming at any stage of the proceedings, including at any time leading up to the trial. Mr Paris & Ms Garden have always offered them and their group right of reply, tried numerous times to seek mediation to find a way to resolve the situation, even relocating from New Zealand with their three young children in order to do so. Mrs Byng and Dr Lewis continued their harassment and defamation, allowing *"the claimants' injured feelings to remain raw."* This was totally dismissed by HHJ Seys Llewellyn, and Lord Justice Simon who dismissed their submitted research on ostracisation in their permission to appeal bundle [AC-103 to AC-117].

73. Justice Warby states at paragraphs 64 and 65 [AJ-57]:

    64. Her initial reaction was to be "completely horrified, both that people would think that I had vandalised a war memorial, and at the incoming storm that would be heading my way from the many people I believed would accept that what the Defendant had said was true."

Ms Monroe thought the accusation was being targeted at her personally. Believing Ms Hopkins had a massive following on Twitter she anticipated that she would start to receive abuse as a result. Ms Monroe's evidence is that she received abusive tweets from people who had read those complained of. I shall come back to the evidence about the "torrent of abuse", which is hotly disputed. But I accept her evidence that she felt anxious and upset, and had difficulty sleeping.

65. I also accept the claimant's evidence about her reaction to the Second Tweet, and her feelings at the way that Ms Hopkins has behaved since publication, and how she has conducted the defence of the proceedings. Ms Monroe found it very upsetting and frustrating that rather than say the First Tweet had been false and express some regret about posting it, she just "switched her line of attack" and made what Ms Monroe saw as a "deliberate call to arms".

74. A similar experience befell Mr Paris & Ms Garden due to the actions of Mrs Byng and of Dr Lewis. Lies have been spread about them, both personal and professional, which lead others to attack them publicly. It has been, and still is, an extremely traumatic experience for the whole family, and learning through the incomplete disclosure the actual and true extent of the monitoring, lies and threats that have been spread to so many people merely compounds that ongoing trauma. This includes Mrs Byng's admission in private of using her husband's medical credentials to spread a fake clinical judgment against Ms Garden, something Mrs Byng fervently denied having done so in court [AD-01 to AD-73]. Yet HHJ Seys Llewellyn has never taken that traumatic effect into account, and even used it against Ms Garden in his *"general observation"* at paragraph 106 of his Judgement. [AB-84]

MALICE

75. Mr Paris & Ms Garden have shown the presence of malice throughout their applications to seek permission to appeal and to reopen the appeal [AB-27-30, AC-01-05, AD-01-06], but being Litigants in Person, at no time have they been informed or advised, by any judge, barrister or solicitor, of what Justice Warby revealed in his judgement at paragraph 66 (this is despite HHJ Seys Llewellyn's assurance at the PTR that it was the duty of the opposing barrister to reveal any case law which could be of benefit to LiPs):

"I remain of the view I expressed in Barron v Vines [2016] EWHC 1226 (QB) [22], that when malice is alleged in aggravation of damages,

> *"... the issue is not the actual state of mind of the defendant. It is whether the claimants have suffered additional injury to feelings as a result of the defendant's*

outward behaviour. If the defendant has behaved in a way which leads the claimants reasonably to believe he acted maliciously that is enough."" [AJ-57]

This would be on par with what is generally accepted regarding harassment, and what HHJ Seys Llewellyn himself said in court:

"the essence of the tort is the tormenting of and the direct effect upon a Claimant." [AB-57]

76. Mr Paris & Ms Garden submit that beyond the irrefutable evidence they have already presented about Mrs Byng and Dr Lewis' malice and willingness to commit fraud upon the Court, their numerous submissions on the matter, stated above, conclusively show that *"the defendants have behaved in a way which leads the claimants reasonably to believe they acted maliciously".* All elements of Mrs Byng and Dr Lewis' behaviour, from the fake diagnosis, the denial of right of reply, stalking them and "warning" anyone Mr Paris or Ms Garden interact with on social media, disability abuse, and their attempt at sabotaging Mr Paris & Ms Garden's Human Rights mediation as it was happening [AB-25], all add to that reasonable belief.

REPUTATION

The effect of the defamatory statement on the Claimant's reputation was explored by Justice Warby, as in paragraphs 71(7) and 71(8) [AJ-60]:

"71(7) The state of Ms Monroe's existing standing or reputation in the eyes of the publishees. As Mr Price accepts, a defendant who wishes to prove that a claimant had an existing bad reputation must plead and prove it. That has not been done. Instead, Mr Price relies on documentary evidence that the (as he would say) few who abused Ms Monroe in the aftermath of the tweets complained of were people who were "already making the same or similar comments about her before the tweets". That is what the analysis of Ms Harris tends to show. This is a tricky area. In principle, evidence of bad reputation, however it may come into a case, is relevant only if it goes to the same sector of the claimant's reputation. This evidence is not clearly of that nature. But even assuming this is a legitimate line to take (which may be debatable) I do not think this is a matter to which any great weight should be attached. It is not safe to infer that a claimant's reputation has not been harmed by a specific defamatory allegation just because a person who makes rude remarks about the claimant after publication also made rude remarks about her before.

71(8) Another variant of this point is put forward: that those who engaged with the tweets were users who were already strongly supportive of Ms Monroe, or strongly opposed to her; in summary, people "whose opinions of the parties can't be shifted." This comes

dangerously close to evidence of bad reputation by the back door. Besides, I am not convinced that this is how people actually think, at least not in the mass. A person can have a low opinion of another, and yet the other's reputation can be harmed by a fresh defamatory allegation. An example is provided by serious allegations made against a politician of a rival party. I have recently held that it does not follow from the fact that a publishee is a political opponent of the claimant, that they will think no worse of the claimant if told that he or she has covered up sexual abuse: Barron v Collins [2017] EWHC 162 (QB) [56]. The same line of reasoning is applicable to the different facts of this case. As Mr Bennett puts it, if someone is hated for their sexuality or their left-wing views, that does not mean they cannot be libelled by being accused of condoning the vandalisation of a war memorial. It can add to the list of reasons to revile her."

77. By complete contrast, HHJ Seys Llewellyn stated at Paragraph 155 of his Judgement [AB-94]:
"The publishee Alicia Hamberg was a fierce critic of the Claimants and it is inconceivable that her opinion of them, or her attitude towards them, would have been altered in the slightest by that which the First Defendant wrote."

78. It must be also reminded that it was shown in court that Alicia Hamberg was originally a supporter of Mr Paris & Ms Garden [AJ-105], until Mrs Byng privately told her a string of lies about them to convince her they were not to be trusted. [AJ-109]

79. Any effect upon Mr Paris & Ms Garden, or upon those critical of them, or anyone else for that matter, has been completely and unjustly dismissed by HHJ Seys Llewellyn, and actually turned against them.

CONCLUSION

80. It is quite remarkable that two cases dealing with defamation over social media would come to such radically opposite conclusions even with the defence, organised by the same barrister Mr Jonathan Price, using very similar arguments in each case.

81. As was clear even during the trial of case 3SA9009, when HHJ Seys Llewellyn openly admitted to not being aware of even the basics of internet publishing, including URLs and analytics, or even his understanding of Twitter, that this judge was totally unqualified to rule on the intricacies of publication via social media, admittedly preferring one definition over another because it suited his purpose, as opposed to suiting the actual facts. Like he said himself at paragraph 127 [AB-88]:

"Subject to whether a tweet may be found upon specific search, I prefer the evidence of the First Defendant to that of the First Claimant on this issue."

Even this is contradicted by Justice Warby at paragraph 51 [AJ-54]:

"The Judge's task is not to impose his or her own views."

82. The case of Monroe v Hopkins overseen by Justice Warby shows quite clearly how detrimental this lack of knowledge has been on the facts in this case and has greatly contributed to the misrepresentation of the evidence at hand. It is submitted that Monroe v Hopkins, provides fresh evidence of the extent of injustice meted out to Mr Paris & Ms Garden, who had already been forced to transglobally relocate due to the level of harassment, which at present remains uncurbed and has in fact been condoned.

83. The Judgement in this case therefore creates a public message capable of provoking harassment, causing fear and of chilling free speech. Both the opposing barrister and the police have identified the case as being significant. Price said it could change the law, and the police officer said it could become a stated case. This is because it usefully and clearly defines the line beyond which speech can become harassment, by refusing open exchange or right of reply, and resorting to covert smear campaigns. This is arguably one of the most urgent lines to draw in the new media environment, and without which clear, specific and foreseeable dangers for the public are present.

84. The Court has not only jurisdiction but, as detailed in the other already submitted applications, clear obligations under the Human Rights Act to prevent such interferences into family life, and free speech, including into grief and children's agency, and to protect from discrimination in treatment between parties. The failure to prevent discrimination is clearly visible in all the emerging fresh evidence in this case so far.

85. Because of this, and all the other evidence submitted previously [from AB-01 to AH-06], Mr Paris & Ms Garden assert that the judgement for case 3SA90091, and the permission to appeal A2/2015/2839 are unsafe, the permission to reopen the appeal must be allowed for justice to be done and to be seen to be done, including the matters in the recent applications.

86. The case should never have been tried by a Judge prepared to exclude an evidenced and observed course of conduct, and one who, unlike Justice Warby, clearly did not understand the intricacies of online publications, and social media. It should not have been judged while Dr Lewis remained in breach of a Court Order, and harassing defamation concerning minors should not be tolerated by the Court. In all the circumstances, the injustice was forseeable. It is

also crucial for the judge who will be looking at all the evidence contained in all these submissions to demonstrate an expertise on the traumatising and triggering effect of ostracisation.

87. In view of the extremity of those effects and the length of time the Applicants and their family have had to endure them, urgent costs protection and a swift restoration of justice is requested going forward.

10 May 2017
Stéphane Paris
Angel Garden