

ENGLAND AND WALES / JUDGMENT

Baggaley, Re

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Neutral Citation Number: [2015] EWHC 1496 (Fam) IN THE HIGH COURT OF JUSTICE FAMILY DIVISION Case No: LE13P01303 and others Royal Courts of Justice Strand, London, WC2A 2LL Date: 22 May 2015 Before : SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- ----- In the matter of NIGEL BAGGALEY (aka Nigel Quinlan)
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- ----- Ms Samantha Broadfoot (instructed by the Treasury Solicitor) as friend of the court nominated by HM Attorney-General Mr Baggaley appeared in person on 24-25 June 2014 Hearing dates: 24-26 June 2014
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Judgment

This judgment was handed down in open court Sir James Munby, President of the Family Division : 1. 2. I have before me a number of matters relating to Nigel Baggaley. Mr Baggaley comes before the court in four different capacities. First, he is a pertinacious litigant on his own account. Secondly (I put the matter descriptively, without pre-judging any issue I may have to decide), he is the moving spirit behind two limited liability companies that provide legal advice and legal services: McKenzie Friends 4U Limited and Diy Law Shop Limited. McKenzie Friends 4U Limited is seemingly dormant; Diy Law Shop Limited has as yet filed no accounts. They have operated out of premises in Hinckley in Leicestershire: previously at 77 Windrush Drive, more recently at 52 Rugby Road. Thirdly, he acts as a McKenzie friend. Fourthly, he has a Facebook account. Mr Baggaley accepts that it is he personally, and not the company, who acts as a McKenzie friend. But he is keen to emphasise that he personally does not provide the legal advice and legal services provided by the company. His involvement, he says, is merely as an employee of the company. “DIY Law Shop is a completely separate entity to me” (Transcript 25 June 2014, page 19, line 31). Presumably he seeks in this way to avoid personal liability: see *Williams and Another v Natural Life Health Foods Ltd* [1998] 1 WLR 830. I note in passing that whereas the email address for McKenzie Friends 4U Limited was apparently mckenziefriends4u@yahoo.co.uk, emails from Diy Law Shop Limited which I have seen were sent nigel@diylawhinckley.mygbiz.com and from stalkerccfc@gmail.com. from Mr Baggaley accepts that he has on occasions used other names, “quite a few other names that I change every now and again” (Transcript 25 June 2014, page 40, line 1). In an email sent from nigel@diylawhinckley.mygbiz.com on 27 November 2013, he is described as Nigel Quinlan. He

has also used the name Fukula which, as he explained (Transcript 25 June 2014, page 46, line 9), stands for “fuck you local authority.” Mr Baggaley accepts that he has no relevant professional training or qualifications. His previous employment was in the “security industry” as he described it, in fact, as he readily conceded, as a ‘bouncer’ in public houses and clubs. He made no bones about his criminal record, volunteering in his oral evidence, which in this as in most other respects was given in an engagingly frank way, without any attempt at evasion or prevarication, that he had served a number of, usually short, prison sentences for offences of both dishonesty and public disorder. He said (Transcript 24 June 2014, page 57, lines 2-4) that he had been in a young offender’s institution at the age of 13. He had most recently come out of prison some two years ago (see Transcript 24 June 2014, page 56, line 25). In 2011 Mr Baggaley was involved in twelve actions in the Nuneaton County Court. The number of each action began with 1NU00. I shall refer to these actions (“the County Court actions”) by the last three digits of their numbers: respectively, 194, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, and 414. On 19 March 2012, His Honour Judge Gregory, sitting at Coventry County Court, made a general civil restraint order against Mr Baggaley. The order, which listed the County Court actions, recited that Mr Baggaley “has persistently issued claims which have been totally without merit and have been struck out”, and provided that Mr Baggaley was “forbidden for a period of two years from the date of this order (until 16 th March

2014) ... from issuing any new application appeal or other process in ... any of the actions ... AND from issuing any further proceedings or further applications in any action.” The order was made in Mr Baggaley’s absence, and accordingly drew his attention to the fact that he could apply to set it aside and that any such application should be made within 7 days. No such application was made. On 24 January 2013 Mr Baggaley appeared in the Leicester Family Proceedings Court as a McKenzie friend on behalf of the father in private law proceedings. I shall return below to the events of that day. Between October and December 2013 Mr Baggaley (or Diy Law Shop Limited) acted on behalf of the mother in private law proceedings in the Leicester County Court (LE13P01303). On 18 December 2013 there was a hearing before His Honour Judge Bellamy in Leicester of the mother’s appeal against an order of the District Judge. Judge Bellamy gave a judgment of which I have the approved transcript. Before the hearing there had been an incident in the court corridor involving Mr Baggaley and the father’s counsel, Mr Matthew O’Grady, which Judge Bellamy described in his judgment (para 10). The judge’s account was based on what Mr O’Grady had told him and the judge’s own viewing of the court’s CCTV footage of the incident. Judge Bellamy heard from Mr Baggaley. The mother’s appeal was withdrawn. Judge Bellamy considered Mr Baggaley’s behaviour. He considered whether to extend the civil restraint order made by Judge Gregory, but decided (judgment, para

15) that it was not appropriate to extend that order “either as to its scope or as to its 3. 4. 5. 6. 7. 8. length.” Turning to consider Mr Baggaley’s conduct as a McKenzie friend, Judge Bellamy said this (judgment, para 17): “In this case Mr Baggaley’s behaviour in court today has been unacceptable. His attitude to counsel was wholly inconsistent with that to be expected of a McKenzie Friend in family proceedings. Mr Baggaley’s demeanour in court is matched by

his attitude in his communications with the Mother's solicitor and with Cafcass. His attempt to portray himself as the Mother's representative, both on her notice of appeal and in letters, demonstrates either a total lack of understanding of the role of a McKenzie Friend or, and as I find more likely, a wilful disregard to the proper limits of the role of a McKenzie Friend. Mr Baggaley has served this mother very badly. As I said earlier, she has in truth been nothing more than a puppet in his hand. Mr Baggaley is not an asset to a litigant in person. He is a serious hindrance. I have come to the conclusion that I should make a Civil Restraint Order preventing him from acting as a McKenzie Friend in any family proceedings." 9. 10. 11. 12. The order was expressed to be an interim order, to remain in force until 17 January 2014 when the matter was directed to be considered by a judge of the High Court. On 23 December 2013 Mr Baggaley applied to set aside the order made by Judge Gregory. On 27 December 2013 he applied to set aside the order made by Judge Bellamy. The applications were actually issued on 7 January 2014. The matters came before Peter Jackson J on 17 January 2014. He gave a judgment of which there is an approved transcript: *Re Baggaley* [2014] EWHC 45 (Fam). He had before him statements: (a) from Mr O'Grady dated 24 December 2013; (b) from Miss Jane Sharratt, the legal executive instructing Mr O'Grady, dated 24 December 2013;

- (c) from Mr O'Grady's clerk, Scott Baldwin, dated 23 December 2013; (d) from Mr Baggaley dated 5 January 2014; and (e) in relation to the incident at the Leicester Family Proceedings Court on 24 January 2013, from Mrs Ann Palmer, the Clerk to the Justices, dated 15 January 2014. The statement from Mrs Palmer had been filed in accordance with directions given by Judge Bellamy in an order dated 14 January 2014. Peter Jackson J decided (judgment, para 24) that the matter could not be finally determined then and there, first because he took the view that the matter should be referred to the Law Officers and, second, because he accepted that Mr Baggaley was entitled to a further period within which to respond to and challenge the evidence against him. However, the judge (judgment, para 25) made a further interim order, extending the restraints imposed on Mr Baggaley by Judge Bellamy. In accordance with the order he had made on 17 January 2014, the matter came back before Peter Jackson J on 19 February 2014. He had before him a most helpful Note dated 17 February 2014, prepared by Mr Andrew Bird as the friend of the court appointed by the Attorney-General. Peter Jackson J further extended the interim order in the following terms: "By way of interim order Nigel Baggaley is prohibited (whether personally or through an agent or any other third party) (a) application or any appeal in any proceedings in any court; and from issuing, acting in or conducting any claim or any (b) from acting or holding himself out to act as a McKenzie friend in these or any other proceedings in any court." 13. 14. 15. It is apparent both from what Judge Bellamy said when originally imposing an order essentially in these terms on 18 December 2013, and from what Peter Jackson J said in his judgment on 17 January 2014, that the order is intended to control Mr Baggaley's conduct when acting for others and not when acting as a litigant on his own behalf (this, of course, having been regulated by Judge Gregory's order). Peter Jackson J listed all the matters to be heard before me on 6 May 2014. He identified the factual issues to be determined as being

those in relation to (a) the events at Leicester Family Proceedings Court on 24 January 2013, (b) the events at Leicester County Court on 18 December 2013, (c) the alleged telephone call from Mr Baggaley to Mr Baldwin on 18 December 2013 referred to in Mr Baldwin's statement, and (d) Mr Baggaley's involvement in proceedings LE13P01303 as alleged in Miss Sharratt's statement. He directed Mr O'Grady, Miss Sharratt, Mr Baldwin and Mrs Palmer to attend before me to give evidence. He directed that the court files in the County Court actions were to be sent to me. Although his statement of 5 January 2014 concerned itself primarily with what had happened at Leicester County Court on 18 December 2013, Mr Baggaley has never availed himself of the opportunity afforded him by Peter Jackson J to file further evidence. The hearing fixed for 6 May 2014 had to be adjourned, through no fault of Mr Baggaley, and was re-fixed to start on 24 June 2014. Mr Baggaley appeared in person. Ms Samantha Broadfoot appeared as the friend of the court appointed by the Attorney-General. She had prepared an excellent and, as one would expect, balanced and impartial Note dated 13 June 2014. On the first day of the hearing, 24 June 2014, I heard evidence from (in this order), Mrs Palmer, Miss Sharratt, Mr Baldwin, Mr O'Grady and Mr Baggaley. On the second day, 25 June 2014, I heard the rest of Mr Baggaley's evidence. There are transcripts of all the evidence. On the third day, 26 June 2014, I heard closing submissions from Ms Broadfoot. This was in the absence of Mr Baggaley because, as he had told me the day before (Transcript 25 June 2014, pages 68-70), he had run out of money. 16. I am very sorry that the handing down of this judgment has been so delayed by the pressure of other work. The law 17. Giving legal advice or providing legal services is not, as such, a prohibited or regulated activity. However, certain forms of such activity, each of which is referred to in the legislation as a "reserved legal activity", are regulated by the Legal Services Act 2007, re-enacting provisions originally in the Courts and Legal Services Act

1990. Unless entitled to do so by the 2007 Act, it is a criminal offence to carry on a "reserved legal activity". 18. So far as is material for present purposes two activities are within the statutory definition of a "reserved legal activity", see section 12(1): "the exercise of a right of audience" and "the conduct of litigation". These expressions are defined in Schedule

2. Paragraph 3(1) provides that: "A "right of audience" means the right to appear before and address a court, including the right to call and examine witnesses." Paragraph 4(1) provides that: "The "conduct of litigation" means – the issuing of proceedings before any court in England (a) and Wales, the commencement, prosecution and defence of such (b) proceedings, and the performance of any ancillary functions in relation (c) to such proceedings (such as entering appearances to actions)." 19. 20. The definition of "right of audience" is clear enough. The definition of the "conduct of litigation" is more problematic: see *Agassi v Robinson* (Inspector of Taxes) (No 2)

[2005] EWCA Civ 1507, [2006] 1 WLR 2126, esp paras 56-57. These are deep waters which there is no need for me to enter, save to note that sections 20 and 22 of the Solicitors Act 1974, referred to in *Agassi*, have since been, in the case of section 20 very significantly amended by, and in the case of section 22 repealed by, the 2007 Act. Acting as a McKenzie friend is

not as such a “reserved legal activity”. It is regulated by the common law, as summarised in Practice Guidance: McKenzie Friends (Civil and Family Courts) [2010] 2 FLR 962, issued on 12 July 2010 by Lord Neuberger of Abbotsbury MR and Sir Nicholas Wall P. A McKenzie friend has no right to act as an advocate or to conduct litigation. So a McKenzie friend who wishes to address the court requires permission to do so in accordance with Schedule 3, paragraph 1(2)(b), of the 2007 Act. 21. The Practice Guidance requires to be read in full. For present purposes I need to draw specific attention to paragraphs 4, 13, 19 and 20: “4 MFs may not: i) act as the litigants’ agent in relation to the proceedings; ii) manage litigants’ cases outside court, for example by signing court documents; or iii) address the court, make oral submissions or examine witnesses. A litigant may be denied the assistance of a MF because its provision might undermine or has undermined the efficient administration of justice. Examples of circumstances where this might arise are: i) the assistance is being provided for an improper purpose; ii) the assistance is unreasonable in nature or degree; iii) the MF is subject to a civil proceedings order or a civil restraint order; iv) the MF is using the litigant as a puppet; v) the MF is directly or indirectly conducting the litigation; vi) the court is not satisfied that the MF fully understands the duty of confidentiality. Courts should be slow to grant any application from a litigant for a right of audience or a right to conduct litigation to any lay person, including a MF. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the court. These requirements are necessary for the protection of all parties to litigation and are essential to the proper administration of justice. Any application for a right of audience or a right to conduct litigation to be granted to any lay person should therefore be considered very carefully. The court should only be prepared to grant such rights where there is good reason to do so taking into account all the circumstances of the case, which are likely to vary greatly. Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience.” 22. 23. 24. 25. The court has both statutory and inherent powers to control those who misbehave or abuse its process. Section 42 of the Senior Courts Act 1981 empowers the High Court or the family court on the application of the Attorney-General to make various kinds of order to restrict vexatious legal proceedings. I mention this provision only for the purpose of completeness: no such application has been made in relation to Mr Baggaley. CPR 3.11, which is supplemented by PD3C, enables the court to make a civil restraint order, but only against “a party to proceedings” who has “issued claims or made applications which are totally without merit”. This was the jurisdiction exercised in the present case by Judge Gregory in relation to the County Court actions, in each of which Mr Baggaley was a “party”. It is not a jurisdiction exercisable against a McKenzie friend, because a McKenzie friend is not a “party” to the proceedings in which he is assisting. Quite distinct from and in fact pre-dating the existence of these statutory powers, the High Court has inherent jurisdiction to prevent such behaviour: see *Grepe v Loam*

(1887) 37 ChD 168, *Ebert v Venvil and Another* [2000] Ch 484 and *Bhamjee v Forsdick and others* (Practice Note) [2003] EWCA Civ 1113, [2004] 1 WLR 88. This jurisdiction is, in principle, available not merely against a party to proceedings but also against non-parties, such as a McKenzie friend: see *Paragon Finance plc v Noueiri* (Practice Note) [2001] EWCA Civ 1402, [2001] 1 WLR 2357, para 73, *Her Majesty's Attorney General v Tobiasinsky* [2004] EWHC 1111 (Admin), para 2, and *Her Majesty's Attorney General v Chitolie* [2004] EWHC 1943 (Admin), paras 19, 23. 26. Elaborate citation of authority is unnecessary. It suffices to quote two passages from the judgment of Silber J in *Her Majesty's Attorney General v Tobiasinsky* [2004] EWHC 1111 (Admin), paras 3 and 47: "3 ... The Court can prevent an individual acting as a "McKenzie friend" from continuing to act as such where the assistance given is inimical to the efficient administration of justice ... If the claimant does not obtain the relief sought, a party who is subject to a Civil Proceedings Order will be able to do indirectly in other parties' litigation what he or she cannot do directly, namely to initiate and to pursue hopeless claims. It would be a failing in the legal system if a person like the defendant who is subject to a Civil Proceedings Order could not be prevented from initiating and pursuing such cases. The defendant's conduct shows that the relief claimed by the claimant should be granted now and before more hopeless claims can be initiated or pursued by her in other people's cases." 27. 28. The jurisdiction is not confined to the bringing (or assisting in the bringing) of hopeless claims. It may be exercised because of and to restrain personal misbehaviour on court premises: see *HM Attorney-General v Ebert* [2001] EWHC Admin 695; and, in the case of a McKenzie friend, because of his incompetence: see *Paragon Finance plc v Noueiri* (Practice Note) [2001] EWCA Civ 1402, [2001] 1 WLR 2357. Consistently with this, paragraph 17 of the Practice Guidance says that: "The High Court can, under its inherent jurisdiction, impose a civil restraint order on MFs who repeatedly act in ways that undermine the efficient administration of justice." It is important to be clear as to what precisely it is that I have before me. There is, as I have said, no application in accordance with section 42 of the 1981 Act. There is no application based on any complaint that Mr Baggaley (or either of the two companies, McKenzie Friends 4U Limited and Diy Law Shop Limited) is improperly conducting litigation in breach of the 2007 Act. There are two matters: first, Mr Baggaley's application to set aside the civil restraint order imposed by Judge Gregory in respect of his acting as a party in the County Court actions; secondly, the question of whether I should extend the order under the inherent jurisdiction restraining him acting as a McKenzie friend and doing the other things referred to in Peter Jackson J's order. It is convenient to deal with them in turn. The general civil restraint order imposed by Judge Gregory 29. 30. I do not know whether Judge Gregory gave a formal judgment. If he did, I have not seen a transcript. I do, however, in accordance with the order Peter Jackson J made on 19 February 2014, have the relevant court files in each of the twelve County Court actions. It will be recalled that the basis upon which Judge Gregory made the general civil restraint order was that Mr Baggaley had "issued" the County Court actions, all of which had been "struck out" as being "totally without merit." An examination of the files shows that this was not entirely so: i) : Contrary to the assertion in the order, this action was not issued by Mr Baggaley. He was the

defendant. The action was not struck out. The claimant filed a notice of discontinuance. However, on 20 December 2011 the District Judge made an order which, noting that the claims in 194 and 226 had ii) iii) iv) already been discontinued, directed that the claim be struck out pursuant to CPR 3.4(6) as being “totally without merit.” : In this action, where the claimant in 194 was the defendant, the District Judge on 17 August 2011 ordered the defendant to file a defence. A defence was filed on 7 September 2011. Subsequently the action was discontinued by notice dated 21 October 2011. On 20 December 2011 the District Judge made an order which, noting that the claims in 194 and 226 had already been discontinued, directed that the claim be struck out pursuant to CPR 3.4(6) as being “totally without merit.” 225, 227, 228, 229, 230, 231, 232, 233, 234 : Each of these actions was struck out by the District Judge on 20 July 2011 “pursuant to CPR Part 3.4(2) because the statement of case discloses no reasonable grounds for bringing the claim.” In 231 and 234, parts of the claim were struck out on the basis that the County Court has no jurisdiction to determine an action for libel or slander. In each case the order recites that the court was “acting on its own initiative pursuant to CPR 3.3(4).” In none of the cases were the particulars as set out in the claim form self-evidently devoid of factual merit or self-evidently wholly bad in law. In each case it may be that the particulars as supplied were defective as a matter of law – in some cases more obviously so than in others – but in each case the action was simply struck out without Mr Baggaley being given an opportunity to remedy the defect. : In this action the District Judge made an order on 20 December 2011, setting out that the particulars of claim “do not comply with CPR Rule 16.4 or the Practice Direction at 16PD3” and ordering that unless Mr Baggaley by 9 January 2012 sent – I paraphrase – particulars of claim in proper form “the claim ... on that date shall stand struck out without any further order of the Court.” No further pleading was filed. 31. 32. 33. It will be appreciated that, by the time the matter came on for hearing before me, Judge Gregory’s order had already expired by effluxion of time. The order made by Peter Jackson J on 19 February 2014 indicated that I was to consider, amongst other issues, whether Judge Gregory’s order should be extended or continued. Given the various matters to which I have drawn attention in paragraph 30 above, I do not see how I can properly extend or continue Judge Gregory’s order. In one action (194), Mr Baggaley had not even been the claimant. In only one of the other actions

- (226) had the claim been struck out as being “totally without merit”, and the reasons why in that case the District Judge characterised the claim in that fashion are not clear, particularly since he had earlier ordered the defendant to plead to Mr Baggaley’s particulars of claim. In all the other cases the actions seem to have been struck out because of deficiencies in the pleadings. I am not saying that Judge Gregory would not have been justified in making a general civil restraint order against Mr Baggaley, but I do not, with all respect, understand how in the circumstances he was justified in doing so on the basis set out in his order. In all the circumstances I think that I should go further. I appreciate that Mr Baggaley’s application of 23 December 2013 to set aside Judge Gregory’s order was made long out of time. But since Judge Gregory’s order is, for the reasons I have already explained, in

significant part bad on its face – that is, when compared with the underlying orders previously made by the District Judge – I do not see how it can stand. In my judgment, Mr Baggaley is entitled to have it set aside. The inherent jurisdiction 34. For the purpose of considering whether to extend the interim order made by Peter Jackson J, I therefore leave out of account the general civil restraint order made by Judge Gregory. In accordance with Peter Jackson J's directions, I need to focus on the four factual areas I referred to in paragraph 13 above. I take them in turn. The facts: the events at Leicester Family Proceedings Court on 24 January 2013

35. Mrs Palmer was the legal adviser assisting the Bench in Leicester Family Proceedings Court on 24 January 2013. She exhibited her note of the proceedings to her statement dated 15 January 2014. In her statement she pointed out that in the discharge of her duties as a legal adviser she is required to take a note of the substance of the proceedings. She described her note in this case as not verbatim, reasonably comprehensive and contemporaneous.
36. Mrs Palmer's note records that counsel acting for the mother made an application to exclude Mr Baggaley as the McKenzie friend assisting the father. It records in some detail the basis of the application. The note continues (I quote it verbatim; the abbreviations require no explanation): "Bench:- Mr Baggaley y are not a pty we wld like to hear Mr T only. Mr B (audibly) what I say. Chris y will need to look at me and repeat Chair appropriate if y continue we will ask you 2 leave. y are using Mr T as a mouthpiece and that is not Mr B continues to argue & talk ax chair – ch tells him z go. Mr B Its one of the worst cases of injustice y are pathetic [leaves ct room] pointing @ ch" The hearing continued. The justices retired. Mrs Palmer's note continues: "Mr Baggaley returns to the ct door and demands to speak to LA he is asked to leave and LA will not speak to him. Thro' the closed door Mr B can be heard by LA and JP's he is angry and using the F word to Jim the usher and v close to him. Assertions that LA stitched it up ... Security called JPs confirm they want Mr B out of the building given his loud and abusive behaviour in the ct/corridor o/s their room."
37. Mrs Palmer elaborated slightly in her statement: "Shortly after the justices had retired I saw Mr Baggaley return to the court door. The Usher was outside the court door and I heard Mr Baggaley loudly demanding to speak to me. Through the glass panel I could see that Mr Baggaley was clearly very agitated and was becoming angry. That anger was directed towards the Usher and I heard Mr Baggaley using "fuck" repeatedly. I noted that Mr Baggaley was very close to the Usher and I was concerned for the Usher. I telephoned and called for security to attend at court 11. I entered the justices' retiring room and spoke to the justices who confirmed that they had heard Mr Baggaley's loud and abusive behaviour in the corridor outside their room. I informed them that I had called for security and they confirmed to me that given Mr Baggaley's behaviour in and out of court that he should be escorted from the building by security."
38. Mrs Palmer's oral evidence (Transcript 24 June 2014, pages 1-14) was to the same effect. The tenor of part of Mr Baggaley's cross-examination of Mrs Palmer is illustrated by the following exchanges (Transcript, page 6, lines 1-9): "Q For what reason did they ask me to

leave the court? A and that you kept arguing with the Chairman. Because, Mr. Baggaley, they found you obstructive Q Miss Palmer, it was you. You were the problem. You actually got the Magistrates to remove me from the court. I know you did that. Why don't you tell the truth? A I didn't, Mr. Baggaley. You argued with the Chairman of the Panel sitting on that day, the Chairman of the Magistrates." Mrs Palmer denied (Transcript, page 7, lines 23-24) Mr Baggaley's suggestion that she was "over-hamming" her evidence. 39. Another aspect of Mr Baggaley's cross-examination of Mrs Palmer produced the following exchange (Transcript, page 13, lines 10-24): "THE PRESIDENT: I am sorry, Mr. Baggaley. You are putting to Mrs. Palmer that four complaints have been made by you about her. MR. BAGGALEY: Yes. THE PRESIDENT: You have just said, in answer to a question I put to you, that there are emails dealing with that. Now, can you please produce the emails which you just referred to? MR. BAGGALEY: I will, yes. THE PRESIDENT: Can we please see them? MR. BAGGALEY: Oh, sorry, not at this moment in time. I haven't brought them with me. I didn't think we would be going down this line ..." Despite being given every opportunity to do so, Mr Baggaley never did produce the emails. Mrs Palmer's evidence (Transcript, page 10, line 42) was that she was not aware of any complaint. 40. In his own oral evidence while being questioned by Ms Broadfoot (Transcript 24 June 2014, page 70, line 1) Mr Baggaley emphatically denied that he had used the word "fuck". He accused Mrs Palmer of lying to me (Transcript, page 71, line 19): "Q all this up then? ... So are you saying then that Miss Palmer has made A Oh, I could say a lot about Miss Palmer. I've got to admit, me and Miss Palmer go back a long way. We don't get on. Don't believe a word she said earlier on. She knows me. We've got beef. There's no two ways about it. Q Are you going to be producing evidence of that beef? A Well, I'm going to -- No, I'm not because it's like earlier on. I'm not the one coming to this court making allegations. You know, I'm here to defend myself. I'm not here to make allegations about anyone. Q No, but if the reality is that she has a motive for lying about you and you have got evidence about that, that is your answer, or otherwise is your case that she made all this up ---- A Did you hear earlier on that I've made complaints and she said she knew nothing about those complaints? Well, I made those complaints directly to her, so, you know, if she's going to sit in the court and blatantly lie about complaints I've made to her the chances of there being some solid evidence out there that I can just produce is minimal." I again asked him to produce, the following day, the emails. He did not.

41. Mr Baggaley's account of what took place included the following (Transcript 25 June 2014, page 28, line 39): "So I disagreed with the magistrates. The magistrates took exception to the fact that I disagreed with them, and chucked me out the court, with immediate effect. But there was no effing and blinding, there was no kicking off, or banging tables or chairs. You know, the behaviour within the court was, at that point, okay. I did as I was told. I stood up and walked out, in disgrace." He admitted that he had used the word "pathetic", but made two points. First (Transcript, page 29, line 20), "I didn't say, "You're pathetic." Right? I said, "That was pathetic."" Secondly (lines 15, 35), "I meant it in the truest form, the [dictionary] sense; not in an insulting manner." 42. Despite Mr Baggaley's denials, I accept the accuracy of Mrs Palmer's note and the truthfulness of her oral evidence. Mr Baggaley is correct in his

assertion that there was “no effing and blinding” in the courtroom – though that had never been alleged – but there was, subsequently, in the corridor. His conduct in the courtroom and in the corridor was, I find, as described by Mrs Palmer. I should add that although I prefer Mrs Palmer’s evidence, supported by her contemporaneous note, that what Mr Baggaley said was “you are pathetic”, it would have made little, if any, difference if what he had said was, as he asserted, “That was pathetic.” The facts: the events at Leicester County Court on 18 December 2013 43. In his statement of 24 December 2013 Mr O’Grady described the events at Leicester County Court on 18 December 2013 when he was waiting to come on before Judge Bellamy. He had been instructed by Miss Sharratt that he was not to discuss the case with Mr Baggaley. He described handing over to the mother, who was sitting alone at the time, certain documents including a copy of his skeleton argument. Later, he went to find the mother and found her sitting by Mr Baggaley. He introduced himself. Mr Baggaley said “Who are you? Shut up and go away.” His tone, according to Mr O’Grady, was aggressive and confrontational. Mr O’Grady spoke to the mother. Mr Baggaley said “Shut up and go away” and then “Do you want some more?” Mr O’Grady said he was sorry and what did he mean by that. “Mr Baggaley then got to his feet ... He moved over to me fast. He stood with his face directly in front of mine. He literally brought himself nose to nose with me. I feared he was about to physically hurt me. I thought he was about to headbutt me ... I was very shaken by what happened.”

44. Mr O’Grady’s oral evidence (Transcript 24 June 2014, pages 33-54) was to the same effect. I need to refer to two parts of Mr Baggaley’s cross-examination of Mr O’Grady. The first (Transcript, pages 44-45) records Mr O’Grady referring to what can be seen on the DVD of the CCTV recording and continues: “Q I don’t deny all of this. I don’t deny that. I don’t deny walking up to you, do I? There is no denying that I walked directly up to you, is there? Now, I’m going to put to you that the reason that I walked up to you was because I was protecting [the mother] from you. What do you say to that? A I can’t speak to why Mr Baggaley behaved as he did but certainly my behaviour, in my view, didn’t justify the way he reacted. Q You said yourself that I said, “Shut up and go away” on three occasions. Three occasions. Why didn’t you shut up and go away? A Q I was talking to [the mother], my Lord, and ---- You weren’t. You said you were talking to me A I was hopeful that [the mother] and I could have moved the issues in the case forwards without Mr Baggaley. That wasn’t possible. Q So after asking you to go away, whether I used the words “shut up” or not, I asked you to go away three times and you didn’t go. Can you understand it from our point of view, or from my personal point of view, that I’m trying to protect somebody who is now in tears because she thinks she is going to be forced to go into a room with a perpetrator? And I will ... when she went into court she was actually in court to sit ... I can’t understand at all and I can’t accept that the way A I spoke, the way I behaved, all justified the way Mr Baggaley reacted. And I should say I can’t recall, and I suspect I would have said so if I could have done, I can’t recall [the mother] crying.” 45. In another part of his cross-examination of Mr O’Grady, Mr Baggaley put this to him (Transcript, page 48, line 15): “Q I think you were a game player on the day. I think your game plan was to come along and upset me, try to get a reaction, go in

to the judge, get the police involved, get a big reaction there in front of the judge, and that's exactly what you got. You got me removed from the ... and you left the mother with absolutely no assistance at all. And the next day she went back to court she got ... and you know she did, because she ... You can't be proud of that. A a conspiracy with the judge or anybody else ---- I can assure the court that at no point in time did I have Q I didn't say that. -- for those events, to have a game that these events A should play them out and, on the contrary, if I could be anywhere but here right now then I think that would be preferable. I have a job to get on with. I'm a professional. I have things to do." 46. In his own oral evidence, Mr Baggaley made no bones about the fact that he had "faced up" to Mr O'Grady. He was asked by Ms Broadfoot to explain (Transcript, 25 June 2014, page 50, line 40): "Q facing up to him? But can you describe what you did when you were A Yes, I can. You remember you asked me what did I do before in my life, before I did this? I did security for ten years and what I mean by "security" is I mean I worked on doors in casinos and I had to face up to a lot of people, and you learn to use your wit and speech and ... Q And your body. A Well, I mean, yes, I know where you're going with that; it's where he went with it. It's that my body language was threatening. I don't think it was threatening. I think it was clear that I wanted him to go away. Q Is it the same sort of body language which you might use to block somebody's entrance into a nightclub if you thought they were undesirable? No, it's the same language I'd use to move somebody A out of a nightclub. Q Same body language? Yes. It's clear that - if you want to hit me, then go A ahead and hit me. Right? I'm not hitting you, though. My hands are away from you. I'm not touching you. I'm speaking to you as well. Q But it is threatening, though, is it not? A It's not threatening at all, no, it's not. In fact it's the complete opposite. I was taught in a lot of training by the best, that a good door person or a good security guard will talk their way out of a problem. Okay? You're a good security guard if you're not walking round with scars across your face. The ones with the scars are the ones that are not so good. All I did was usher him toward the door, to get him away from my client. Q A In the same way ---- Without touching. Q ensure that somebody who was undesirable would leave ... Sure, in the same way that a bouncer would try and A In exactly the same way a bouncer would remove someone from a club or a bar without actually exerting any force upon them. Okay? In the same way as if a man was at the bar, showing attention to a lady who didn't want that attention and would not leave the lady alone. It would be the security officer's job to walk in there and protect that lady from that that unwanted attention. And why would the man stop giving that woman Q unwanted attention? Because, if he did not obey what the security guard or the bouncer or you were saying, he would be fearful that he might be manhandled. A Well, I don't agree with that. I think the fact is that if you are a man and you walk around bullying a woman, I think that the chances of other men coming along and interrupting and becoming involved and, maybe, even removing you from the woman, I'd say that's human nature. I wouldn't say that that's anything to do with acting aggressively. And, by the way, you can remove somebody without acting aggressively." 47. To make sure that I had correctly understood what Mr Baggaley was saying, I returned to the point a little later (Transcript, page 57, line 10): "THE PRESIDENT: Your basic point ... is that, when you got up, you were, to use your own phrase "facing up to

him” -- A Yes. -- in the same sort of way as you would have been if Q you had been on the door of a club. A Q A In a controlled manner. I understand. Yes, someone - yes. Q And the impression I have, from what you say, is that people who do that job are very carefully and cleverly trained so that, in a way, by facing up, you have your way without ever actually -- A Q A Q A Having to touch. -- touching anybody. Yes, assault. Yes, so the key thing is you do not touch somebody. Yes. Q their body space -- And part of the technique, I suspect, is getting into A Q A Q A Yes. -- so they instinctively go the other way. Move backwards. Have I got it right? Yes, yes.” 48. As can be seen, there was at the end of the day little difference between Mr O’Grady and Mr Baggaley as to what had happened. Where there was any difference I prefer Mr O’Grady’s account to Mr Baggaley’s. I reject Mr Baggaley’s assertion that Mr O’Grady had some game plan. I am quite satisfied that Mr O’Grady behaved throughout in an entirely proper and professional manner. I accept Mr Baggaley’s explanation that he had merely “faced up” to Mr O’Grady, whilst also accepting Mr O’Grady’s account that he believed that Mr Baggaley was about to headbutt him. Mr Baggaley’s explanation that he was protecting the mother from Mr O’Grady is beside the point: first, there was nothing that the mother needed protecting from; and, secondly, even if there was, it provided no justification for Mr Baggaley’s actions. The facts: the telephone call from Mr Baggaley to Mr Baldwin on 18 December 2013

49. Mr Baldwin was senior clerk to Mr O’Grady. According to the account he gave in his statement dated 23 December 2013 and repeated in his evidence to me on 24 June 2014 (Transcript 24 June 2014, pages 29-32), he took a telephone call from Mr Baggaley on 18 December 2013. It was at about 2.30, before Mr O’Grady had returned from court. According to Mr Baldwin, Mr Baggaley said that he wanted to make a complaint about Mr O’Grady “as he had stitched him up at court.” Mr Baggaley said that he had remonstrated with Mr O’Grady but to no effect and that he had then “faced up” to Mr O’Grady. He said that he would be pursuing Mr O’Grady through the civil courts. He then said: “Tell Mr O’Grady that I’m going to make sure that this piece of shit McKenzie Friend is going to be the biggest thorn in his side. Tell him I’m coming for him. Legally, that isn’t a threat. I am coming for him legally. Goodbye.” According to Mr Baldwin he made a note of this as Mr Baggaley was talking. At 2.54 he sent an email to Mr O’Grady setting it out. 50. In his cross-examination of him, Mr Baggaley did not challenge the accuracy of Mr Baldwin’s note. When I pointed this out (Transcript 24 June 2014, page 32, line 19), Mr Baggaley said that he accepted the gist of it. In examination in chief, Mr Baldwin had very fairly made clear (Transcript 24 June 2014, page 30, lines 33-42) that he had not understood Mr Baggaley to be making a physical threat, merely a threat of legal action. 51. I accept Mr Baldwin’s evidence. The facts: Mr Baggaley’s involvement in proceedings LE13P01303
52. Miss Sharratt is the legal executive who instructed Mr O’Grady in the proceedings in Leicester County Court that came before Judge Bellamy on 18 December 2013. She was acting for the father. The mother was in person, being assisted by Mr Baggaley. Miss Sharratt’s account of the events with which I am concerned was set out in her statement dated 24 December 2013 and repeated in her evidence to me on 24 June 2014 (Transcript 24

June 2014, pages 14-28). 53. The focus was on seven matters, which I will take in chronological order: i) ii) iii) On 9 October 2013, in the course of a telephone conversation between them, Mr Baggaley called Miss Sharratt a “fucking lying slag.” On 14 October 2013, in the course of a telephone conversation with a colleague of Miss Sharratt, Mr Baggaley spoke, according to Miss Sharratt, “in an extremely aggressive manner.” He called the receptionist a “fucking lying bitch.” On 27 September 2013, Mr Baggaley, calling himself Nigel Quinlan and acting, he said, “on behalf of” the mother in the proceedings, had sent Miss Sharratt’s firm an email saying “we do not accept your email [of earlier the same day] as truthful or professional. [The mother] has authorised us as sole points of contacts [sic] and therefore any letter from you will be returned unopened.” On 15 October 2013, Mr Baggaley, now calling himself Mr Baggaley and acting “on behalf of” the mother, sent Miss Sharratt an email saying “This is to notify you that your emails to [the mother’s] email address are blocked and will not be received. Any letters to [her] address from your iv) v) vi) company will be returned unopened to yourselves until you start contacting [her] sole point of contact.” On 18 December 2013, Mr Baggaley telephoned Miss Sharratt’s firm and spoke to one of her colleagues, whose attendance note records a message he wanted passed on: “tell that solicitor that was in charge of that debacle this morning and the rest of your Firm that two can play that game. I am now making it my life’s mission that your client will never, ever, ever have contact. Have you got that?” On 20 December 2013, Miss Sharratt received a telephone call from Mr Baggaley who responded to her opening words by saying “who the fuck do you think you are?” He said that she needed to watch herself as he would be there. His manner, she says, was extremely aggressive and intimidating. When she terminated the call, he responded “ha ha ha, you fucking know it.” Later the same day, 20 December 2013, Miss Sharratt’s firm received an email from nigel@diylawhinckley.mygbiz.com, though apparently sent by Mr Baggaley’s wife, notifying them of Mr Baggaley’s intention to take “civil action” against both the firm and Mr O’Grady and asking them to note that Mrs Baggaley was now acting as the mother’s McKenzie friend. vii) Mr Baggaley’s Facebook for 19 December 2013 contains a lengthy account of what happened at court on 18 December 2013 and previously, including a critique of the Cafcass officer’s report. His facebook for 20 December 2013 sets out, in anonymised form, Judge Bellamy’s order dismissing the mother’s appeal.

54. Mr Baggaley’s cross-examination of Miss Sharratt was very short. It focused on two points (Transcript, pages 27-28): The police are charging on the evidence. They found “Q no evidence ... So can we just establish the fact that I didn't get charged and we can come to the conclusion, can't we, that the reason I didn't get charged, whether I did it or not, was because there was not enough evidence? A So are you saying that you did do it? I am saying that -- No, I'm not. I am saying that the Q point is, or not, I was not charged because there was not enough evidence. A Q A You were not charged. Did you bring evidence to this court today? The evidence is attached to my statement. Q No, it's not. The evidence that you have brought to the court today is ... It is not evidence. It is not solid evidence. Can you prove that I said what you say I said? A No. Q No. Thank you.” 55. In his own oral evidence, though not

in his cross-examination of her, Mr Baggaley challenged Miss Sharratt's evidence. He denied (Transcript 25 June 2015, page 31, line 16) calling her a "fucking lying slag." He denied (Transcript, page 33, line 20, page 48, lines 7, 22) that the telephone calls on 14 October 2013 and 18 December 2013 had ever taken place. 56. I accept Miss Sharratt's evidence. I reject Mr Baggaley's denials. Discussion 57. 58. 59. In circumstances where there is, and can be, no suggestion that the witnesses against Mr Baggaley have put their heads together in crafting their evidence, it is striking how certain themes emerge. First, there is Mr Baggaley's argumentative and confrontational manner, even extending, as the events in the Leicester Family Proceedings Court and the Leicester County Court demonstrate, to his behaviour in court in front of the judges. Secondly, there is his repeated use, when talking to others involved in litigation, of the kind of language, including, to use Mr Baggaley's own words "effing and blinding", which has no place in the legal process and for which there can be no justification. Thirdly, there is his tendency to "face up" to people – for it is clear from Mrs Palmer's evidence that that is what he was doing to Jim the Usher at Leicester Family Proceedings Court just as he subsequently did to Mr O'Grady at Leicester County Court. Fourthly, as noted by Judge Bellamy and as borne out by his behaviour before the Bench at Leicester Family Proceedings Court and by Miss Sharratt's evidence, it is clear that Mr Baggaley does not understand, or, if he does, chooses not to confine himself to, the proper role of a McKenzie friend. The court corridor is not the entrance to a nightclub, and those going about their lawful business in a court building do not expect to be treated as if by a 'bouncer'. An exasperated and out-of-character outburst, especially if apology is promptly offered, is one thing. Mr Baggaley's behaviour to the Bench at Leicester Family Proceedings Court, however, was quite unacceptable. His subsequent behaviour in the corridor was disgraceful. His treatment of Mr O'Grady at Leicester County Court, if less outrageous, was unacceptable. No-one in Miss Sharratt's position should have to endure being called a "fucking lying slag." No doubt barrister's clerks have to put up with many difficult and on occasions unpleasant telephone calls, but there was no excuse for what Mr Baggaley said to Mr Baldwin. I am not dealing here with a single 'one off' incident. I am confronted with a lengthy list of incidents the cumulative effect of which leaves me in no doubt that the court must exercise its inherent powers not just to protect itself but also to protect those lawfully going about their business from behaviour which is inimical to the proper and efficient administration of justice. In particular, those attending court are entitled to do so without fear of being treated by a McKenzie friend in the kind of way that both Jim the Usher and Mr O'Grady were treated. In my judgment, Mr Baggaley has repeatedly acted in ways that undermine the efficient administration of justice. His misbehaviour as a McKenzie friend has to be controlled. Given his repeated misconduct and the gravity of that misconduct, I am satisfied that Mr Baggaley's misbehaviour as a McKenzie friend can be adequately and appropriately controlled only by my extending indefinitely the order made by Peter Jackson J. In my judgment such an order is not merely proportionate but necessary. 60. It will be appreciated that, in acting as a McKenzie friend, Mr Baggaley's misconduct – and in my judgment it is serious and repeated misconduct – has not been confined to the courtroom. It has extended to the court corridor and, indeed, beyond the confines of the court building.

In my judgment his behaviour towards Miss Sharratt and her firm, for example, equally undermines the proper and efficient administration of justice and is equally behaviour that must be restrained. Accordingly, an order in the terms of paragraph (a) of the order made by Peter Jackson J is required. I have considered whether the language of paragraph (a) could be more narrowly drawn, but I do not think it can be if the essential vice is to be controlled.

Conclusion

61. I shall therefore: i) ii) set aside the order made by Judge Gregory; and extend indefinitely, in the terms set out in paragraph 12 above, the order made by Peter Jackson J on 19 February 2014. The wording of paragraph (a) of Peter Jackson J's order needs to be adjusted to spell out, for the avoidance of doubt, that it does not affect Mr Baggaley's right to litigate in his own name and on his own behalf. Since my order is indefinite in its duration, it will need to spell out that Mr Baggaley is to be free to apply for the order to be varied or discharged if he can demonstrate that there has been a material change in circumstances, for example if he can demonstrate that he has achieved a proper understanding of the unacceptable nature of his conduct. I will direct that any such application is to be made to a judge of the Family Division. I do not think it appropriate to impose any minimum period which has to elapse before Mr Baggaley can make such an application, though I would not expect any application to have much prospect of success if made within (say) the next two years.

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