Neutral Citation Number: [2011] EWHC 2576 (Fam)

Case No: FD02P01268

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
(In Private)

Royal Courts of Justice
Strand, London, WC2A 2LL

Sent to the parties: 3 August 2011
Handed down: 11 October 2011

Before :

LORD JUSTICE MUNBY
(Sitting as a Judge of the Family Division)

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In the Matter of RB (Adult) (No 3)

Between :

A LONDON BOROUGH	**Claimant**
- and -	
(1) RB (by her litigation friend the Official Solicitor)	
(2) MF	**Defendants**

- -
- -

Ms Nicola Greaney (instructed by the London Borough) lodged written submissions on behalf of the Claimant
Ms Angela Hodes (instructed by the Official Solicitor) lodged written submissions on behalf of the First Defendant
The Second Defendant appeared in person

Hearing date: 14 April 2011

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Judgment

Lord Justice Munby :

1. I handed down my judgment in this matter on 30 September 2010: *Re RB (Adult)* [2010] EWHC 2423 (Fam). In paragraphs [33]-[36] I explained the unusual forensic context in which I had come to give judgment. I set out my findings in relation to no fewer than sixteen issues, referred to as (a) to (p). Issue (a), relating to sexual abuse, was itself divided into four sub-issues. In relation to costs (issue (q)) I made no decision. In the circumstances I was not asked to make and have not made any order.

2. Putting matters very generally, MF succeeded in relation to one of the four sub-issues under (a) – what I shall refer to as the apology issue – but otherwise failed on all issues.

Events following judgment

3. Subsequently, MF, by letter dated 8 October 2010, indicated that he was seeking costs and 'compensation' from the local authority. The Official Solicitor, by application dated 22 November 2010, sought costs against MF and (in part) against the local authority. The application was supported by a witness statement by the Official Solicitor also dated 22 November 2010 and a skeleton argument by Ms Hodes dated 18 November 2010. The local authority made no application but indicated that it resisted any application made against it by either the Official Solicitor or MF.

4. I did not make any formal order (and no-one asked that I did) but on 14 December 2010 I indicated, having received the parties' observations on the point, that the matter should proceed as follows:

    i) MF should by 10 January 2011 set out in the form of a written skeleton argument to be sent to the other parties (and copied at the same time to me):

        a) The precise form of order he seeks against the local authority in relation to (i) costs (ii) compensation and (iii) anything else.

        b) The reasons why he says that he is entitled to such relief.

        c) The reasons why he says that the Official Solicitor should not be granted the relief the Official Solicitor is seeking against him.

    ii) The local authority should by 3 February 2011 set out in the form of a written skeleton argument to be sent to the other parties (and copied at the same time to me):

        a) The reasons why it says that MF should not be granted the relief he is seeking against it.

        b) The reasons why it says that the Official Solicitor should not be granted the relief the Official Solicitor is seeking against it.

    iii) The Official Solicitor should by 17 February 2011 set out in the form of a written skeleton argument to be sent to the other parties (and copied at the same time to me) his response to the skeleton arguments from MF and the local authority.

    I indicated that I would then consider how best to proceed and, in particular, whether to deal with the matter at an oral hearing or on paper without an oral hearing.

5. Pursuant to these directions, MF submitted a letter from Newman Law, solicitors, dated 16 December 2010 (though actually sent later) which enclosed a number of documents, including a letter from MF addressed to me dated 29 December 2010. I understood these two letters to set out his case.

6. Thereafter, MF sent my clerk a number of emails and letters; they are dated 19 January 2011, 25 January 2011 (two) and 27 January 2011. In the email sent on 19 January 2011 he said that "In the light of new evidence (OS wants money from LA and LA refuses to pay …) and its ramifications as extensively analysed, in my

application for costs and compensation" he sought a "RE-TRIAL … in the name of FAIRNESS and JUSTICE." Under cover of the email dated 25 January 2011, he sent a copy of a letter from the Adjudicator dated 24 January 2011 (see paragraphs [126]-[131] of my previous judgment). In the email sent later the same day, 25 January 2011, MF asked that "In the light of new evidence and the letter of the Adjudicator" I "consider [his] appeal." In the email sent on 27 January 2011, he said that "In the light of recent developments I have to ask for permission to appeal".

7. As I explained in the further judgment I handed down on 28 January 2011 (*Re RB (Adult) (No 2)* [2011] EWHC 112 (Fam)), I treated these emails from MF as making applications to me, as the trial judge, to direct a re-trial and/or give him permission to appeal. Since all the relevant material was at hand, and as MF in his email of 25 January 2011 had asked me to consider his appeal, I said I was prepared to do so without requiring MF to file a formal notice of application for permission. For the reasons I set out in that judgment, and which I need not repeat here, I refused permission to appeal and refused to direct a re-trial. I explained why, contrary to MF's contention, there was no new evidence and how, in reality, his challenge to my findings was no more than an attempt to re-argue the case and to persuade me (or the Court of Appeal) to come to a different conclusion. I described his application for permission as "devoid of merit". I said that there was simply no basis for a re-trial. I observed that a wish to have the opportunity of re-arguing a case in the hope that it will produce a different outcome does not begin to justify a request for a re-hearing.

8. Accordingly the same day, 28 January 2011, I made an order dismissing both of MF's applications. I made clear at the end of my judgment that the matter would proceed in accordance with the directions I had given in December 2010.

9. So far as I am aware MF has never sought to pursue any application to the Court of Appeal for permission to appeal the order I made on 28 January 2011. It follows that both the judgment I gave on 30 September 2010 and the judgment I gave on 28 January 2011 (and the order I made on the latter occasion) are final and binding.

10. Thereafter, MF sent my clerk a number of further emails and letters; they are dated 1 February 2011 (two), 2 February 2011 and 3 February 2011 (the latter an email sending a copy of the letter dated 2 February 2011) and contained what MF asserted was new evidence. On 3 February 2011 my clerk wrote to MF as follows:

> "Lord Justice Munby has read your latest emails, two dated 1 February 2011 and the most recent dated 3 February 2011, and notes what you say.
>
> He is not prepared to reconsider any further either the judgment he handed down on 30 September 2010 or the further judgment and order dated 28 January 2011. Nothing you say provides any reason for doing so.
>
> You must appreciate that those two judgments are now final so far as the High Court is concerned. The only issues which remain for determination by the High Court (and which as you know Lord Justice Munby will be dealing with) are those referred to in the directions he gave on 14 December 2010, as

> set out in para 3 of the latest judgment. In relation to those matters you have filed your submissions.
>
> The next step, as you know, is for the local authority and the Official Solicitor to file their submissions. At that stage the judge will consider how best to proceed."

11. In accordance with the directions I had given, the local authority under cover of a letter dated 4 February 2011 filed Ms Greaney's skeleton argument dated 1 February 2011. Ignoring the directions I had given, MF wrote a letter dated 6 February 2011 responding to Ms Greaney's skeleton argument and in order, as he put it, "to demonstrate to the court that the Local Authority is misleading the court and that they have committed the act of perverting the course of justice by having excluded from the courts bundles documents." Ms Hodes' further skeleton dated 15 February 2011 was filed on 16 February 2011.

12. The same day, 16 February 2011, I gave further directions, indicating that MF should by 28 February 2011 set out in the form of a written skeleton argument to be sent to the other parties (and copied at the same time to me) any submissions he wished to make in response. I indicated that I was willing (but only if all parties agreed) to decide the matter on the papers and without an oral hearing. I indicated that if any party wished there to be an oral hearing, I would fix the hearing (probably in March 2011) with a time estimate of half a day. I said I was minded to agree to dispense with the need for attendance at that hearing by any party who wished not to attend or be represented. I asked that I be notified by 2 March 2011 whether or not anyone wished there to be an oral hearing.

13. MF's response to the skeleton arguments by Ms Greaney and Ms Hodes was in the form of a letter, erroneously dated 1 February 2011, which was in fact received on 28 February 2011.

14. Ms Greaney and Ms Hodes indicated that their clients did not require an oral hearing. MF said that he did. Ms Greaney and Ms Hodes indicated that their clients did not require their attendance at the hearing, which I accordingly dispensed with, being content in each case to rely upon their written submissions. On 21 March 2011 the parties were notified that the hearing would take place on 5 April 2011.

15. MF failed to attend the hearing on 5 April 2011. The explanation he subsequently provided in emails dated 6 April 2011 was not entirely satisfactory. Be that as it may, the hearing was re-fixed for 14 April 2011.

The hearing on 14 April 2011

16. At the hearing on 14 April 2011 MF appeared again in person. As they had previously indicated, the local authority and the Official Solicitor were neither present nor represented. During the course of the hearing MF handed in a file containing 13 groups of documents all of which he assured me (Transcript page 4) had previously been sent in, so that there was nothing new. At the end of the hearing I reserved judgment.

17. Towards the end of the hearing, MF asked (Transcript pages 52-53) for time to put in further material. As an indulgence to him I said that he could do so. MF initially said he could do this within 10 days (Transcript page 54) but in the event I allowed him 14 days (Transcript page 55). This was confirmed in an email my clerk sent him on 15 April 2011, reminding him that any further documents he wished me to consider had to be in by 28 April 2011 at the latest.

Events since the hearing

18. In an email which MF sent in reply on 15 April 2011 he indicated that it might take the solicitor he proposed to instruct to assist him in relation to the compensation issue two months to prepare the relevant material. On 21 April 2011 he wrote enclosing further documents in relation to the question of costs but said that he would need "a little longer" to deal with the question of compensation. MF then sent my clerk a number of emails and letters setting out further details of his case: they are dated 10 May 2011, 15 May 2011, 20 May 2011 and 18 June 2011. The latter enclosed a copy of a letter from BSG Solicitors LLP dated 15 June 2011 addressed to me in which they said that "we need to confirm that the Court does accept the principle that the Court accepts it has jurisdiction to award compensation."

19. On 21 June 2011 my clerk sent an email making clear my insistence that any further material which MF wished me to consider had to be delivered by 15 July 2011. The email spelt out that MF should treat this as a final order, time of which was of the essence. The email said:

> "You raise a question about [MF]'s claim for compensation. As you are aware, the local authority disputes that there is any liability and, moreover, points out – and the judge thinks this is correct – that [MF] has never identified any basis in law for such a claim.
>
> The judge has not as yet made any ruling on the point one way or the other and is therefore unable to give you the confirmation you seek."

The email concluded:

> "The judge looks forward to receiving any further material that either [MF] or you on his behalf wish the judge to consider. But, to repeat, it must be with us by 15 July 2011."

20. Since then MF has sent my clerk a number of further emails and letters: they are dated 21 June 2011, 30 June 2011, 14 July 2011, 15 July 2011, 23 July 2011 and 26 July 2011. His final words at the end of that last email are "**Are we, [RB] and I, not entitled to Justice?**"

21. On 14 July 2011, BSG Solicitors LLP had written to the court stating that they were not on the record for MF and indicating, as I read their letter, that they lacked the time to advise him in respect of the compensation claim. In the email he sent the same day MF explained why, as he put it, "I intend not to submit a report on Compensation …

and the reasons for keeping it in abeyance." He said "I have not been able to come to a conclusion in relation to my legal right as **I am not a lawyer** and I need more time."

The parties' contentions

22. As I have indicated, MF's submissions were set out in a number of documents (with their enclosures): (i) his letter dated 8 October 2010, (ii) the letter from Newman Law dated 16 December 2010, (iii) the letter from MF dated 29 December 2010, (iv) his emails and letters dated 19 January 2011, 25 January 2011 (two), 27 January 2011, 1 February 2011 (two), 2 February 2011 and 3 February 2011, (v) his letter dated 6 February 2011, (vi) his letter (erroneously) dated 1 February 2011 but received on 28 February 2011, (vii) the documents he handed in at the hearing on 14 April 2011, (viii) his letter dated 21 April 2011, (ix) his emails and letters dated 10 May 2011, 15 May 2011, 20 May 2011 and 18 June 2011, and (x) his emails and letters dated 21 June 2011, 30 June 2011, 14 July 2011, 15 July 2011, 23 July 2011 and 26 July 2011.

23. Much of this material is repetitious. I do not propose even to attempt to summarise it, not least because much of it is simply irrelevant to anything I have to decide. Nonetheless I have had all this material very much in mind, just as I have very much in mind everything that MF said in the course of his oral submissions at the hearing on 14 April 2011 as recorded in the Transcript to which I have already referred.

24. The Official Solicitor's case is set out in his witness statement dated 22 November 2010 and the skeleton arguments by Ms Hodes dated 18 November 2010 and 15 February 2011. The local authority's case is set out in the skeleton argument by Ms Greaney dated 1 February 2011.

The issues

25. As will be apparent, I am concerned with two issues, and only two issues: costs and MF's claim for compensation. I emphasise this point because most of the material MF has put before me, and the vast bulk of his arguments, are not in fact directed to either of these issues. For, notwithstanding my judgment and order of 28 January 2011, MF has persisted, endlessly, repetitiously and obsessively, in seeking to re-argue the matters which I dealt with in my judgment of 30 September 2010. That judgment, as I have explained, is now final and binding. It is simply not open to MF to seek to re-open my findings or to re-argue issues that were disposed of finally and conclusively in that judgment. I appreciate that MF may disagree with some of my findings, but I cannot help that. For good or bad, like it or not, he is bound by them, just as are the local authority and the Official Solicitor.

26. I add this, lest MF thinks that he is being denied justice because of some technical legal rule. In my judgment, none of this material – almost all of which, I emphasise, was before me when I wrote the judgment of 30 September 2010 and none of which constitutes new evidence – even begins to cast the slightest doubt on the correctness of my findings. His points are devoid of merit. Even it was open to me to reconsider my findings, I would not alter any of them.

The issues: compensation

27. The basis upon which MF seeks compensation is not very clearly articulated but would seem (see for instance what was said in the letter of 16 December 2010) to be based upon (a) the local authority's handling of the Baclofen incident (issue (b)) and (b) the local authority's allegations against MF – none, he says, ever substantiated – in relation to (i) sexual abuse, (ii) physical and emotional abuse and (iii) financial abuse (issues (a) and (f)).

28. In relation to this, Ms Greaney makes two fundamental submissions:

    i) First, that MF has identified no basis in law for his claim for compensation. The claim has not been properly particularised. There is, in law, she says, no proper basis for any claim; in particular, there is no basis in law for any claim in relation to the apology issue.

    ii) Second, that there is in any event no factual foundation for the claim. The 'facts' relied upon in support of the claim do not, she says, accord with my findings. In relation to Baclofen, as she points out, I said (judgment para [69]) that "it is difficult to see how … the local authority can sensibly be criticised." I did not find any of the allegations of which MF complains to have been put forward improperly by those making them. On the contrary, I found (judgment para [65]) that the local authority was justified on the evidence it had in making the original allegation of sexual abuse; I found (para [67]) that, quite apart from any allegation of sexual abuse, the local authority was "fully justified" in commencing the proceedings; and I found (para [123]; see also para [151]) that the allegations of financial abuse had at all times been made by all concerned in good faith, without any impropriety and in circumstances where there appears to have been an appropriate basis for them.

29. It is not altogether clear from his most recent communications whether MF is still pursing his claim for compensation. I shall assume in his favour that he is.

30. Insofar as his email of 14 July 2011 includes an application for an extension of time in which to formulate his claim for compensation, the application is refused. I gave directions as long ago as December 2010. Since then, MF has been afforded a double indulgence: at the hearing on 14 April 2011 I gave him the further time for which he asked; subsequently I extended that time until 15 July 2011. Enough is enough. Making every allowance for the fact that MF has been acting as a litigant in person (albeit that he has had professional assistance in recent months) I am satisfied that he has had more than enough time in which to formulate his claim. The other parties are entitled to finality. The litigation must be brought to an end.

31. So far as concerns the substantive merits of his claim for compensation, I can be brief. Essentially for the reasons identified by Ms Greaney it must be dismissed. There is, for the reasons I have already summarised, no factual foundation for any part of his claim. That of itself is the end of it. Moreover, and in any event, MF has still not identified any basis in law for his claim for compensation.

The issues: costs

32. The issue of costs raises more difficult questions.

33. There are, as will be appreciated, two applications for costs. MF seeks costs from the local authority. The Official Solicitor seeks costs from MF from 4 August 2005 (the date of the hearing before Roderic Wood J); to the extent that any of these costs were increased by the stance taken by the local authority, the Official Solicitor also seeks an order against the local authority.

34. It is convenient to consider the Official Solicitor's application first. He accepts that this is not a jurisdiction in which costs follow the event: *Re HM (Vulnerable Adult: Abduction) (No 3)* [2010] EWHC 2107 (Fam), [2011] 1 FLR 1394, paras [27]-[28]. But he submits, correctly, that the outcome of the hearing and the conduct of the parties are both relevant to the exercise of the court's discretion under CPR 44.3. He draws attention in particular to the relevance of a party's "conduct" as referred to in CPR 44.3(5).

35. His case, as set out in his statement and in the two skeleton arguments prepared by Ms Hodes, can be summarised as follows:

    i) The "central issue" which I had to determine (issue (p)) was where RB should live. On that issue MF lost, in circumstances where, as the Official Solicitor points out, I found (judgment para [166]) that "There was simply nothing which even began to suggest that the future might be different from the past." In the event, had RB not died before judgment, I would have upheld the arrangements made by Bracewell J on 10 May 2004.

    ii) The Baclofen issue (issue (b)) was "nothing to do with the case", MF's focus on it being, as I found (judgment para [69]), "unwarranted both historically and forensically."

    iii) The sexual abuse issue (issue (a)) likewise did not go to the real issue to be decided by the court, namely RB's best interests. MF's concern was rather to clear his name.

    iv) In relation to the other issues (see judgment, paras [29]-[31]), they were not relevant to the central issue, they were personal to MF, they did not resolve the litigation and, says the Official Solicitor, the manner and pursuit of such matters by MF was unreasonable. The Official Solicitor complains, in particular, of the "strident and vicious attacks" on the professional integrity of Dr Jeffreys (cf, judgment para [36]), the "manipulation and manufacture of evidence" by MF in an attempt to mislead the court (this relates primarily though not exclusively to his dealings with Mr Sohewon), his "unjustified personal attacks" on the integrity of the Official Solicitor, his staff, solicitors and counsel, including allegations that the Official Solicitor had tampered with the court bundles, and his "relentless, discourteous and bullying" behaviour towards them.

    v) In relation to these and other issues raised by MF, the Official Solicitor draws attention to the terms in which I dismissed them, such as (what follows is far

> from exhaustive) "utterly groundless" (judgment paras [77], [153]), "utterly devoid of merit" (judgment para [77]; see also para [141]), "utterly baseless" (judgment para [142]), "completely groundless and entirely without substance" (judgment paras [134], [138], [139]; see also para [151]) and "fatuous" (judgment para [150]).

36. The Official Solicitor submits that, having regard to my decision in relation to the central issue, to the conduct of MF during the proceedings (including the manner in which he communicated or failed to communicate with the other parties), to the manner in which he presented his case (including making applications which served no purpose and were entirely without merit) and to the findings in my judgment, MF should be ordered to pay his costs since 4 August 2005. Those costs, he says, have been increased substantially by MF's unreasonable behaviour and, as a result, have been disproportionate to the issues involved. The litigation, he says, has used up an inordinate and disproportionate amount of time and public money. The merits, he contends, were all one way, and, he says, the Official Solicitor's stance has been completely vindicated.

37. As Ms Hodes puts it, MF is seeking to re-litigate the issues through the costs jurisdiction and by an application for compensation. Whilst acknowledging that for significant periods during the proceedings he has acted as a litigant in person, she submits that what she calls this apparent abuse of process is symptomatic of his lack of insight into the court process and his role in it. He has, she says, used the litigation process to pursue matters with which he is personally obsessed, without consideration of the burden on the other parties and the court. The gravamen of the Official Solicitor's application, she says, is not just that MF lost but that he acted wholly unreasonably over a period of many years and so wasted considerable public resources.

38. In support of his application, the Official Solicitor refers to two other matters. The first is the warning that Bracewell J gave MF on 10 May 2004 (Transcript para [7]), that

> "if the matter were to come back to Court and be further litigated and he were not to succeed, then he could be faced with a very substantial bill of costs."

39. The other is that the Official Solicitor's predecessor consented to act for RB because she appeared to have sufficient capital to cover her costs; indeed, the court made an order providing that the Official Solicitor's costs be met from her estate. However, it became apparent in due course that RB's capital had been depleted, first by the removal of the money in her bank accounts during the period when MF was acting as her attorney and, second, by the local authority's charge on her house in respect of her financial contributions to the cost of her social care. The Official Solicitor's difficulties were, he says, exacerbated by MF's failure as her attorney to provide financial information despite repeated requests, and his refusal to complete a means form in order for RB to be eligible for public funding. This prevented a potential application for public funding by the Official Solicitor on her behalf. The end result, he says, is that there is no cover for the "extremely high" costs he and his predecessor have incurred.

40. The local authority's position is that, having regard to the approach to costs in this jurisdiction and the totality of my findings, the appropriate order is that there should be no order for costs. It seeks no order against MF and disputes that either he or the Official Solicitor should have any order for costs against it.

41. As Ms Greaney points out, not merely is the vast bulk of what MF has to say directed to an impermissible attempt to re-litigate issues which I have already determined, but he actually says very little in support of his application for costs. Although, as she makes clear, the local authority acknowledges and accepts the criticisms I have made of its handling of the sexual abuse and related issues, she submits that neither those matters nor anything else justifies an order for costs in favour of MF. Looking to the litigation more generally, she submits that MF lost on the central issue; indeed, except in relation to the apology issue, he can, she says, fairly be said to have lost on all issues – an appraisal with which Ms Hodes agrees. Moreover, it has to be borne in mind, she submits, that I did not criticise the local authority for initially raising the allegation of sexual abuse, my criticisms focusing on the local authority's subsequent handling of the issue and its failure to apologise. Given the welter of other issues I had to consider (not least the myriad complaints raised by MF) it cannot reasonably be said, she submits, that the proceedings would have come to any earlier or significant less costly conclusion if the local authority had handled the sexual abuse issues differently. In short, the adverse findings against the local authority have to be seen in the light of the litigation as a whole and do not of themselves justify an award of costs in MF's favour.

42. So far as concerns the Official Solicitor's claim for costs against the local authority, the Official Solicitor makes clear that this relates only to such additional costs as were generated by the local authority's handling of the sexual abuse issues and that his claim is contingent on him not recovering those costs from MF. Ms Hodes makes clears in her skeleton argument that the claim is pursued only if I take the view that the local authority contributed "in a significant way" to the generation of costs in this context. Ms Greaney submits that this was a side issue which arose between MF and the local authority and did not in substance affect the Official Solicitor. And, as we have seen, she disputes that it contributed in any significant way to the costs. She says that MFs conduct of the litigation has been at heavy expense to the public purse and that there is no justification for imposing any further burden on the local authority.

43. Ms Hodes in response very fairly concedes that there is weight to the point that MF's complaints were so myriad that it may be difficult to assess the additional burden caused by the sexual abuse complaint.

44. At the outset there are two points that need to be made. In the first place, MF's conduct in the litigation was something which, directly or indirectly, arose in relation to a number of the issues I had to determine; and it was something I made various findings about, many exceedingly damaging to MF. Nothing which has been put before me since I handed down my judgment seems to me to justify any adjustment to those findings, whether by way of mitigation or otherwise. Thus, where the Official Solicitor now seeks to characterise MF's conduct in more severe terms than those I chose to use in my judgment – for example, in relation to Mr Sohewon or, more generally, in relation to what the Official Solicitor calls MF's "manipulation and manufacture of evidence" – I propose to proceed on the basis of my findings, nothing more and nothing less (see, for example, judgment paras [87]-[88]).

45. The other point relates to the Official Solicitor's complaints about MF's alleged obstruction of the process of his seeking to obtain public funding. This is not something, in my judgment, which I can properly take into account. If the Official Solicitor had cause for complaint (and I am not suggesting that he may not have done) then this was something which, as it seems to me, he could and should have ventilated at the time, either in this court or in the Court of Protection, either of which, it might be thought, would have had ample powers to prise the relevant information out of MF if indeed he was holding it back.

46. These two matters out of the way, I turn to address the three central questions.

47. The first relates to the costs of what everyone is agreed was the central issue, namely (issue (p)) the question of RB's best interests and where she should live. Now on this, of course, MF lost, and, moreover, lost in circumstances where he should have had Bracewell J's warning well in mind. In the circumstances there is, in my judgment, no sensible basis upon which MF can seek his costs, whether against the local authority or, for that matter, the Official Solicitor. So far as his costs are concerned, there should be no order. But I go further. I am not persuaded that in all the circumstances of the case it would be right, just or fair, to order MF to pay these costs.

48. Four factors in particular persuade me to this conclusion. First, what everyone accepts is the general approach to costs in this type of case. Second, the fact that MF was not seeking to re-open an issue which had previously been determined by the court after a full hearing. Prior to the hearing before me in December 2008, the court had made only interim orders. It is quite a strong thing in a case of this kind to say that the answer is so clear that a final hearing is either unnecessary or, at least, to be undertaken only at risk of an adverse order for costs. Third, the fact that MF's case did have a real measure of support from two expert witnesses. Although one was heavily criticised the other was not (compare judgment paras [104], [163], with paras [117]-[118]). Moreover, the case against MF on the facts was not all one way and not quite as dark as his opponents saw it (judgment para [165]). Fourth, the fact that, if there was indeed litigation misconduct sufficient to justify penalising MF in costs, then that can be done by way of a 'split' or 'issues-based' costs order.

49. Accordingly, so far as relates to the costs of the central issue I shall dismiss both the Official Solicitor's application and MF's application. In principle there should be no order as to costs.

50. The second question relates to the costs of the sexual abuse issue (issue (a)) and, in particular, the apology issue. On this I agree with the local authority that there should not be any order for costs in favour of either MF or the Official Solicitor. My reasons are in essence those articulated by Ms Greaney.

51. So far as concerns MF's costs, any claim which he might conceivably have against the local authority in relation to this issue would be swamped by the claims which the local authority would have against him in relation to the many issues (for example, issues (c), (f), (g), (h), (m) and (n)) where much time was taken up by him in attacks on the local authority or its representatives which signally failed. The fact that the local authority has chosen not to pursue MF in relation to those costs, when it might well have done, is no reason why he should have his costs. In my judgment he should not.

52. So far as concerns the Official Solicitor's costs, this was an issue which arose primarily as between MF and the local authority. It did not in substance affect the Official Solicitor and I doubt that it contributed in any very significant way to his costs. The reality, in my judgment, is that it is well nigh impossible to assess the additional burden upon the Official Solicitor, but the burden, whatever it may have been, was comparatively modest when assessed in the wider scheme of things. Accordingly I decline to make any specific order in relation to these costs.

53. Accordingly, so far as relates to the costs of the sexual abuse issue I shall dismiss both the Official Solicitor's application and MF's application. In principle there should be no order as to costs.

54. The third question relates to the costs of all the other issues. The stark facts here are that these were almost all peripheral issues which had more to do with MF's personal concerns than with RB's welfare; that on all these issues MF lost; and that in very large measure both his pursuit of these issues and the manner in which he chose to do so were unreasonable. I do not propose to rehearse what is set out in great detail in my judgment; the key points have already been summarised (see in particular the language extracted in paragraph [35] above).

55. In these circumstances the Official Solicitor, in my judgment, is entitled in principle to an order for costs against MF in relation to all these issues. In relation to these issues MF's conduct of the litigation was far outside the ambit of what is reasonable or appropriate in a case of this kind. His behaviour over a very long period takes him, in my judgment, far outside the circumstances where it is appropriate to make no order as to costs. On the contrary, his pursuit of all these issues, and more particularly the extravagant, strident and on occasions vicious way in which he chose to pursue them, mark this out as a classic case for making an adverse order for costs.

56. I recognise, of course, that the fact that a litigant's conduct opens the door to the making of an adverse order for costs does not, without more ado, justify actually making an order. But in the present case the factors that open the door also more than justify – indeed, in my judgment they demand – making the order the Official Solicitor seeks.

57. The question then becomes how most fairly and justly to give effect to this. It is unthinkable that I should make an order requiring a detailed assessment on an issue by issue basis. This is quite plainly a case where I should order MF to pay a percentage of the Official Solicitor's costs, that percentage reflecting the principle that MF is not to be required to pay the Official Solicitor's costs of the central issue or of the sexual abuse issue but only his costs of the other issues.

58. The assessment of such a percentage is inevitably impressionistic and produces a figure which can at best be only a rough approximation. Mathematical precision is impossible. I have to take a broad axe and do my best to achieve what in the nature of things can only be rough justice. I have of course been steeped in the minutiae of the case over a number of hearings spanning some five years. I take that into account. I bear in mind that whatever the time spent on the various other issues, the central issue would inevitably and on any basis have taken up a substantial proportion of the overall time and costs. And I also bear in mind that the proportion of space occupied

by the various issues in my judgment bears only a tenuous relation to the time and costs expended on them before and during the final hearing.

59. Doing the best I can I conclude that 20% of the Official Solicitor's costs from 4 August 2005 to the date when I gave judgment are attributable to those issues in relation to which, for the reasons I have given, he is in principle entitled to his costs against MF.

60. I shall therefore order MF to pay 20% of the Official Solicitor's costs of the proceedings from 4 August 2005 to 30 September 2010.

61. I have considered as a separate issue the costs incurred since I gave judgment. In relation to those costs I propose to make no order. The Official Solicitor has succeeded, but only against MF and only in part. There has been no suggestion from the local authority that it might wish to seek any costs. I suspect that, assessed in the context of the wider picture, the costs incurred since I gave judgment, whether by the Official Solicitor or the local authority, are comparatively modest. In my judgment, broad justice will be done if I make no order in relation to the costs since 30 September 2010.

Conclusion and order

62. For these reasons I shall accordingly:

    i) dismiss MF's applications against the local authority for compensation and costs;

    ii) dismiss the Official Solicitor's application against the local authority for costs; and

    iii) order that MF pays the Official Solicitor 20% of his costs of the proceedings from 4 August 2005 to 30 September 2010, such costs if not agreed to be the subject of detailed assessment on the standard basis.

Postscript 11 October 2011

63. The judgment was sent to the parties in draft in the usual way on 3 August 2011. Since then my clerk has received various communications from MF. None of them affects anything in the judgment – they are almost exclusively directed to what MF calls my "outrageous" judgment of 30 September 2010 – or, with one exception, requires any further discussion.

64. In an email dated 8 September 2011 MF asks me to send him a copy of what he calls the "report" which, he says, he has been informed I sent to the GMC relating to Dr Jeffreys. I do not know what MF is referring to. I made no report to the GMC. I can only assume that he is referring to my judgment of 30 September 2010 which, I assume, someone has sent to the GMC.

65. The order will be in the following terms:

> UPON the various applications (1) by MF seeking compensation and costs from the local authority and (2) by the

Official Solicitor seeking costs from MF and from the local authority

AND UPON READING written representations from each of the parties

AND UPON HEARING MF in person

IT IS ORDERED THAT

1 The applications by MF against the local authority for compensation and costs are dismissed.

2 The application by the Official Solicitor against the local authority for costs is dismissed.

3 MF shall pay the Official Solicitor 20% of his costs of the proceedings from 4 August 2005 to 30 September 2010, such costs if not agreed to be the subject of detailed assessment on the standard basis.

The order will be dated 11 October 2011.

66. The proceedings in this court are now at an end.