IN THE COURT OF APPEAL A88YJ875

Between

A

Appellant

and

The Cornwall Council

Respondent

Perfected Appellant's skeleton argument at the permission stage

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This argument isn't structured logically, with a section on each of the different appeal grounds. Instead, it follows the sequence judgment being appealed, dealing with issues the appellant takes with *dicta* in the judgment, in the order in which those *dicta* appear.

1. His lordship stated, in **paragraph 1** of his judgment, "The case follows Family Court proceedings ... in which the Family Court ordered that there should not be direct contact between A and S."

2. This early sentence is seriously misleading. It shows that his lordship simply did not understand the claim he was hearing, despite having before him the pleadings and my skeleton argument for the 3 day-trial trial (which argument is in the Appellant's Supplementary Bundle), to neither of which he has referred at all in his judgment. Yes, there had been private family proceedings which had been concluded (apart from an application for permission to appeal) by the time this claim was brought. However, those private family proceedings were *not yet in progress* at the time ~~of~~ when the main facts pleaded in this claim occurred, in particular the facts about the meeting of **23rd May 2013** and the events leading up to it and around it. With the benefit of hindsight, I was unwise to start the family proceedings, when SW advised me to do so, as a way (she said) of addressing the concerns I had tried unsuccessfully to raise with her. There

might never have been any family proceedings. I would still have had this claim if there had not been any family proceedings. This claim is brought on separate facts. His lordship appears not to have understood this at all. He has, in **paragraph 1** of his judgment, already started to sow the seeds, of the chronological fallacy that bedevils this judgment, whereby his lordship explains events in early 2013, as having been caused by subsequent events that did not take place until later in 2013, or in subsequent years.

3. In the family proceedings, the county court did not order that "there should not be direct contact between A and S". However, even if the county court *had* ordered that, in February 2014, after final hearing in the Family proceedings, which is the first occasion on which the county court made any substantive order, this then *future* order, is not capable of justifying *retrospectively*, or even having the been the contemporary explanation for, the council's conduct from April to June 2013, which was the subject matter of this free-standing HRA claim when it was first brought. That finding also requires one to be fooled by the chronological fallacy.

4. His lordship continues, "The essence of A's claim is that the council prevented A's direct contact with S and did not support A's application to have S live with him, because A had expressed views about abortion and same sex marriage in blogs on the internet..."

5. My pleadings and skeleton argument do not disclose this to be the "essence" of my claim at all, although it is an *aspect* of my claim. The ***essence*** of my claim, when I first realised (on 23rd May 2013) that the claim had accrued to me, and when I complained about my treatment to the Respondent, and later when I *issued* the present claim within the limitation period, was that the council had undertaken social work in a manner that was not compliant with Article 8.2. The burden of proof at the trial of this claim rested upon the council, to show that what it did, which (as it happens) did *include* measures

taken in order to prevent direct contact at a time when there were not yet ongoing family proceedings, though that wasn't necessary for me to prove, was "in accordance with law and necessary in a democratic society".

6. Beliefs discrimination (which the judgment of Dingemans J finds **did occur**, to all practical intents and purposes) was certainly one aspect of my argument. But I also argued that the social work process that was adopted, of which my main complaint was that it was "one-sided", was quasi-judicial in character, and yet did not comply with the rules of Natural Justice, and was therefore not in accordance with English Common Law, and hence outside the qualification of Article 8.2 that permits certain interferences.

7. I also argued (in my trial skeleton argument and in submissions) that conducting social work in this one-sided manner showed a lack of the obligatory "due regard to the need to foster good relations between" men and women, as set out in the **public sector equality duty**. This *also* took the social work outside the scope of Article 8.2, I argued.

8. His lordship continues, that it was the council's "position" that it had "made proper recommendations to the Family Court; and that it was the Family Court which made the relevant decisions." If that were the council's position, then his lordship should have noted that the county court did not make any decisions at all until February 2014, whereas my claim was focussed upon the events that took place in April, May and June 2013, and most of all upon the Defendant's conduct ~~events~~ up to and including the 23rd May 2013, by which date the council had not made any recommendations to the county court, because the family proceedings in the county court had only just been issued at that stage. The first, five-minute-long directions appointment in the Family proceedings was yet to happen, and the council were not involved in that directions appointment when it did happen. When I took the decision to bring this claim, a decision I took on

23rd May 2013, when the claim accrued, nothing at all was going on in the county court in which the council was involved.

9. What had **not yet happened** in the county court, when the facts of my claim accrued in the second quarter of 2013, and which might well never have happened, had I not been stupid enough to take SW's advice and issue family proceedings, is not a defence to the substance of my claim, brought on *earlier* facts. That is **chronological fallacy**. It is saying that A caused B, when B happened before A. Chronological fallacy - findings of the trial judge that things the council did and which I complained about, were justified, because of other thngs there were *going to* happen *in the future*, abound in the judgment. The evidence before the court included an email, dated before SW had met with A, in which SW told M what outcome she was fairly confident she could procure for her, in the family proceedings in the country court!

10. At **paragraph 10** of his judgment, his lordship makes this understatement, "In the event there was not much attendance by the public at the trial." There was none at all, unless one counts the council's witnesses who were scheduled to give their evidence later, who came to watch my testimony, and the reverend from my church who lingered for the first ~~a~~ few minutes of my testimony after giving his own evidence. I did not know that parts of the hearing were going to be "in public" (albeit in name only), until the trial was underway. If the trial had *actually* been held in public, in any *meaningful* sense, I do not believe that his lordship would have had the *audacity* to deliver as distorted an account of the proceedings as he has, surely ~~have been~~ witnessed as he would have been by a great multitude of people, as attended earlier hearings.

10A. Nevertheless, "distorted" though I say his lordship's account of the proceedings in his judgment may have been, he made the findings of fact that I hoped he would make,

for me to win (or so I thought) at least a declartion that my Convention had been breached. His few demonstrably mistaken findings of fact were relatively unimportant, confined to certain small details where the documentary evidence provided by the Defendant (now Respondent) contradicts his lordship (which I will come to). The main findings of fact that Mr Justice Dingemans made in his judgment are very close to the facts that I pleaded, and which I know to be true, and set out to prove: So close that (frankly) I am at a loss to know why his lordship did not at least make a declaration that my Convention rights were indeed infringed, even if he had not found it apt to award me a single penny damages based upon the Convention doctrine of Just Satisfaction.

11. At **paragraph 24**, his lordship says, "I am satisfied and find that it was the police who told M that there should not be contact between S and A during their investigation." This is a surprising finding, in that it flies in the face of the council's own admissions in its documentation and in the evidence-in-chief of SW. A more correct finding of fact is undoubtedly "six of one and half-a-dozen of the other" (so-speak). The pressure put onto M to stop S seeing A was a joint enterprise, in which the police and the council worked together. The initial decision was a police decision, but the council went along with it. When, in due course, I assemble the Appellant's Supplementary Bundle (ASB) to accompany the Appellant's Core Bundle, I will label as **Joint Enterprise Evidence** the index entry for the pages from the trial bundle that I include in the ASB, that prove what is asserted in this paragraph 11 of my appeal skeleton argument.

12. At **paragraph 27**, his lordship says, "In evidence A suggested that the council should have promoted a reconciliation between A and M. The evidence before me did not suggest that any attempted reconciliation would have worked."

13. That which his lordship said I suggested in evidence, was also a key part of my skeleton argument for the trial, and was in my closing submissions. The council's failure to try to promote reconciliation, flouted the public sector equality duty. To have absolutely no regard at all to the need to foster good relations between men and women (as SW admitted), especially between the man and the woman who are parents of the same safeguarded child, cannot meet the statutory obligation to have "due regard" to that need. This isn't a mere technicality. The Equality Act should have changed social work, putting an end to the vice of only listening to one of a child's parents, and deciding to eliminate the other, behind closed doors, which his lordship's findings of fact amply confirm is precisely what happened in this case. The facts his lordship has found, fly in the face of the public sector equality duty, and take the social work to the wrong side of the law, outwith the Article 8.2 criteria.

14. Social work is *per se* an interference with the Article 8 right. If social work is undertaken in a manner that flouts the public sector equality duty, as this was, then it is not undertaken "in accordance with law" for Article 8.2 purposes. That was pleaded and argued. But his lordship has glossed over that point (and many others). He has made a mere guess that the council wouldn't have been able to foster any better relations. He said that the evidence before him did not "suggest" that would have worked. But the council didn't even try. The council ignored its public sector equality duty. That made their social work unlawful. His lordship seems to recognse this in his judgment, and then, somehow, to lose sight of it. Neither party brought any evidence as to what "would" have happened, if the public sector equality duty hadn't been derelicted. How could there be such evidence?

15. In fact, I specifically cross-examined SW about this very point. Her reply made it clear that she considered that the *only* law governing her activities, which she needed to take into account when striving to ensure that her social work was conducted "in accordance

with law", was The Children Act. She considered the public sector equality duty *irrelevant* to her job. On the strength of that admission alone, I should have won my declaration. (At this "permission" stage", I won't be *able* to include *documentary* evidence, plundered from the trial bundle, in my Appellant's Supplementary Bundle, to proof that SW **admitted orally** this dereliction of her public sector equality duty in the witness box. I will apply for a transcript of her oral evidence given under my cross-examination, **if** I obtain permission to appeal, and the substantive appeal is contested, and the court considers, then, that this admission of dereliction of the public sector equality duty is a piece of evidence upon which the appeal might turn.)

16. At **paragraph 32**, his lordship says, "I accept and find that M did not want contact between A and S. It is not for me to determine whether that was a reasonable approach for M to have taken."

17. His lordship has misdirected himself badly at this point, as to what facts it was for him to determine. The council made a decision to support M in her decision. Whether the council's decision to support M's decision was reasonable, hinged upon whether M's decision itself was reasonable in the first place.

18. Of course, technically, the correct test in Article 8.2 isn't reasonableness, it is "necessity", which means proportionality, but the same argument applies. The only way of determining whether the council acted proportionately to a legitimate aim when supporting M's decision, rather than (say) objecting to M's decision in the strongest possible terms as the public sector equality duty demanded it should, would be for his lordship to answer the preliminary question, whether M's decision was itself proportionate to a legitimate aim - an aim, that is, which it would have been legitimate for the council to have. It follows that it was most definitely for his lordship to

determine, whether M's decision was proportionate to a legitimate aim, so that he could deduce from that determination, whether the council's support for M's decision was proportionate to the shared legitimate aim. If the proportionality of M's decisions is what he meant by "a reasonable approach" on M's part, then he misdirected himself badly, when saying that this was not for him to determine whether M's was a reasonable approach.

19. The test of necessity (proportionaliy) in Article 8.2 should be objective, not subjective, God's view, so-to-speak, not that of any individual, or the state, or any employee subsequently accused of the HRA tort. Anything less than insisting upon applying an objective test in pursuance of Article 8.2, tips the balance of power between the state and the individual too far in favour of the state. If a measure is more harsh than the minimum harshness objectively necessary to meet the legitimate end, it must not be left wide open to the public authority to defend its interference in the Article 8 right by pointing to an employee's well-intentioned state of mind, her subjective belief in the necessity for any harshness in excess of that maximum allowed interference which (we now realise) was the minimum that was objectively necessary at the time. The public sector must do more than do its best. It must get everything right. The HRA tort is not a crime, that requires a *mens rea*. It is an objective fact, a wrong-doing of the state, against an individual, that nobody need have been able to realise at the time was a wrong-doing (except, perhaps, the victim.)

20. At **paragraph 35**, his lordship says, "In my judgment A lacked the insight into the fact that he had not, in his first referral to the social services department, expressly referred to the fact that M was coaching S to make an allegation against him." What his lordship calls a "fact", was not true. The referral he mentioned was right there, in the trial bundle, and was drawn to his lordship's attention. It contained the following sentence: "The father has reason to believe that the mother or the grandmother may have

coached [S] (who is still not talking in full sentences to any great extent, and does not yet understand the importance of telling the truth) to utter the false allegation, 'Daddy smack'." His lordship was, at this juncture in his judgment, not concentrating on the evidence. I will label as **Coaching allegation proof**, in the ASB index, the pages plundered from the Defendant/Respondent's own prolific contribution of documentary evidence to the first-instance trial bundle, filed consecutively in the ASB,which prove his lordship's mistake on this point. His lordship error in finding of fact here is grave. As well as the referral form that I completed, the very first document in section G of the trial bundle ("Defendant's documents"), is a social worker's note of a telephone conversion before I made the written referral, which mentions my coaching allegation made over the telephone, before I repreated this in writing on the referral form.

21. At **paragraph 41**, his lordship, in the context of the police reading my blog posts and alerting social services, mentions my essay parodying that of Michael Swift. However, SW, in her witness statement, places that liaison *before* the meeting of 23rd May 2013 (as it obviously must have been, for her to have questioned me about my blog at the meeting). I did not publish "The Homophobic Manifesto" until 17th June 2013. (That later date is clearly visible in the trial bundle, where the manifesto is annexed to the welfare report.) The manifesto wasn't a *cause* of the council's concerns. It was my distressed response some weeks *later*, to the realisation that I was in danger of never seeing S again, because of the council's expressed disapproval of my admittedly homophobic beliefs. In the ASB index, I will mention the proof of this – one page from the annex of blog posts to Welfare report that the Defendant contributed to the trial bundle – as **Manifesto date proof**. This is another example of what I call "chronological fallacy", when some fact is said to be caused by (or justified by) a later fact.

22. **At 43**, his lordship says, "I find, that SW took the comment literally, and having taken it literally was understandably concerned about it." In reply, I say (again) that the Article 8.2 tests are objective, not subjective. His lordship was required (for the purposes of the necessity or proportionality test) to make a finding of fact whether what SW did – *any of it* – was worse than would have been the minimum needed, in the light of the true facts. Not, that is, merely in the light of the facts as SW mistakenly believed them to be at the time. That would be to apply the wrong test, a merely subjective test. With a subjective test, instead of the objective test of Article 8.2, a wronged party effectively has to prove malice on the part of the public servant who has wronged him. It makes a joke of the Convention to require that.

23. Any doctrine that the Article 8.2 test is subjective, which doctrine seems to be lurking behind his lordship's thinking in many places, is simply unsafe. The HRA must even provide remedies for honest errors, once they are discovered, as they were, in this case. His lordship found that hindsight enables us all to realise that certain things could have been done better. Proportionality is a doctrine about getting the measure of something exactly right, erring on the side of caution when in doubt. If I had really been of the school of thought that didn't regard infants as legal persons, then perhaps parentectomy was the least needed to safeguard my son, though I don't see why. But, thanks to his lordship's finding of fact, we all now know that I *wasn't* of that school of thought. Parentectomy (even temporary, with an intention to get the county court to rubberstamp it later) was inflicted because of a mistaken belief on SW's part, not because it was *actually* "necessary", as Article 8.2 puts it. Parentectomy was not the proportionate decision, in the light of the *true* facts, as his lordship found them to be, even though SW may have acted in good faith.

24. The email of SW quoted extensively at **paragraph 47** of the judgment, proves, incontrovertibly, that SW had made up her mind, before hearing from me. His lordship

has simply skated over my argument that it violated *Audi Alteram Partem* for SW to make what was clearly a quasi-judicial decision, without hearing from me at all (other than my sporadic complaints by telephone that I was not being listened to at all).

25. In my skeleton argument, I had argued that child safeguarding social work engaged Article 8~~.2~~, and was more-or-less always a potential breach of ~~my~~ Convention rights, unless it was conducted "in accordance with law". I argued that, in an English Common Law jurisdiction, social work that was not compliant with Natural Justice, was not capable of being in accordance with law for Article 8.2 purposes. Nowhere in his judgment, has his lordship acknowledged this argument of mine, central to my claim though it was, let alone refuted that argument.

26. I rely upon the findings of fact at **52** and **53** of the judgment. What his lordship found, was that there had been different treatment of me, because I had the beliefs I had. (They were strong, non-negotiable and uncompromising beliefs.) I therefore consider that I was entitled, and possibly even obliged, to "disengage". More to the point, I thought it ***wise*** to disengage. I am not convinced that engaging further would have done anything other than to have provided more "ammunition" against me, in the already made-up mind of SW. SW was clearly attempting to provoke me, by challenging me about moral beliefs of mine that were of no relevance to my parenting of a two year-old. She was on a "fishing expedition" (so-to-speak).

27. At **56**, his lordship found that "SW did continue saying that she was trying to understand A's views and whether he was able to negotiate and compromise ...".

28. That finding of fact falls squarely within the facts I pleaded. This was *exactly* what I set out to prove at trial, in order to prove that there had been *discrimination* against me

because of my beliefs. Having found that SW was keen to discover whether I was a negotiator and compromiser (I am not) or a stalwart, a bigot, somebody opinionated (I am), how on earth did his lordship then persuade himself that this wasn't different treatment of me *on the grounds of my beliefs*?

29. I think the reason must be that his lordship erred gravely in his utterly wrong construction as to what it means to treat somebody differently *because of his beliefs*. His lordship considered that that concept relates, very narrowly, only to the *content* of beliefs. I say that is is the law – and the CA must say that the law says this too or else the state will be able to bully dissidents with impunity - that it also covers, more broadly, the *strength* of beliefs too, that become the grounds of discrimination.

30. Properly understood, I say, his lordship *contradicts* himself, by making his false distinction between *protected* content of beliefs and (he implies) *unprotected* strength of beliefs. He made a finding of fact that I was interrogated about my beliefs, in order to inform decisions about me that touched upon my Article 8 right. He found that it would have been wrong to treat me less favourably because of *what* it was discovered I believed during that interrogation. However, he found, and considers it perfectly *acceptable*, that I was merely treated differently because of how *strongly* I believed what I believed, not because of *what* I believed. He noted that I hold strong beliefs, which I am and shall forever hope to remain unable to negotiate or compromise about. These are beliefs which I was not willing to debate with SW, in that context, because my beliefs were not relevant to her task, or at least, *ought not to be*.

31. His lordship has therefore made the finding of fact that I most needed him to make. The fact that I was sure would guarantee me victory. He found that there was an inquisition into my beliefs which was undertaken in order to inform a decision about how to treat

me. He found that I was treated differently, because my beliefs were too strong. However, he considers the *strength* of my beliefs to be something because of which a public authority is *permitted* to treat me differently, even though the same public authority is not entitled to treat me differently because of the *content* of my beliefs. I don't see how the CA can possibly declare that that is the law. It must reject this Dingemans Doctrine. Are we only free to believe what we want? (His lordship's doctrine of lesser freedom.) Or are we also free to believe what we believe as stubbornly and as vehemently as we wish? (The greater freedom which I believe the draughtsmen of the Convention intended to bestow.)

32. If his lordship's narrow doctine is wrong, and mine is right, it follows, as night follows day, that I was the victim of beliefs discrimination, in Convention terms, and should have obtained judgment in my favour, for that reason alone.

33. At the risk of labouring the point, let us see where his lordships doctrine takes us, if we embrace it. His lordship's doctrine, that beliefs discrimination only concerns content of beliefs, not also strength of belief, is the doctrine of the heresy trial. A "heretic" is often promised that he can avoid being beheaded or burnt at the stake, by being willing to negotiate and/or compromise, for example by signing this or that recantation. It is enough that he signs. He doesn't have to prove sincerity.

34. Many have avoided martyrdom by negotiation and compromise, hoping for God's forgiveness after they have saved their own skins. Others, made of sterner stuff, preach exactly the same "heresies" as those who save themselves by signing recantations when the heat is on. But the latter simply cannot bring themselves to sign the recantations put under their noses. Their beliefs may be identical in *content* with those who signed

recantations to save their necks. But their beliefs are *stronger* than the beliefs of those who negotiated and compromised their way out of trouble. So, they die.

35. Every conscientiously homophobic Christian knows the politically correct script he is expected to parrot, with fake sincerity, when asked by a social worker how he would feel if his son or daughter chose homosexuality. We all dread that moment of decision, that testing of our faithfulness. When that test comes, some of us find grace to refuse to play along with that game. I found grace myself, in my hour of trial, thank God. I deliberately decided not to negotiate or compromise with SW, because I believed that it was my duty instead to challenge the entire practice I was being subjected to, for what it undoubtedly was, a modern day heresy trial. The very characteristic of firmness that cost me my relationship with my son, which SW perceives as a vice, I perceive as a virtue, and I thank God I found it in me to do as I did, and would do the same again.

36. **At 52**, his lordship says, "However it is also right to record that the fact that SW said that she believed S before hearing from A was unfortunate." I say that it was more than unfortunate. It was a breach of Natural Justice which took the council's social work out of the safe category "in accordance with law" of Article 8.2, because Natural Justice is a doctrine integral to the law of this country.

37. His lordship adds, "it was important to ensure that the process was fair so as to command confidence". It was important, because fairness ~~it~~ is a requirement of English Common law, not "the icing on the cake" (so-to-speak) that it'd be nice to have too, merely in order to "command confidence".

38. I pleaded, and I argued in my written skeleton argument, and in closing submissions, that it was a *legal requirement* that the social work process should be fair. If the local

authority was not willing and able to do the necessary social work fairly, it should not have done it at all. That, I say, is the law of England. His lordship has made important findings of the facts on which I relied in my statements of case. But his lordship has overlooked my argument, set out in writing in my skeleton argument for the trial, that if the Defendant broke two laws (Natural Justice and the Public Sector Equality Duty), which his lordship's findings make it abundantly clear it did, then it is no defence to say that at least the defendant kept a ~~thrid~~ third law (The Children Act). "In accordance with law", in Article 8.2 does not mean, "in accordance with some laws, but against other laws".

39. This finding in **paragraph 54**,

"A replied that SW was 'not very clever' that it had been read out of context and that SW did not understand satire and black humour. A did say it was his way of using the pro abortion arguments to an older child, saying it was his way of explaining that the argument was not valid, and that SW was stupid if she had taken it as his view."

and this finding in **paragraph 55**,

" A did not bother to explain in clear terms to SW that he was attempting to parody arguments of those in favour of abortion, and that he had not intended the comment to be taken literally"

are mutually contradictory.

39A Depending upon how strict or lenient the court is in allowing me time to file my bundles, I may include pages in the ASB, called in the ASB's index **Proof of explanation re "hardly a person"**, gleaned from the Defendant/Respondent's own documentary evidence that was in the first-instance trail bundle.

40. Again, **at 55**, “I also find that SW continued to take A's comment in his blog about an 8 month old child 'hardly' being a person literally ...”. That may be so. However, the tests in Article 8.2 (lawfulness and proportionality), are objective tests, not tests to which the state of mind of the public authority tortfeasor is relevant.

40A. Human Rights Act causes of action are not a “zero sum game”, in which a plaintiff can only win at the expense of a public employee having a black mark against her. The Human Rights Act allows public authorities to be found liable for honest mistakes that don't involve malice. His lordship's finding that my treatment was unfair, though not malicious, should logically have led to a declaration that my Convention rights were breached.

41. Again, **at 55**, “she was concerned about it given the history of A's mental illness.” At that stage, there was no evidence of a history of mental illness upon which any rational concerns could be founded. (Nor is there in the present day, as it happens.) Secondly, there is no rational connection between mooting unusual doctrines about when infants become legal persons (if that had been what I was doing – and his lordship found that I *wasn't* doing this), and mental illness. Again, it is not his lordship's duty to make excuses for what the SW did, which he admits was unfortunate and unfair, by reference to SW's state of mind. Article 8.2 is an objective test, of lawfulness and necessity, not a subjective test of the tortfeasor's beliefs or intentions, her state of mind.

42. At **paragraph 57**, his lordship seems confused again. The context of his finding at 57 appears to be the meeting of 23rd May 2013. The Homophobic Manifesto was not published until 17th June 2013. I wrote it *because of* the meeting, not *before* the meeting. See **Manifesto date proof** in ASB.

43. **At 57**, his lordship finds, "A did not seem to have insight into the fact that heading his own essay 'the homophobic manifesto' might give rise to concern about whether A would let S develop his own views and beliefs." I was well aware that my essay was provocative. I understood the concerns it might raise, but I believe the opposite of what those who would have such concerns believe. What they call good, I call evil, and *vice versa*. They believe that to raise children to be what they call "heterosexual", is child abuse. We believe that to raise children to believe that homosexuality is good and normal, is child abuse. His lordship heard no evidence on which to base this finding. I see no rational connection between "concern about whether A would let S develop his owns views and beliefs" and my essay title (parodying the common name of the essay I was parodying – the Homosexual Manifesto). I had "insight" into the "fact" that we openly homophobic people are a persecuted group in the UK nowadays, and that those who persecute homophobic people seem to feel self-righteous about this, as though we formed an exception to the usual taboo against persecuting specific groups in society. I do not agree that dissident intellectuals ought to be careful, lest the authorities might wish to punish them with the loss of their children. Such caution was necessary in Stalin's USSR, but it should not be necessary in David Cameron's or Theresa May's Britain.

44. But his lordship is missing the point anyway. He again resorts to chronological fallacy. I only wrote that piece (The Homophobic Manifesto) 25 days *after* the meeting. It was an expression of my sheer disgust with the persecution of decent, law-abiding, and conscientiously homophobic people, the most worrying example of which I had come across, was myself. It is one thing to try to drive out of business a baker who refuses every order to decorate a gay cake. It is in another league altogether, to interrogate a natural parent about the morals he hopes to pass on to his own son, when what hangs in the balance, is whether he will be allowed to have a relationship with his son at all. Yet

the latter is what happened. His lordship's findings of fact are more-or-less what I set out to prove: precisely that.

45. **At 58**, "The meeting concluded with A sharing his view about SW's bias, and that she was looking to get A out of S's life." The email from which his lordship quoted in **paragraph 47** of his judgment, from SW to M, proves beyond a shadow of doubt, that SW was indeed looking to get me (A) out of S's life, and that she was biased in the sense that she had made that decision without meeting or hearing from me, contrary to Natural Justice.

46. **At 59**, his lordship says, "A should have been prepared to explain what he was intending to communicate to SW". Elsewhere he finds that I *was* prepared to explain what I was intending to communicate. SW's notes and documentation galore minute that I actually did explain. His lordship says, "If A had taken the time to explain that the blogs were not to be taken literally, there is no doubt that the meeting of 23rd May 2013 would have been much easier for both A and SW." But the innuendo here, that I didn't take the time to explain, is flatly contradicted by the documentary evidence and the witness statement of SW, in which she repeats my explanation. That I didn't explain is a flawed finding of fact that his lordship *himself* contradicts, when he finds that SW continued to have her concerns, even after my explanation. In the ASB index, I will label the ASB pages that prove that I *did* explain, **Proof of explanation re "hardly a person"**.

47. Again, his lordship writes, "A was at liberty to continue publishing the blog in that form, but it would have meant that SW's proper concerns formed because she had read the blogs literally were properly addressed." SW had concerns that may have been *subjectively* proper at first (there were never any such concerns that were *objectively* proper), but only up until the moment when it was explained to her that she had

completely misunderstood the "hardly a person" phrase. After that, SW had only *improper* residual subjective concerns. His lordship seems altogether too keen to exonerate SW. He exonerated SW subjectively. By acknowledging that SW was mistaken in her literal interpretation of "hardly a person", his lordship ensured that if only he had applied the correct, *objective* Article 8.2 test of necessity, he would have found any interference based on the misinterpreation to be unnecessary, and should have made a declaration to that effect.

48. **At 60,** his lordship says that SW "was very unlikely to change her view without an explanation from A about his blog." His lordships judgment is self-contradictary as to whether or not I did offer SW an explanation about the "hardly a person" phrase. However, the written evidence, in the bundle, including SW's own note and witness statement, is unanimous, that I *did* deliver to SW the explanation about which his lordship cannot make up his mind as to whether I delivered it or not, and that she understood it, because she was able to paraphrase it in her own words with no violence to the meaning. See **Proof of explanation re "hardly a person"** in ASB.

49. **At 61**, his lordship says, "I am satisfied that SW's recommendation that A should not have contact with S was not made because A believed that abortion and same sex marriage was wrong". His lordship is entitled to be satisfied of that. However, his lordship also implies, and says so elsewhere, that the reason why SW's entrenched intention was not tempered at the meeting, was because of the firmness of my beliefs. Had I shown myself willing to negotiate and/or compromise, then SW might have relented. But I wasn't, and shouldn't have to be, willing to negotiate and compromise, about abortion and homosexuality, the worst crime and the crime against nature, in order to avoid the dire outcome inflicted upon me because I was unwilling to negotiate or to compromise.

50. **At 61**, his lordship also indicates that SW was still siezed of her belief, which he has found in his judgment to have been mistaken, that my use of the phrase "hardly a person" was sinister, a cause for concern. Subjectively, in SW's mind, the phrase was sinister. Objectively, his lordship has found, that phrase was not sinister. In determining whether the parentectomy imposed upon me was proportionate to a legitimate aim, his lordship should have used the objective test, and found that my Convention right was breached, not the subjective test, finding that the SW didn't realise that my Convention right was being breached, and therefore it wasn't, as his lordship argues.

51. **Paragraph 62** concludes, "The failure to ask the questions in a different way did not amount to any relevant breach of duty." There is no reasoning to support this bald assertion, anywhere in the judgment. However, his lordship was not required to determine whether the social worker had done her duty or breached it. He was required to determine whether her performance of her duty fell safely within the criteria of Article 8.2, which refers to lawfulness and proportionality. His lordship is satisfied that I proved breach of Natural Justice in a quasi-judicial function, which is itself unlawful. I also proved neglect of the public sector equality duty, which is also unlawful, although his lordship seems to have forgotten this. I proved different treatment of me because I held pro-life and homophobic beliefs with such vehemence that I disengaged rather than negotiate or compromise about those beliefs, with the relevant comparator being somebody with the same beliefs as me as regards the content of the beliefs, but without my vehemence, which I am not ashamed to say can be formidable.

52. In reply to **paragraph 63**, I had finished my email sending SW my family's contact details (which email was in the bundle) with these words, "Please don't bother to phone them if, as your extraordinary behaviour today implied, your mind was already made up before you met me, and no amount of evidence would be capable of changing it." In her evidence, SW stated that she had not contacted my family, because I had *asked her not*

to. This was obviously a reference to these closing instructions, not to bother phoning my family *if a certain condition applied*. In other words, SW admitted that my conditional clause, "your mind was already made up before you met me, and no amount of evidence would be capable of changing it", did indeed apply. See, in ASB, **Emails**.

53. **Last sentence at 74**, "It was noted that A believed that he had been stopped from seeing S because of SW's belief that he was pro abortion and homophobic, but that was not the case." His lordship must mean "pro life", or "against abortion". That was not the case, only if one accepts the doctrine that treating somebody differently because of the strength of their beliefs is morally superior to treating them differently because of the content of their beliefs. Who can tell whether it was "the case"? The point is that at no stage, ever, did SW reassure me that "that was not the case". The only explanation I was *ever* given, was concern about S being exposed to my strong beliefs. If I believed that which was not the case, because I was never told different, who is to blame for that? My lord, I should not have to endure four years of litigation, to be told only at trial that I'd got hold of the wrong end of the stick. The Defendant could have told me that in 2013 immediately I began correspondence before action, raising complaints based upon what I had been led to believe, and so on.

54. **Content of the judgment from 74 onwards** concerning the private family proceedings may be interesting, but they are not germane to the pleadings. My Particulars of Claim state that I do not impugn the family court process in these proceedings. If I had done so, that part of my claim would rightly have been struck out as an abuse of process, an attempt to relitigate. It is a symptom of his tendency towards chronological fallacy for his lordship to think that it could possibly be relevant for him to recite events that happened about eight months after my claim accrued, about which I had pleaded nothing.

55. **At 86**, “SW was also entitled to consider the strength of A's views”. This makes explicit his lordships the doctrine, which I say is wrong in law, that SW was entitled to consider the strength of my views, even though she would not have been permitted to consider the content. I have already argued at length how utterly unsafe and unworkable a doctrine that is. The state will always be able to say, of those with beliefs it dislikes, that what they dislike about the beliefs is their strength not their content. That is making it too easy for the tyrant.

56. **At 88**, “I should record that it is apparent that the way in which SW reported her concerns about A's views to A in the meeting of 23rd May 2013 was not, as SW fairly accepted with the benefit of hindsight, the best way of approaching the matter. This is because it led A to become disengaged with the process, in part because of his misunderstanding about the legal effect of *R(Johns) v Derby County Council*. This meant that SW was not able to communicate that it was her concern about whether A would permit S to develop his own views because of the strength of A's views rather than an attack on A's views, that was in issue.” “Not the best way” is virtually the same as saying that the way this was done was not proportionate to the legitimate aim, of testing my parenting skills by trying to start an argument with me about foetal homicide and sodomy. The court, with the benefit of hindsight, can and should find a breach of Convention rights, when social work was conducted with greater cruelty than it needed to be conducted with, even though, at the time, the tortfeasor did not realise this, thinking (without the benefit of hindsight) that she was using the minimum amount of cruelty necessary in order to achieve her legitimate aim. (Cruelty? I mean “interference”, of course.)

57. **At 89**, his lordship says, “SW's approach did not involve any infringement of A's rights.” But clearly it comprised an *interference* in my Article 8 right, even though it might have been capable of being lawful and proportionate. That is the *nature* of this

kind of social work. I had indeed invited that interference, by referring my son myself. But I had made the referral in the expectation that the approach used in that social work would comply with Natural Justice, the public sector equality duty, the requirement of Article 14 not to discriminate against people because of what they believed, or how strongly they believed whatever they believed, and so on.

58. When I read his lordship's **paragraph 90**, it appears that he makes the key findings of the facts I pleaded. Almost every fact I pleaded, somewhere in the judgment, his lordship finds to be true. The purpose of a reasoned judgment includes enabling the loser to know why he has lost. The more I read this judgment, the more cognitive dissidence I experience. There are only minor facts I pleaded, of only slight importance, that his lordship could not bring himself to find were true. His lordship having found that I was truthful generally, and nearly everything I had said happened is exactly what did happen, my expectation would have been that I should have won this claim. I do not find in this judgment, any comprehensible explanation as to why I lost. Specifically, why didn't his lordship make a declaration that my Convention rights had been infringed?

59. His lordship is mistaken, when he says, **at 94**, that "there is no pleaded issue about the public sector equality duty". Paragraphs 4, 21, 27, 37 and 38 of the Amended Particulars of Claim plead non-compliance with the public sector equality duty. My skeleton argument argued expressly that there had been no compliance with the public sector equality duty. In paragraph 4 of the defence, the Defendant pleads, "The Claimant is required to state how, why and when the Defendant is said to have breached its [public sector equality] duty." The Amended Reply To Defence incorporates the (original) Reply To Defence, which specifies the alleged breaches of the public sector equality duty, in its paragraphs 20, 21, 22, 23, 24, 37, 39. Because the pleaded and

argued breaches of the public sector equality duty were omissions rather than acts, the onus of proof of adherence to the duty necessarily lay upon the Defendant.

60. Moreover, SW was cross-examined as to her compliance with the public sector equality duty, when I asked her what regard, if any, she had had, at any stage at all, to the need to foster good relations between the man and the woman who were the parents of S. She replied to the effect that she had had no regard at all to that need, because she was following a procedure that derived from The Children Act, a function to which the public sector equality duty was, she indicated, irrelevant, as far as she understood her duty. Yet the public sector equality duty (Equality Act 2010 s149), enacted after the Children Act, says that the public sector equality duty applies to all the functions of a public authority; not all the functions *except* child safeguarding social work; *all* functions. It was noted in final submissions that the Equality Act does not confer a cause of action, upon somebody who considers he has been harmed directly by a non-compliance with the public sector equality duty. I clearly remember replying to this point, saying that a breach of the public sector equality duty can nevertheless prevent an interference with the Article 8 right from being "in accordance with law", as required to benefit from the qualification of the Article 8 right that is set out in Article 8.2.

61. His lordship points to lack of evidence of non-compliance. But the non-compliance was an alleged omission rather than an alleged act, with the burden of proof therefore resting upon the Defendant to prove compliance. The SW admitted not complying with the public sector equality duty, saying that it didn't apply to her job. There was a complete lack of evidence that the Defendant, at any stage, had any regard at all, to the need for it to foster good relations between men and women. On the contrary, it is difficult to read certain of the hundreds of pages of documentary evidence which the Defendant disclosed, without gaining the impression that the Defendant was determined to prevent detente, and that that was how he Defendant usually carried on.