

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER

Case No. CA20210013

Courtroom No. 5

PO Box 9300
Leicester
LE1 8DJ

Friday, 9th September 2022

before

TRIBUNAL JUDGE GRIFFIN
& TRIBUNAL JUDGE NEVILLE

MERMAIDS

- v -

CHARITY COMMISSION
& LGB ALLIANCE

MR M GIBBON KC and MR T LOVEDAY appeared on behalf of the APPELLANT
MR I STEELE appeared on behalf of the FIRST RESPONDENT
MS K MONAGHAN KC and MS A REINDORF appeared on behalf of the SECOND
RESPONDENT

WHOLE HEARING

UNOFFICIAL TRANSCRIPT AGREED AS ACCURATE BY THE PARTIES

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1 **Case called.**

2 JUDGE GRIFFIN: Can we start with some introductions? I am Judge Griffin; to my left is
3 Judge Neville. We are the Judges tasked with deciding the appeal in this case. I can
4 see a lot of faces in front of me. Perhaps, Mr Gibbon, you could make some
5 preliminary introductions?

6 MR GIBBON: Madam, I appear with Mr Loveday, to my left for Mermaids, the appellant.
7 Mr Steele appears for the Charity Commission; he is on my right and the second
8 respondent, who was added by order of Judge MacMillan, in September last year, is
9 represented by my learned friend, Ms Monaghan, further to my left. Before going
10 any further, all of us adopt and endorse the court's – the tribunal's initial comments
11 at the opening of this matter. Clearly, this is happening just before the
12 commencement of the hearing and in the very limited time available, it's been noted
13 that, for instance, the courts and tribunals in Scotland have decided that it would be
14 appropriate not to sit today whereas different guidance, I understand, is in place in
15 this jurisdiction.

16 Now, I raise this as a matter for discussion and I would be very much in the tribunal's
17 hands. It appears to us that, in the light of the guidance, that it's certainly appropriate
18 for housekeeping matters to be dealt with today but there might appear to be an
19 argument that would be inappropriate to send us away into the arena of a substantive
20 matter. I raise those questions, to put it this way, neutrally, so that it's been properly
21 put for consideration and our position is simply that if the tribunal wishes to go ahead
22 and that is the appropriate course and if the tribunal were to think the matter needed
23 further discussion, then, we could, perhaps, engage with the other parties and discuss
24 it further. My anticipation is that the other parties would be neutral on whether the
25 tribunal should or should not proceed to the substantive issues. That's one matter.

26 The subsidiary matter, though, which is of practical importance, whatever happens,
27 is that one of my witnesses is a Member of Parliament, as you may realise. He has
28 understandable obligations flowing through from Her Majesty's sad death and he will
29 be unavailable today in any event. The intention was, in terms of the order of
30 witnesses that the available witnesses today would be Mr Roberts and
31 Mr Nicolson MP. So, if we do go ahead, subject to the tribunal, the anticipation
32 would be that after Mr Roberts' evidence is concluded then, that would be an
33 appropriate point to rise. That's the subsidiary point but, perhaps, the appropriate
34 thing is to debate this on the first matter if we may and I'll stop speaking at this point
35 and see if the other counsel have anything they wish to add.

1 JUDGE GRIFFIN: Mr Steele?

2 MR STEELE: Nothing. I would endorse what Mr Gibbon has said. We are in the tribunal's
3 hands.

4 JUDGE GRIFFIN: Thank you.

5 MS MONAGHAN: And similarly us. I think we endorse what Mr Gibbon has said.

6 JUDGE GRIFFIN: Thank you. It is something Judge Neville and I will discuss later to let
7 you know our current instructions from the Judiciary is that court business will
8 continue at this stage but, obviously, that is subject to review and we will check on
9 the guidance. If there is any renewal of that or update to it when we rise to consider
10 the issues which, I think, everybody is agreed, that it is appropriate to deal with in
11 any event.

12 MR GIBBON: I am much obliged.

13 UNKNOWN COUNSEL: Sorry to interrupt. Is it possible to speak closer into the mic
14 please? Some people are having difficulties hearing.

15 JUDGE GRIFFIN: Is that Mr Noah[?].

16 THE CLERK OF THE COURT: Yes.

17 JUDGE GRIFFIN: Thank you, Mr Noah. We need to ensure that we have the right
18 microphones activated here. I am just going to ask the clerk to assist us to make sure
19 that we all – we have a number of microphones on our desk; some of which will be
20 to record; others of which will be for the CVP link, which reminds me, there are
21 certain things that I need to say about that at this stage. Thank you.

22 I believe there is a facility to record the hearing in this room, is that right? Or, is that
23 being done by the CVP link?

24 **Discussion *sotto voce*.**

25 JUDGE GRIFFIN: Mr Noah, can I just check with you that you are recording the hearing?

26 THE CLERK: Yes, I am recording the hearing.

27 JUDGE GRIFFIN: Thank you very much, Mr Noah. Do we have remote observers this
28 morning?

29 THE CLERK: Yes.

30 JUDGE GRIFFIN: Thank you very much. I would just like to say, for the benefit of
31 everybody in the courtroom and also on the CVP link and may I pause there to ask if
32 you can now hear me clearly, Mr Noah?

33 THE CLERK: Yes, I can hear you clearly.

34 JUDGE GRIFFIN: Thank you very much – that the tribunal expects everybody observing
35 these proceedings to remain silent unless they are a participant that has been asked

1 to speak by the tribunal. We will all listen carefully without interruption to the people
2 who are speaking in this hearing room. I understand that those who have been
3 admitted to the CVP observation room will have been asked to comply with my
4 directions of earlier this week and they have been asked to keep their cameras off and
5 their microphones set to mute. Mr Noah, if there are any diversions from the
6 expected standards of behaviour, would you let me know by email, please?

7 THE CLERK: Yes, I will let you know.

8 JUDGE GRIFFIN: Thank you very much. I need to warn everybody that any disruptive
9 behaviour, whether on the CVP link or in person may result in the person concerned
10 being excluded from this hearing. I also need to warn everybody, although I have no
11 indication that this is happening, that there shall be no recording of these proceedings,
12 except by the Court Service, which will be the official recording of these proceedings.
13 That, for clarity's sake, means no audio recording, no video recording, no
14 screenshots, whether that be by computer, phone or other device and if anybody
15 makes such a record, that may be a criminal offence. Sorry, to interrupt the flow but
16 I needed to lay those ground rules out at the beginning.

17 MR GIBBON: I am much obliged. I have deliberately not been speaking too loudly,
18 thinking the microphone was quite close but if that means I wasn't heard, I apologise
19 and if at any stage, it is felt that I am not coming across clearly enough, I hope the
20 message will be got to me and to the tribunal.

21 JUDGE GRIFFIN: I do not think there is any form of amplification of your voice in the
22 room. May I just check, because it is quite a large room and it is important that
23 everybody sitting behind you can hear you. Could I have an indication from the back
24 of the room whether – no, I think the solicitors and parties present and observers are
25 struggling to hear, at the moment.

26 MR GIBBON: I will raise my voice a little, then.

27 JUDGE GRIFFIN: Thank you very much, Mr Gibbon.

28 MR GIBBON: Thank you. I was next going to move to practicalities of housekeeping. In
29 terms of soft copy bundles, my understanding is, the tribunal should have six
30 altogether and I'll run through what they are.

31 JUDGE GRIFFIN: So, we have got them on the desk here. We have not seen them before
32 we came in so, we will need to check that we have what we need.

33 MR GIBBON: I was about to say, in terms of bundles, I was going to go through the soft
34 copies first and then, the hard copies subsequently.

35 JUDGE GRIFFIN: Of course.

1 MR GIBBON: So, the soft copies, which will have been received in advance are volume
2 one, which contains orders, pleadings and applications and witness statements.
3 Volume two, which contains supporting documents in respect of the appeal,
4 documents produced by the Charity Commission and exhibits to the witness
5 evidence. Then, volume three, which is very substantial – I’m sorry – volume three,
6 less substantial, is correspondence bundle up to 2 September. Volume four is the
7 substantial bundle in the sense of, these are the matters that we may be needing to
8 refer to regularly. This includes skeleton arguments, chronology, list of facts, etc.
9 And, list of issues. There’s a volume five, which is an updated correspondence
10 bundle with also additional case management directions in. I have been given a hard
11 copy this morning but I understand the soft copy has also been provided. We can
12 hand up hard copies, if that is-

13 JUDGE GRIFFIN: We did receive the soft copy but would be grateful for those in due
14 course.

15 MR GIBBON: And then, finally, there is a bundle of authorities which is substantial in
16 terms of size. Now, in terms of the hard copy bundles, I have been told and I haven’t
17 got my own copies of these that volume two, which is very lengthy had been divided
18 into four parts.

19 JUDGE GRIFFIN: Yes.

20 MR GIBBON: And, may I check whether they’re labelled in tabs in a way that-

21 JUDGE GRIFFIN: Labelled using Post-It notes-

22 **Discussion sotto voce.**

23 MR GIBBON: I’m told there will be proper stuck on labels at the short adjournment.

24 JUDGE GRIFFIN: They are tabbed – I have tab A, tab B and then, the remainder of the
25 documents flow in paginated order by the look of it, without any further tabs but that
26 would be as – there does not appear to be a tab C that I can see at the moment.

27 MR GIBBON: Yes, my anticipation is that there should have been more extensive tabbing,
28 certainly because the exhibits to certain of the witnesses’ statements have dividers
29 and quite a substantial number of exhibits in certain case. That is-

30 JUDGE GRIFFIN: Missing now-

31 MR GIBBON: That is something that will be of assistance all around. Certainly, the bundles
32 that you have are, essentially, the same bundles as the witness box has so, they need
33 to be in a form that’s readily acceptable by the witnesses.

34 **Discussion sotto voce.**

35 MR GIBBON: Well, that’s a practical matter that we can come back to.

1 JUDGE NEVILLE: If we do rise later on preliminary issues, then we can leave them here
2 unmarked and the Bar can have access to them to change them, while we are out of
3 the room.

4 MR GIBBON: Sir, yes. Then, there's a further practical matter which I am looking for the
5 tribunal's guidance on. It's inevitably the case in hearings that additional documents
6 do arise. We can do that in various ways. It might be, in the first instance, that
7 simply having a hard copy bundle into which those are inserted may be the most
8 practical, rather than trying to add them to existing bundles, which have already been
9 marked up. So, would that be an approach that-

10 JUDGE GRIFFIN: That would find favour, certainly, with me. That would then make it
11 clear, going forward, what had been given during the hearing as opposed to in
12 advance.

13 MR GIBBON: Well, I'm sure, in addition, it would be useful, in due course, to have soft
14 copies of those as well in a finalised form but in terms of the running of the hearing,
15 we'll work on the basis that they should be handed up in hard copy.

16 JUDGE GRIFFIN: Thank you.

17 MR GIBBON: The tribunal is aware that in volume four, there was an extensive reading list
18 and I now have to open my iPad to get the document.

19 JUDGE GRIFFIN: Mm-hmm.

20 MR GIBBON: So, that was at tab one of volume four which is page two. My understanding
21 – the parties' understanding is that the tribunal will have had the opportunity to do
22 some pre-reading. Can I assume that it's been able to do all the suggested pre-
23 reading?

24 JUDGE GRIFFIN: We have.

25 MR GIBBON: On behalf of the parties, we are very grateful. Moving on, therefore, there
26 are a number of procedural matters which have been decided in advance. The first
27 was in relation to remote observation. Then, there was remote participation, if
28 necessary, and, in relation to sharing documents with a third party, I was going to
29 suggest there might be need for further amplification in relation to remote
30 observation but in the light of the tribunal's observations, I don't propose to say
31 anything further on that. And, further directions were given by Judge Neville,
32 identifying eight issues on which the tribunal would wish to hear the parties at the
33 beginning of the hearing so, I am moving to those now.

34 Now, the first of those is in relation to the substitution of LGBA, a corporation, as
35 the second respondent to the hearing and that's because the original addition was of

1 the trustees of LGBA, as they were described in September last year. Now, the scope
2 of the debate here, I hope, isn't going to be one that is going to detain the tribunal for
3 a lengthy period. As you have seen from our skeleton argument, the position of the
4 appellants was simply that there should be clarity as to who it was and to that extent,
5 the application to substitute isn't opposed. We are neutral on it. There are,
6 potentially, consequential matters which arise, though. There was an issue between
7 the parties as to whether substitution, as I understand it, takes place as it were, as if
8 it had been in September 2021, or whether it's as of today.

9 Certainly, our starting point, in the absence of authority to the contrary is that
10 substitution simply takes place from today. That issue may or may not be live.
11 Secondly, although we've had lists of names of who, at particular points, were said
12 to be the trustees, I don't believe that we've had a single piece of paper saying,
13 "Individual X was a trustee from this period to this period and individual Y was a
14 trustee from this period to this period". Now, the reason I say that is, there is no
15 office of trustee, as such, in the constitution of LGB Alliance. There is the office of
16 director but, when we were looking through the lists previously provided, the office
17 of director did not seem to be wholly the same as trustee because not all the same
18 individuals were named.

19 So, it's in that context that request has been made. If the request has simply been by
20 the directors of LGBA to be joined then, we would have the evidence at Companies
21 House to rely on. So, that's the reason for that. One issue that has been raised in
22 correspondence is – well, it might be of relevance or otherwise were we ever to be in
23 a position of there being paying or receiving parties if there were costs orders. I don't
24 put that at the forefront of my submissions because costs aren't ordinarily a central
25 matter for these tribunals and we primarily put our point on the question of principle.
26 It's appropriate to know who, at any given point, was a party to proceedings. So, I
27 think, having said that, I should pass over, I imagine to Ms Monaghan because I don't
28 believe the Charity Commission have a position either way on this point.

29 MS MONAGHAN: I think – thank you, Madam. I think the only issue between us, as I
30 understand it, apart from identifying who the trustees and directors are; the only issue
31 is when substitution takes place. That is – is it treated – is the party treated as having
32 been joined or 'the party' at the outset of the proceedings or the intervention in this
33 case or does it just take place now, with the trustees having been the proper – proper
34 intervenors since the intervention occurred. It is our submission that 'substitution'
35 means what it says. This is a party that is substituted for the LGBA trustees as if they

1 were always party to these proceedings.

2 This is not a case where there has been a withdrawal or a dismissal so, there must
3 always be a party and that party, we submit, and it doesn't seem to be an issue – it's
4 only the date – is properly LGB Alliance because it's an appeal against their
5 registration. There is no dispute so far as the trustees are concerned, and just as with
6 any substitution, because there is an error in the name, for example, it's a correction
7 the appropriate defendant, in this case, intervenor; it's not a fresh party with a
8 withdrawal or anything of that sort. So, we say it's treated as if LGB Alliance were
9 always the party to these proceedings and, indeed, the appeal is against their
10 registration and there's no particular issue arising from the status or activities of the
11 trustees.

12 JUDGE GRIFFIN: The application was made specifically in the name of the trustees; of the
13 LGB Alliance-

14 MS MONAGHAN: Yes, yes.

15 JUDGE GRIFFIN: - do you say that they are, in substance, the same as the company?

16 MS MONAGHAN: They're, in substance, the same. I'm instructed that the instructions
17 were from LGB Alliance and the drafter of the pleadings, in error, if I could put it
18 like that, identified the trustees as the proper party and it's LGB Alliance that is the
19 subject of these proceedings. It is their registration that matters, not the position of
20 the trustees.

21 JUDGE GRIFFIN: As to the identification point that Mr Gibbon raises, is that something
22 that could be corrected without the intervention of the tribunal or-

23 MS MONAGHAN: Yes, that seems to me to be readily remediable. We can sort that out at
24 some convenient moment.

25 JUDGE NEVILLE: Because you seem to be confirming that the people who were giving
26 instructions to your instructing solicitors were, in effect, still the directors of the
27 limited company.

28 MS MONAGHAN: Our – we are instructed formally by LGB Alliance.

29 JUDGE NEVILLE: Yes, but the individuals, who were guiding it or directing it, are the
30 same people?

31 MS MONAGHAN: Ah, of course, I beg your pardon. Yes.

32 JUDGE NEVILLE: So, it might be in that analogy that if you think of a case that involves
33 shadow directors, you know, you could see where what would go, if there were
34 people other than those able to give instructions on behalf of the company, giving
35 instructions to solicitors to take certain steps then, that would be an issue but I think

1 you are saying that they are all the same people anyway?

2 MS MONAGHAN: They are all the same people.

3 JUDGE NEVILLE: All right, thank you.

4 MS MONAGHAN: And we're certainly happy to identify the trustees, if that would assist.

5 Certainly, if Mr Gibbon suggests that would be appropriate, that is absolutely fine,
6 including the dates on which they were trustees. Certainly, from our point of view,
7 we don't require a direction but we can do that.

8 JUDGE GRIFFIN: Thank you. In relation to the company, then, is there a resolution of the
9 company to intervene, as it was the application, that the tribunal could have sight of?

10 MS MONAGHAN: My instructing solicitor says he will find out; we will take instructions
11 on that.

12 **Discussion *sotto voce*.**

13 MS MONAGHAN: I'm told yes and we shall confirm the date in due course but I'm told
14 yes.

15 JUDGE GRIFFIN: Thank you. I think we would like to see a copy of that.

16 MS MONAGHAN: Certainly.

17 JUDGE GRIFFIN: And so far as the effect of the substitution and whether it is retrospective,
18 do you say there is any authority to which we should have regard? Mr Gibbon says
19 that there is no authority.

20 MS MONAGHAN: Not that we have found.

21 JUDGE NEVILLE: Is there an analogous authority in relation to civil proceedings, because
22 I would be surprised if it did not come up there?

23 MS MONAGHAN: There used to be the principle of relation back, as you will recall; it's
24 any amendments and so on would be treated as having been done at the time of issue
25 or the time of the pleadings. I can't find anything in the *White Book* that suggests
26 that principle continues to exist but nor can I find anything that says it's disappeared.
27 So, the answer is, I can't find anything, even in the ordinary civil proceedings context
28 and I also looked at, for what it's worth, at Halsbury's but I looked around and saw
29 if I could find some other cases including doing searches and so on and couldn't find
30 anything, I'm afraid.

31 JUDGE NEVILLE: It may be that if you are able to talk to the parties and confirm that they
32 are the same people, in effect, it might be that Mr Gibbon's concerns are eased
33 somewhat but, perhaps, that is a conversation you need to have.

34 MR GIBBON: Sir, I don't want to cut across Ms Monaghan if she is still making
35 submissions. On investigation of civil parallels, one thing I did find but decided it

1 was an analogy at best, was the case of *BPE Solicitors & Anor v Hughes-Holland (in*
2 *substitution for Gabriel)* [2017] UKSC 21, which is a Supreme Court decision. I'll
3 have to give an oral presentation. I don't have a copy here and we can, perhaps, come
4 back to it but that was a case where a trustee in bankruptcy had had right of action
5 vested in him which had been pursued, at the first instance, and on appeal by the
6 individual who subsequently became bankrupt. He was seeking an order in advance
7 that if he took the matter to the Supreme Court, he would not be liable for the costs
8 of the first instance hearing and the Court of Appeal hearing and he succeeded in
9 getting that order; subject, obviously, to the possibility that specific circumstances in
10 the case might lead to a different conclusion.

11 The starting point was that, by coming in later as the trustee in bankruptcy,
12 effectively, being substituted for the original litigant, he wasn't, thereby, taking on
13 responsibility for earlier matters. Now, it's an analogy, at best, but it does appear to
14 point in the direction that substitution would take place prospectively. I hear my
15 friend's point in relation to relation back but, of course, one of the issues, for instance,
16 if the change of parties took place after the end of a limitation period was, you would
17 look to see if there was any prejudice being caused by that; it may be that gets into a
18 whole different area of law which neither my friend or I would be, perhaps, usefully
19 spending our time or the tribunal's time on investigating.

20 Again, I echo what Ms Monaghan said; in the tribunal context, certainly, our research
21 didn't find anything and we didn't, obviously, find a civil procedure parallel which
22 was of sufficient assistance to the tribunal to be worth being the basis of submissions.
23 So, I mention *BPE v Gabriel*, because that is one thing that struck me as being
24 potentially in the same area, albeit it somewhat different.

25 JUDGE GRIFFIN: Thank you. We diverted from your submissions. Can I come back and
26 just check whether there is anything else that you would like to say?

27 MS MONAGHAN: Simply to reiterate what I have said; that it seems – it – I beg your
28 pardon – it would seem to us that substitution means what it says. We are asking for
29 a direction that this party that has been misidentified is substituted for another and
30 there are likely to be circumstances, I anticipate, fairly regularly, where the wrong
31 party is simply identified and an order for substitution is made and a liability for costs
32 and so on, prior to the date of substitution, isn't incurred because, otherwise, there
33 would be little point in substituting – there would be little point in correcting the error
34 if, actually, liability for acts prior to the date on which substitution occurred is
35 assumed to rest with the person who had been identified in error as the correct party.

1 So, while Mr Gibbon said it hasn't been possible to find a helpful authority, it's my
2 submission that, as a matter of principle, that must be right.

3 There must be a proper party and if this tribunal is minded to grant substitution then,
4 that proper party is LGB Alliance and has always been.

5 JUDGE GRIFFIN: Thank you, I will just check; Mr Steele, did you have anything that you
6 wanted to say?

7 MR STEELE: No.

8 JUDGE GRIFFIN: Thank you. Do you have any comments?

9 JUDGE NEVILLE: No, thank you.

10 JUDGE GRIFFIN: Would you like to reply?

11 MR GIBBON: Very briefly, if I may. The first point was in relation to my friend's
12 suggestion that this was a correction. I haven't troubled you with the detailed
13 background but this was a point that was argued for some months as being one that
14 didn't need correcting and it wouldn't assist but that's the reason why this was
15 ordered many months ago to be a preliminary point to be decided at the start of the
16 hearing.

17 JUDGE GRIFFIN: From my reading of the events before I took conduct of the case from
18 this side of the bench, it seems to be an issue raised by Judge MacMillan in her
19 directions.

20 MR GIBBON: It first appears in directions in January but that was following on from
21 various comments made by my client, going right the way back to the first edition of
22 the trustees on the basis – and I don't want to spend time on this but a company has
23 directors; under the Act, there are charity trustees but there's no office of trustee as
24 such and it was a divergence between the identity of the trustees named in the
25 application and the directors as listed at Companies House and that's why, as far as
26 we were concerned, the matter needed further clarification.

27 It was because that wasn't clarified that the matter was put before the Judge who,
28 therefore, made the direction in January, which was repeated in subsequent
29 directions.

30 JUDGE GRIFFIN: Yes.

31 MR GIBBON: So, that was the first point; that this was a deliberate choice. Secondly, my
32 friend made the submission that the individuals are, in substance, the same as the
33 company and I do, respectfully, say that must be wrong. As, I think, Sumption LJ
34 said in a Supreme Court case, there may be times where, in a one-man company – a
35 one-person company, in a colloquial way, the individual and the company are treated

1 as the same but it's the foundation of English company and insolvency law that they
2 are legally different. So, we do respectfully say that that same principle must apply
3 in all contexts with courts and tribunals. Other than that, I have no further points at
4 this stage.

5 JUDGE NEVILLE: I just want to ask you one thing, Mr Gibbon; your concern, as I
6 understand it, is if the substitution takes place, it implicitly discharges the trustees
7 from the proceedings and adds a new entity and then, any subsequent application, for
8 example, for costs, you would then not have any remedy against the party that was
9 in the proceedings?

10 MR GIBBON: That's certain one issue. One of the difficulties, when one has these
11 discussions in the abstract is trying to foresee how it might come to be relevant.

12 JUDGE NEVILLE: Well, that is where I am going, really, in that what would be wrong
13 with, if something comes up in the future, applying for the trustees to be added back
14 as a respondent to any application that you might make? There is power in the
15 tribunal's rules to – well, it is worded very broadly; “The tribunal may give a
16 direction – adding – substituting or removing a party as an appellant or a respondent”.

17 MR GIBBON: I suspect what we would be doing and it may be that this is of appeal to the
18 tribunal is, postponing the argument and it then it doesn't arise, it doesn't arise. But
19 I think we would be having the same argument again about whether they should be
20 added back or whether the effect and the already in place effect of the order for
21 substitution was to preclude that argument taking place.

22 JUDGE NEVILLE: Yes, I am just not sure if it does; that is what I am saying-

23 MR GIBBON: As I say, if there was an assurance that no such point would be taken, then
24 that would be one thing but, again, it tends to point in the direction of, it would be
25 better to get a ruling now and then, we will proceed and on the basis that all parties
26 are agreed that this point shouldn't be delaying the hearing any more than is
27 absolutely necessary.

28 JUDGE NEVILLE: Thank you.

29 JUDGE GRIFFIN: Well, what we are going to do is; we are going to hear you on the other
30 matters of housekeeping and then, we will retire to consider the issues that we have
31 to determine at that point. As long as there is no issue about whether we can proceed
32 without determining this is an issue. I do not think anybody would suggest that? No?
33 Thank you.

34 MR GIBBON: I think, perhaps, that has to be on the basis that Ms Monaghan would confirm
35 that she would continue to be instructed by the trustees if there had been no

1 substitution but that, I think, must follow.

2 MS MONAGHAN: I will take instructions but-

3 **Discussions *sotto voce*.**

4 JUDGE GRIFFIN: Let us just carry on with the other issues at the moment.

5 MR GIBBON: The second issue on the list is in respect of the application to adduce
6 Ms Gallagher's second statement. Our essential position, as the tribunal will have
7 seen, is that this is a matter for my friend and she must persuade the reasons for
8 lateness and relevance in the usual way.

9 JUDGE GRIFFIN: Yes, thank you.

10 MS MONAGHAN: Yes, we make an application, as you will have seen, to adduce a second
11 witness statement from Ms Gallagher. This was a statement dated 31 August 2022
12 so, is some months after the direction required statements to be exchanged, which
13 was on 18 March 2022. It is late because the attempt was made to ensure that all
14 matters that had arisen since the date of the last statement were before the tribunal
15 and didn't have to be adduced by way of further questions with the permission of the
16 tribunal.

17 And, those matters – my clients and, indeed, we regard as important – you will have
18 seen from the way that the arguments are put that the appellants content that, really,
19 Mermaids – sorry, forgive me, LGB Alliance has as its objects, really, only matters
20 that, in truth, are concerned with undermining Mermaids, undermining Stonewall and
21 matters such of that sort. So, in particular, being transphobic and promulgating a line
22 which is – expresses transphobic views and nothing more than that and that, to the
23 extent that their objects identify matters that are properly described as “charitable”
24 then, that is – I'm not sure they go so far as a sham but, certainly, we would say they
25 would need to go so far as a sham and so, they have produced a good deal of evidence,
26 seeking to demonstrate that, really, LGB Alliance are really only concerned with a
27 transphobic agenda and undermining other charities such as Mermaids and
28 Stonewall.

29 Necessarily, LGB Alliance have to demonstrate – to rebut that evidence. We will
30 say, in due course, it's irrelevant, as you will have seen from the skeleton arguments
31 – the proper place to look at this is on the charitable instrument itself – so, we will
32 say it's irrelevant but while it's there – while those issues are extant, it's necessary
33 for my client to demonstrate that, actually, they are engaged in activities that fall
34 plainly within the context of their objects and that includes updating matters, for
35 example, like lottery funding to undertake some particular activities.

1 Madam, Sir – that’s why this statement has been – that’s why we make the
2 application to adduce fresh evidence in the form of the statement or a witness
3 statement outside of the direction of the time limit given and it’s true to say that the
4 last events, so far as this statement is concerned, occurred in July and the statement
5 was dated 31 August 2022 so, I think objection is made to that too. That is even if
6 there is an explanation for seeking to adduce further evidence in the form of this
7 statement – it ought to have been submitted – served more promptly; completed and
8 served more promptly than it was.

9 I am instructed that it was anticipated that there would be or might be other matters
10 to include. I can’t say any more than that for various reasons; it would be improper
11 for me to go into. So, perhaps doesn’t help so much but, perhaps, if I can put it more
12 neutrally; it was important that there was a need for further evidence or a further
13 witness statement but rather get the most complete witness statement in anticipating
14 that there would be no further matters that would have to be addressed by way of a
15 fresh witness statement or seeking to adduce oral evidence in the witness box by
16 supplementary questions if the tribunal were minded to give permission for that.

17 There is no suggestion, I should say, and no doubt, Mr Gibbon will correct me if I’m
18 wrong but there is no suggestion there is any prejudice caused to any party by this
19 evidence and that, in my submission, is an important matter. The evidence is
20 important, we say; it’s relevant given the way that the appellant puts their case. It’s
21 relevant; it’s significant. No prejudice has been caused. It’s come at a time which
22 makes it less likely there will need to be any request to adduce further evidence by
23 way of oral evidence or a further witness statement.

24 In my submission, therefore, it’s appropriate, with respect, to grant permission to
25 admit it.

26 JUDGE GRIFFIN: Can you explain, if you are able, why no application was made in
27 advance of serving a witness statement?

28 MS MONAGHAN: I’m afraid I can't provide an answer to that.

29 JUDGE GRIFFIN: Thank you. Mr Steele, I understand you are neutral?

30 MR STEELE: That's right, ma'am.

31 JUDGE GRIFFIN: You are, thank you. I will come back to you, Mr Gibbon.

32 MR GIBBON: Just a few short points, if I may. First, we were told that there might be a
33 further statement which we would get in advance of the filing of our skeleton
34 argument on 15 July. Obviously, that did not happen so, we had not unreasonably
35 assumed there wasn’t going to be a further statement. Secondly, in terms of the

1 prejudice point; I agree, I am not asking the tribunal to say there is a prejudice though
2 I do note that the most interesting document attached to the statement is a letter from
3 the Charity Commission about a regulatory compliance case in respect of which there
4 is no further information given, i.e., an investigation of LGB Alliance and that's a
5 matter which, perhaps, we might have been able to pursue further if we'd been told
6 at an earlier date because it might overlap. I will put it no higher than that; it might
7 overlap with the issues which this tribunal is considering.

8 The third and last point is that we do note that what is exhibited is in substantial part
9 notes of the committee on which Mr Nicholson sits; the DCMS committee and not
10 only is the bulk of that material of no obvious relevance – we think there's about five
11 pages within the 60-odd pages which are of assistance – but it also raises the question
12 of what, in due course, one might seek to do with parliamentary material. It is one
13 thing, for instance, to put it in but a separate question arises, for instance, if somebody
14 decides they want to cross-examination in relation to it because, prima facie, that is
15 not something which this tribunal would wish to happen and, in fact, would be
16 impermissible as far as the parliamentary authorities were concerned. So, I raise
17 those points. As I say, it's a matter for the tribunal and unless Mr Loveday or those
18 behind me have further questions that need to be put; that is all I want to say.

19 JUDGE GRIFFIN: So, the reason you are saying that there is some relevance to, at least
20 part of this statement and exhibits-

21 MR GIBBON: We accept there is some relevance. We accept that my friend is right that,
22 especially in the tribunal, there is the opportunity to supplement on developments
23 and in respect of developments, where they are of importance, the tribunal, we would
24 understand, would always give such approval absent special circumstances.

25 JUDGE GRIFFIN: The operation of the tribunal rules is such that relevant evidence is
26 generally admissible unless there is a reason that it ought to be excluded.

27 MR GIBBON: Madam, yes.

28 JUDGE GRIFFIN: And the reason that you rely on to say that we ought to exercise that
29 discretion to exclude the evidence is, simply, that it was late and you had to prepare
30 your skeleton argument before you saw it, is that right?

31 MR GIBBON: I, perhaps, should clarify, then, if that is the impression the tribunal has
32 received. My position is neutral on whether the evidence should be admitted. There
33 are points we wish to draw to the tribunal's attention for the tribunal's consideration
34 but our position is – is neutral, obviously.

35 JUDGE GRIFFIN: All right, thank you very much. That is very clear. Do you have any

1 questions?

2 JUDGE NEVILLE: No, just on that final point; you mentioned about parliamentary
3 privilege. There is no intention by anyone to trespass into that during the hearing
4 because that would need to be raised at a preliminary-

5 JUDGE GRIFFIN: Yes, we will not be challenging the contents of the-

6 JUDGE NEVILLE: No. There is recent Upper Tribunal authority on it, if you need to look
7 at it. *DK v RK* in the Upper Tribunal.

8 JUDGE GRIFFIN: Ah, thank you. I am grateful. Thank you, Ms Monaghan, did you want
9 to reply?

10 MS MONAGHAN: I can't say anything more than I already have, madam.

11 JUDGE GRIFFIN: Thank you very much. We will deal with that later. Are there any other
12 matters?

13 MR GIBBON: Madam, moving onto the third issue; this was the publication of documents
14 to the public and that's on both timing and principle. You will have seen from the
15 parties' notes that we seem to be in agreement; there is one – there is one point of
16 clarification which we realised, from discussions this morning, may be needed,
17 though. The three elements, so that I've said these openly, are that the parties'
18 skeleton arguments may be published in full, once the hearing begins on 9 September
19 – so, that is today and, therefore, if that hasn't happened already, it's intended to
20 happen as soon as is convenient.

21 Secondly, the parties' witness statements may be published in full once the witness
22 in question has commenced their oral evidence. So, commenced rather than
23 completed. So, the formalities of the witness adopting the evidence will, obviously,
24 need to be gone through but thereafter, again, subject to the practicalities, that
25 statement will be available. Thirdly, and I use the words that were chosen – exhibited
26 documents can be published only if they've been put in evidence at the hearing and
27 there is, I think, an ambiguity there which needs clarifying because the assumption
28 made is that the exhibited documents are to be treated differently to the statements.
29 So, the assumption of the sequence, at least, appears to be that the mere fact that a
30 statement is in evidence doesn't mean that a document referred to in the statement is
31 in evidence. The way we had interpreted the parties' agreement was that where
32 specific documents, therefore, were referred to at the hearing, it would be those
33 documents that would be made available and, speaking to my friend, I think their
34 interpretation was somewhat different. I have also, I think, got to mention that the
35 Charity Commission has a separate point which needs to be flagged which is that

1 there are, of course, documents which they have which won't be put in evidence at
2 all because they are not attached to witness statements.

3 I think the position of Ms Monaghan and myself is that, that doesn't cause any
4 difficult because the relevant documents are the ones that the witness has referred to.
5 So, perhaps, if I stop there and pass to Ms Monaghan who can say what her
6 perspective is.

7 MS MONAGHAN: First of all, as to (i) and (ii), there is no difference between us. So,
8 skeleton arguments and the witness statements, once the witness in question has
9 commenced their evidence. As to the exhibited documents, it's my submission that,
10 once that process happens – that is, once the witness has adopted in evidence, the
11 witness statement, they do so with the exhibits. The exhibits are referred to in the
12 statement. Those documents, therefore, form part of the evidence. They are referred
13 to – they are adduced in evidence by the witness and, therefore, they are – ought to
14 be available to the public. It's difficult to know, otherwise, what is in evidence, on
15 the basis of the position suggested by Mr Gibbon – how does one know what's in
16 evidence? There is a passing reference to paragraph 12 in which there are four
17 documents mentioned.

18 Is it to be said that only one is in evidence? Two are in evidence? They are all in
19 evidence, we say, once they are exhibited and once the witness has adopted the
20 witness statement.

21 JUDGE NEVILLE: A feature of tribunal proceedings is that, unlike civil proceedings, not
22 all documents are formally exhibited in witness statements and, sometimes, people
23 make witness statements in these proceedings that do not use the word "exhibit" at
24 all. They just might – may make reference to a bundle or refer to a document by its
25 description and then, someone, subsequently, provides it. Here, it seems, there is a
26 mix. So, you do seem to be placing a legal significance on whether or not a document
27 is formally exhibited as part of a witness statement, compared to, it is just put in a
28 bundle.

29 MS MONAGHAN: Yes, there is another point I want to make, if I may?

30 JUDGE NEVILLE: Yes.

31 MS MONAGHAN: But the first point is, in my submission, because they have been
32 exhibited, they form part of the evidence, once the witness has adopted their witness
33 statement and, therefore, they ought to be available to members of the public and
34 they are readily identifiable because you, perhaps, will have seen, by the way the
35 bundle is organised, that it is organised in chunks. So, X is exhibits in one bundle;

1 Y is exhibits in another. So, it is readily achievable in terms of disclosing the
2 documents and permitting access to the documents by members of the public.

3 There is an authority which I can, perhaps, take you to; a Supreme Court authority
4 that suggests that it would often – you, perhaps, are familiar with it, sir – that it will
5 often be appropriate simply to give the members of the public a copy of the bundle.
6 Although, it technically won't form – all of it won't form part of the evidence,
7 perhaps, it allows the fullest access to the proceedings. Members of the public who
8 want the bundle, who follow it, know what's happening, know what parties are
9 referring to during the course of their submissions, and so on – may I just hand you
10 that authority?

11 JUDGE NEVILLE: Yes. Mr Gibbon, have you seen this?

12 MS MONAGHAN: Yes, and I'm very grateful to them because I gave it to them very late
13 because they have been very generous enough to be kind about that. The parties are
14 familiar with it and I think, had already looked at it-

15 **Discussion *sotto voce*.**

16 MS MONAGHAN: It's a completely different case but it concerned an application after
17 proceedings had been settled for access to the documents that had been put in
18 evidence and so, the question arose before the Supreme Court as to what documents
19 members of the public ought to have access to. The first thing to observe, that where
20 there is special provision made in relation to the supply of documents in civil
21 proceedings – so, we see that referred to at page 639 – internal 639, paragraph 16 –
22 they – those provisions were not determinative so, we see that at paragraph 23. That
23 rule concerned access to records of the court, and as Baroness Hale said, at paragraph
24 23 and 24, “That does not dispose of the issue; it is not all documents form part of
25 the records of the court”. So, it had to be dealt with as a matter of general principle
26 and the first matter, and although I think there is no dispute about this – I can certainly
27 say there is no dispute – it may be helpful for the tribunal to know, in any event, that
28 the question of witness statements was dealt with in terms and we see that at
29 paragraph 26 and 27.

30 Just to summarise, as Baroness Hale noted, “In the old days, if I can put it like that,
31 one would have had old-style evidence-in-chief with the questions being put to a
32 witness and the answers given orally so members of the public could follow easily
33 that which was going into evidence and an analogous procedure had to be provided
34 for where there were witness statements”, and that was met by ensuring they were
35 available to the public once they were adopted.

1 And, again, at paragraph 29, again dealing with open justice, written skeleton
2 arguments, different matter but, again, allows the parties to follow what's happening
3 in relation to argument – again, there's no dispute about that between the parties but
4 it may just be helpful for you to be aware of that for your note. Then, more
5 particularly, for our purposes at paragraph 41 onwards, the broader issues of principle
6 were dealt with and, again, if I may just say, again, this is mindful of the fact that
7 litigation has changed beyond recognition over even, perhaps, 20 or 30 years so,
8 documents are provided electronically, witness statements are provided, arguments
9 are in writing, and so on. So, Baroness Hale picks that up –how is it is that dealt
10 with? At paragraph 41, “The constitutional principle of open justice applies to all
11 courts and tribunals exercising judicial power of the State. It follows that less
12 inconsistent with statute or the rules of the court, all tribunals have an inherent
13 jurisdiction to determine what that principle requires in terms of access to documents
14 and information. The extent of access permitted is not determinative save to the
15 extent that they may contain a valid prohibition. It's not correct in terms of limits to
16 the court's jurisdiction when what is, in fact, in question is how the jurisdiction
17 should be exercised in a particular case”.

18 So, madam, you have – so, you have the jurisdiction to make an order, direct it at
19 securing open justice, dependent upon the case and what public scrutiny and public
20 access to the process requires and then, at paragraph 44 – again, picking up on the
21 written arguments – there is no dispute about that between us, allowing of access;
22 and then, dealing then with access to the evidence, more broadly – paragraph 47,
23 practicalities and proportionality are relevant – highly desirable that the application
24 is made during the course of the trial. In this case, it was made afterwards, because
25 it had settled, when the material is still readily available and the parties are before the
26 court and the trial is in day-to-day control of the process; any party who seeks access
27 will be expected to pay the reasonable costs although if access is provided
28 electronically, that will not present any problem and I would invite you to have a
29 look at that all, when you are undertaking your deliberations because it would be dull
30 for me to read it.

31 Over the page, at the top of the page, it makes the point that there may be
32 countervailing matters. At the very end, at paragraph 48 – the very end of paragraph
33 48, “A clean copy of the bundle, if still available, may, in fact, be the most practicable
34 way of affording non-party access to the material in question but that is for the court
35 hearing and application to decide”. I am not sure there is formally an application

1 before you but I anticipate there will be, if there isn't disclosure; I may be wrong but
2 I anticipate there will be and, as Baroness Hale sought to emphasise, really,
3 practicality and proportionality is the way through it.

4 If this tribunal thinks there is nothing to be lost by disclosing or making the bundle
5 available to members of the public – I don't think it's suggested that there's anything
6 in there that it would be inappropriate to grant access to when it is simply that some
7 of it is in evidence – if this tribunal considers that's the most proportionate and
8 practicable way to deal with that issue then, the tribunal may think that's the way to
9 do it; put the bundle on – the electronic version of the bundle in the chat box or
10 however one deals with it in this tribunal. It's been done before in the chat box, I
11 think, in other proceedings.

12 JUDGE GRIFFIN: A couple of – I need to come to Mr Steele in a minute but you have
13 spoken about the practicalities. Do you make any distinction – we have heard the
14 distinction between the witness statements, the witness's evidence, in terms of the
15 exhibits that they exhibit to those witness statements but, of course, the bundles, as
16 Judge Neville said, contain more than that.

17 MS MONAGHAN: Yes.

18 JUDGE GRIFFIN: So, there is a broader question as to whether the bundle, as a whole,
19 should be published. That may lead to distinctions being made between different
20 parts of that bundle and what should be released in the interests of open justice and
21 what should not be released. Do you make any distinction between any different
22 parts?

23 MS MONAGHAN: I certainly say as, madam, you've identified that the exhibits are part of
24 the evidence and so, they ought to be available to members of the public. As to the
25 other parts of the bundle, it's not that we put a case particularly that they should be
26 available to members of the public but it does seem there is nothing in there that is
27 problematic so far as disclosures are concerned. I think bundle one is directions,
28 orders and then, witness statements – matters of record; witness statements that will
29 be available to members of the public only. Half of the next bundle, in my – the way
30 I have ordered it – matters such as decision of the Commission; articles of association
31 – in fact, that may be exhibited as well; matters of that sort and there's some
32 repetition.

33 We don't put a positive case that members of the public should have access to that;
34 our positive case is in relation to the exhibits. It's merely a question of, would it be
35 most practicable? Would it be most proportionate to put the bundle up but it is fair

1 to say that it is readily severable because of the way that the bundle has been
2 organised, it is possible to say, “Not that chunk but those chunks because they are
3 exhibits and that chunk because they are witness statements”. So, it is capable of
4 being easily done if you were minded not to grant access to anything else that is in
5 evidence.

6 JUDGE GRIFFIN: The other thing that we would need to think about in terms of release of
7 any material is whether it contains any personal data, whether sensitive or not and
8 whether any further redactions would be sought by any party. Can I ask you all to
9 turn your mind to that, just in case we do order the release of certain documentation?
10 As you know, this tribunal is quite familiar with issues about information rights.

11 MS MONAGHAN: Yes, in fact, there’s been a lot of redactions anyway for that very reason
12 but I will take instructions to make sure that exercise has been thoroughly done but-

13 **Discussion *sotto voce*.**

14 MS MONAGHAN: The Charity Commission, I’m grateful, have done it. We’re happy to
15 do another sweep to make sure nothing has slipped through the net.

16 JUDGE GRIFFIN: I think it is always important that a data owner makes any redactions of
17 their – or suggests such redactions to their own information. That is always the safest
18 way. Can I ask Mr Steele-

19 MR STEELE: Ma’am, yes, I’m grateful. Prior to this morning, we had expected the only
20 question about disclosure to the public at large related to the items that are on that
21 bullet point list rather than the bundle more generally, and as you will have seen, the
22 bundle, more generally, reaches far and wide beyond the exhibits and witness
23 statements. It sounds as from what Ms Monaghan was saying that she’s not actively
24 seeking an order for disclosure to the world at large of the bundle in full and it’s a
25 question of whether, obviously, it would be convenient for those who are actually
26 physically doing the uploading on the Internet to just upload the existing bundles but
27 I think, as she fairly did point out, that they are readily severable so, one can, fairly
28 easily make a PDF that only contains, for example, the witness statements and the
29 exhibits.

30 That was the course that I would suggest is appropriate, unfortunately, in this case in
31 circumstances where no one is asking for anything else to be put into the ether, as it
32 were. It’s worth just to say something about what else the bundles do contain. You
33 will notice that your bundles two – or, four volumes of bundle two, have got tabs A
34 and B and those are the sort of high-level categorizations and then, within those, there
35 are items – and, unfortunately – yes, a number of tabs but the whole of section B is

1 the exhibits from various witness statements. Section A are documents that were
2 disclosed by the parties at a much earlier stage in these proceedings last year. Item
3 one is supporting documents and notice of appeal.

4 Items two, three and four are disclosure given by my client, largely responsive to
5 [inaudible] FTT rules, with which you will be familiar. And taking, as always, erring
6 on the side of inclusion as to what documents should be provided and that's why
7 we've got a lot of material there that doesn't then feature in the exhibits to the witness
8 statements because they're documents that are what one might say are of peripheral
9 relevance, at most but we – I'm afraid, I haven't had the opportunity to take
10 instructions on this but I anticipate that what my client will say is, there is no
11 justification for all of that material, which is of most peripheral relevance, to be put
12 into the public domain in circumstances where no one is asking for that to happen.
13 And, in circumstances where Ms Monaghan has indicated that there is no practical
14 impediment to severing the bundle in a way that allows the parts that are of public
15 interest and relevance to be put into the public domain and everything else not.
16 That's the way I would see it. As I say, I haven't had an opportunity to take
17 instructions but I strongly suspect that that will be my client's position.

18 It's worth just saying that, within the body of those what I call peripheral or more
19 extraneous documents; there are, for example, quite a few pages of comments that
20 people have made – members of the public made when the Commission was
21 considering whether or not to register LGB Alliance as a charity and you could
22 probably imagine – have a look to see the tenor of some of those communications.
23 They have been redacted to remove the names of those making representations but I
24 would suggest that is not the sort of material that needs to be getting out there. There
25 is no need for it to be put in the public domain.

26 JUDGE GRIFFIN: Do you have any experience, or those who instruct you, Mr Steele, in
27 this sort of case as to how the matters are published? Is it left to the tribunal to publish
28 it or is the parties who take that responsibility?

29 **Discussion *sotto voce*.**

30 MS MONAGHAN: It is not something that I am familiar with; the actual process; the
31 practicality.

32 MR STEELE: No.

33 MS MONAGHAN: The suggestion was made of putting the link into the chat box and that's
34 only part of the equation. Link to what?

35 JUDGE GRIFFIN: Yes, so, we need to think about that as well. Was there anything else

1 that you wanted to say? Did you have any questions?

2 MS MONAGHAN: Apparently, I am told that there is a hosting mechanism, so it is possible
3 for it to be hosted somewhere and we can organise that. I will discuss it, of course,
4 with the other parties, if you were minded to grant permission for that but there is a
5 mechanism where it can be done with an accessible host-

6 JUDGE GRIFFIN: So, we need not delve into that in any depth, particularly, by the sounds
7 of it?

8 MS MONAGHAN: Not unless Mr Gibbon and Mr Steele want to but, certainly, we can
9 discuss it among ourselves or the solicitors to make sure that everybody was happy.
10 It is not that unusual, as you will know, these days, ma'am, and it can be dealt with.
11 I beg your pardon.

12 JUDGE GRIFFIN: Give me a moment.

13 **Pause.**

14 JUDGE GRIFFIN: There is just a matter of administration has arisen which, hopefully, we
15 will deal with. Thank you for bringing that to our attention. So, Mr Gibbon, is there
16 anything you would like to say?

17 MR GIBBON: Yes, there is no blame for the confusion here. I mean, we are where we are
18 but it is being raised at the outset of the hearing. My instructions are, there would
19 certainly be a wish to take advantage of the opportunity to look through and see what
20 redactions were needed – we entirely endorse the principal of open justice and we
21 entirely recognise what has been said in *Dring* case about doing what is appropriate
22 in the circumstances to achieve that and that the tribunal clearly has a discretion.

23 So, if that's a route which is appropriate to go; there is certainly no – in principle –
24 objection; it's the practical concern, bearing in mind that there is very significant
25 documentation as to what redactions might be needed and that's got two aspects and
26 I'm speaking on my feet as it were now; in respect of our own witness statements,
27 clearly that's a matter for our witnesses and thinking about the interests of the third
28 parties concerned where there are genuine concerns, as you'll understand, given the
29 background, as to personal information and confidentiality that may arise.

30 I can conceive that there also might be a case for saying that each party might have
31 observations to make to other parties about whether they might be minded to do
32 further redactions. So, that's a slightly different point. I think that would be a
33 question of communication and it's unlikely to arise but it does seem to me that there
34 is a possibility there might be a limited number of points where the parties could see
35 that it might be appropriate for further redaction of the other parties; that statement.

1 So, bearing that in mind, it does seem to point in the direction of both further
2 discussion between the parties as well as consideration by the tribunal, possibly
3 something that has to be revisited in the light of that; I'm looking at Ms Monaghan
4 to see if that is something that she-

5 MS MONAGHAN: I am content with that, if that is convenient for the tribunal. I wonder
6 if it might be better, perhaps, for the tribunal to say, in principle, what they might
7 consider should be available to the public and then, we can be working on how to
8 achieve that in a way that ensures that the interests of those whose information might
9 be present in the documents can be protected.

10 MR GIBBON: I fully endorse that.

11 JUDGE GRIFFIN: Thank you. Mr Steele?

12 MR STEELE: I also do.

13 JUDGE GRIFFIN: Thank you. Was there anything else, Mr Gibbon?

14 MR GIBBON: Not on that subject. I don't know whether the tribunal's administrative point
15 was a matter you wished to deal with now or after we had finished our issues?

16 JUDGE GRIFFIN: We are going to take a break in about five minutes so, is there a short
17 point that we can deal with now?

18 MR GIBBON: There's one – possibly two – short points we can deal with. The next point
19 was in relation to any outstanding issues over disclosure of documents to the
20 Good Law Project; the short answer is, no, there aren't any outstanding points. And,
21 the next point after that was the draft timetable and you should have received, I think,
22 by email, a copy of a draft timetable. Now, obviously, this was prepared in advance
23 of yesterday's news. The parties have an agreed list in which witnesses will be called
24 and we haven't tried to ascribe particular times within those windows and, inevitably,
25 in the usual way, they will be needed for a broad flexibility but, certainly, our
26 anticipation is that whether or not we get into witness evidence today, we don't
27 anticipate that there's any difficulty over the timetable being met and the hearing
28 being completed at the end of next week, obviously, absent unforeseen
29 developments.

30 JUDGE GRIFFIN: Was there anything that either you, Ms Monaghan, or you, Mr Steele,
31 would like to add to those two points?

32 MS MONAGHAN: No, not from me.

33 MR STEELE: No, thank you.

34 JUDGE GRIFFIN: I think that that concludes all of the matters of administration that-

35 MR GIBBON: That was the first five-

1 JUDGE GRIFFIN: That was the first five, all right.

2 MR GIBBON: - but that might be a convenient moment.

3 JUDGE GRIFFIN: I think it is likely to be convenient moment. What we are going to do
4 is, we are going to rise now. We will come back at 10 past 12.

5 **Court rises.**

6 **Court resumes.**

7 JUDGE GRIFFIN: During that break, Judge Neville and I were able to just look at certain
8 of the issues and how we will approach the remainder of the day and we able to
9 indicate that we will release any witnesses for today. We will not hear any evidence
10 today. So, that will help, certainly, Mr Nicholson and Mr Roberts to plan the
11 remainder of their day.

12 In relation to the disclosure bundle – thank you, that is very helpful – we would like
13 to indicate that our position is, looking at the application of the principles in *Dring*
14 to this case, that as much of the bundle as possible should be open for inspection by
15 the public, although we appreciate that not all of the bundle may come within that
16 indication. Therefore, we would like you to discuss the matter and to agree a
17 proposal, if possible, in relation to any documents that it is thought should not be
18 published and any redactions that are necessary and nothing is going to be published,
19 please, until the direction of this tribunal, in full, which will come on Monday.

20 In relation to the other matters, we will rise after we have heard further submissions
21 on the other matters of housekeeping and outstanding issues and make a
22 determination then. It might be that we will deliver those decisions today orally or,
23 we might release the parties and deliver them to you in writing; one or the other.

24 MR GIBBON: Madam, one point, in rising, if I may, in relation to your observation on the
25 bundles.

26 JUDGE GRIFFIN: Could we just pause a minute? Mr Noah? Mr Noah?

27 THE CLERK: Can you hear me?

28 JUDGE GRIFFIN: I can hear you, Mr Noah. Could you ask Miss Byrne[?] to turn off her
29 camera. I think she just has.

30 THE CLERK: Okay.

31 JUDGE GRIFFIN: Thank you very much. Could everybody who is listening on the CVP
32 link please put their microphones on mute and keep – make sure their cameras are
33 kept off. Thank you very much. Sorry, Mr Gibbon.

34 MR GIBBON: Madam, it's just in relation to the matter on the bundles. I am sure it will
35 assist if you get some sort of communication from the parties this afternoon and,

1 certainly, speaking personally, I imagine that is what we will try and do, as soon as
2 we reach some sort of agreement; if we could get some sort of correspondence to the
3 tribunal, we will.

4 JUDGE GRIFFIN: Thank you very much; that is very helpful.

5 MR GIBBON: Before I go further, I'm told, as well, I was still a bit softly spoken before
6 the short break. For those in the room, certainly, I will try just to lift the volume
7 slightly going forward. There are three further outstanding matters on
8 Judge Neville's very helpful list. The next one, we hope, is entirely straightforward.
9 That was whether the tribunal should commit any witness or representative to
10 participate in the hearing remotely, and any consequential directions. As things
11 currently stand, none of the parties' witnesses or advocates intend to participate
12 remotely but the parties will notify the tribunal were this to change.

13 JUDGE GRIFFIN: Thank you very much.

14 MR GIBBON: Madam, the next point is very much a contemporary issue but one of great
15 importance, even if there isn't a huge amount of precedent in relation to the
16 situations. Any remaining directions concerning remote observation and, in
17 particular, any application for permission to live tweet or otherwise
18 contemporaneously transcribe or summarise the proceedings. Now, there is a
19 relatively old piece of court guidance from 2011 which emphasises that it's a matter
20 for the tribunal to rule on, i.e., it's not an automatic entitlement.

21 That said, policies as between ourselves, I believe, are agreed subject to the tribunal
22 that this is an appropriate matter where live tweeting, if I can use that summary of
23 what was to happen – live tweeting should be permitted; it's prima facie likely to be
24 in the interests of open justice, which we have already addressed this morning. We
25 are agreed that, accordingly, the general approach should be that anyone attending
26 has permission to live tweet, provided that they do so appropriately and, obviously,
27 the tribunal would wish to emphasise that and, in particular, the parties – and, again,
28 I'm sure that the tribunal would echo this; are agreed that any live tweeting and
29 reporting must first comply with the general law and the existing directions and,
30 secondly, not interfere with the proper conduct of proceedings or evidence and
31 participants should be made aware of this and, obviously, my submission is part of
32 making participants aware of it but it's a matter, were the tribunal to be persuaded it
33 was appropriate that the tribunal itself would wish to emphasise as well.

34 That's as much as I wanted to say by introduction and, perhaps, again, if I pass to Ms
35 Monaghan, if there is anything she wishes to amplify?

1 MS MONAGHAN: Simply to endorse the observations by Mr Gibbon. There is some
2 enthusiasm for accessing both remotely, as you've heard, and via tweet, the
3 proceedings. It is not exceptionally unusual for live tweeting to occur now and, as
4 long as it's not disruptive, in my submission, there is no reason why it ought not to
5 happen and it does improve access to the hearing because, of course, people can
6 follow it on Twitter. So, as long as the parameters are identified, that is those already
7 mentioned by Mr Gibbon, must be appropriate, mustn't be disruptive so far as giving
8 of evidence is concerned, then, I would submit that it is appropriate in this case.

9 JUDGE GRIFFIN: Thank you. Mr Steele, any observations?

10 MR STEELE: Nothing to add, madam.

11 JUDGE GRIFFIN: Well, we are happy to give you a decision on that particular issue now.

12 We are happy to give permission for what is known as "live tweeting" of these
13 proceedings. We will keep that under review, especially if that permission is abused
14 by any person, whether in this room or online. We, therefore, give permission for
15 live tweeting of an actual factual account of these proceedings, which we find is in
16 the interests of open justice. So, anybody attending or viewing on the CVP link has
17 our permission to live tweet and we endorse what has just been said on behalf of both
18 the appellant and the second respondent that any live tweeting must be done
19 appropriately. It must also be in compliance with the general law and any existing
20 directions of this tribunal and it must not, under any circumstances, interfere with the
21 proper conduct of these proceedings or the evidence.

22 We also would note that, in the past, there have been unfortunate situations where,
23 understandably, there has been a misunderstanding and there have been inaccuracies
24 in live tweetings from courts and tribunals. We expect that any errors in live tweeting
25 will be swiftly corrected by the person who initially tweeted the message in the first
26 place if it has found to be inaccurate. We do not propose to monitor the live tweeting
27 or to police it in any way but any person who wishes to bring any matter to our
28 attention may do so in the usual way.

29 I will pause there. Mr Noah, could you automatically, please, mute everybody that
30 is viewing the CVP link. I think there might be a participant or two who has a
31 microphone still activated and I can hear movement. Slightly disconcerting at this
32 end. Let us hope that has happened. All right, thank you. So, that deals with that
33 issue. Was there anything else?

34 MR GIBBON: There is one remaining issue, subject to the tribunal and that is, any issues
35 arising from the amendment of witness statements on 2 September 2022 and none of

1 the parties have any issues to raise.

2 JUDGE GRIFFIN: Thank you, that is very helpful. I am just looking; there is an agreement
3 on what you have just said. Good. So, was there anything else not on Judge Neville's
4 helpful list that anybody would wish to raise at this stage?

5 MR GIBBON: Not by way of issues that need determination.

6 JUDGE GRIFFIN: Thank you. So, what we will do is, then, we will rise now to consider
7 all of the submissions. I understand that it has helpfully been indicated that not only
8 have our files found themselves a home in divider boxes, thank you very much to the
9 clerk of the court for her assistance with that, but it is proposed that there may be
10 some more labelling and tabs being inserted in those so, we will leave those here for
11 now. We do have the soft copies so; we will work from those.
12 We will give you an indication, I think, probably by 2.00 as to whether we will give
13 our decisions orally this afternoon or, whether we will take some further time and
14 release the parties this afternoon. We will get that message to you at or before
15 2.00pm. Thank you.

16 MR GIBBON: Madam, in the light of that and I apologise for, perhaps, not raising this
17 earlier; I was going to go on and use the time today, if it was possible, just to mention
18 one or two very brief points but, most importantly, the list of issues and the outline
19 of the statutory framework because that does not require witness attendance and it
20 might be a useful use of the time. So, it could be that I do that straight away? It will
21 take five or 10 minutes and, perhaps, not much more than that and then, if you rise,
22 then there is no need to come back and we have used, at least, some more of the time
23 today, rather than eating into time that the witnesses have on Monday.

24 JUDGE GRIFFIN: I will just-

25 **Discussion *sotto voce*.**

26 JUDGE GRIFFIN: Yes, we will do that now, if there is no objection to that. I can see
27 Ms Monaghan has started to arrange herself-

28 MS MONAGHAN: No, no, I am sorry, I'm enthusiastically going off to Pret-

29 JUDGE GRIFFIN: - but there you are. Let us deal with what we can now. Anything that
30 does not require witness evidence; and, if necessary, this afternoon, have a think, if
31 you would, all of you, whether there is anything else that we can usefully do before
32 we start the witnesses on Monday. I am assuming, from the way things seem to be
33 developing, that nobody is intending of making any form of opening address to the
34 tribunal?

35 MR GIBBON: This is as much as it is from me and it is really just to – well, I'll set it out

1 and I'll be finished before I've explained what it's going to be.

2 JUDGE GRIFFIN: All right-

3 MS MONAGHAN: I understand, from Mr Gibbon, if I may just say, that we all are
4 absolutely clear that Mr Gibbon just proposes to give a completely neutral, 'This is
5 the statutory framework and these are the issues and, if that's the case, then, that, I'm
6 sure, would be very helpful.

7 MR GIBBON: Yes.

8 JUDGE GRIFFIN: Thank you. Rather, as in your skeleton argument; it is split into the law
9 and then, the application of the law?

10 MR GIBBON: Yes, and I was going to amplify what I hope are uncontroversial points at
11 the start because I think they will help, certainly for those here but, perhaps, those
12 viewing as well.

13 JUDGE GRIFFIN: Absolutely.

14 MR GIBBON: I will deal with them very briefly. First, the central substance of issue in this
15 case is whether LGB Alliance is a charity within the technical meaning of that word
16 in English law and to the extent the word has a different meaning in other contexts,
17 that is not relevant. If LGB Alliance is a charity within the legal meaning of the word
18 then, the Charity Commission must register it. So, that's, if you like, the scope of
19 the legal issue and I think that is important to emphasise.

20 Secondly, this is not a case about the lawfulness or otherwise of LGB Alliance's
21 conduct. That is simply not an issue. Thirdly, this may be something we come back
22 to but it's not part of Mermaids' case that the tribunal is required to make formal
23 determinations of contentious points of equality law. Fourthly, there is a very
24 substantial amount of material. In the time available, none of the parties are going to
25 investigate more than a percentage of the issues and, I think, both sides would wish
26 to say that by not dealing with particular issues, it shouldn't be taken that that is
27 accepted; that is a different question to whether points have been properly put which
28 are of relevance but I am sure Ms Monaghan would wish to make that point as firmly
29 as my clients would wish to make it.

30 MS MONAGHAN: Yes.

31 MR GIBBON: And, fifthly, and again, I'm sure everyone in this room will endorse this; we
32 have a responsibility at the Bar which I hope we will all achieve, to deal with matters
33 in a mutually respectful way and again, I have absolute confidence that all of us will
34 do our professional duties with the usual obligations in mind and there are
35 contentious issues. They have to be properly put but they will be put professionally

1 by all concerned and, as I say, that's again, really – bearing in mind that there is a
2 wider audience and we all have a difficult role to tread – path to tread at times. So,
3 those are the only points I wish to pick up and I hope none of those is controversial.
4 Moving to the list of issues; that's found in volume four at tab two. Again, I
5 emphasise this just so the shape of both the ultimate submissions can be seen in
6 advance but also, therefore, the subjects to which evidence must be relevant for both
7 parties. So, the first – what are the purposes for which LGB Alliance is established
8 within the meaning of the Charities Act 2011? Secondly, do those purposes fall
9 exclusively within the descriptions in Section 3(1) of the Charities Act? I'll come to
10 provisions shortly. Thirdly, is the nature of those purposes beneficial to the
11 community and to use the jargon, that is called public benefit in the first sense; that
12 being a form of words derived from the ISC case – the tribunal will be well aware.
13 In particular, do they include, essentially, political purposes which are not ancillary
14 to recognised charitable purposes? Is there a common understanding of enlightened
15 opinion that the attainment of the relevant purposes by LGB Alliance would benefit
16 the public? And, thirdly, does the pursuit of the relevant purposes by LGB Alliance
17 give rise to significant dis-benefits which outweigh any benefits? The fourth of the
18 headings in the list of issues; do those purposes benefit the public or a sufficient
19 section of the public? Again, to use the jargon, that is called the public benefit in the
20 second sense. One has these two senses because the authorities recognise that
21 historically, they were used – the phrase “public benefit” was used in different ways
22 and Mr Justice Warren in the ISC case helpfully drew out the two broad strands that,
23 historically, one could see in the case law.
24 Then, finally, as a matter of fact, what are the effects or potential effects of the
25 decision to register LGB Alliance on the appellant? Are these effects such that the
26 appellant is or may be affected by the decision on a proper application of Schedule 6
27 to the Charities Act of 2011, and that's, to summarise, is the question of what is the
28 standing of my client to bring this appeal. The position of the Charity Commission,
29 as you will have seen, is that it intends to focus on assisting the tribunal with the
30 applicable law on charitable status and on standing but is not engaging in the factual
31 disputes which exists between my clients and Ms Monaghan's clients.
32 And, it was from there that I was going to move very briefly to the statutory
33 framework. That's found in various places but, perhaps, best in the authorities bundle
34 at tab one. The fourth page, I believe, of the electronic bundle which doesn't have
35 internal pagination, I'm afraid. So, section one of the 2011 Act says this, “Meaning

1 of Charity” is the heading, sub-section one, “For the purposes of the law of England
2 and Wales, charity means an institution which is (a) established for charitable
3 purposes only”. There is no dispute between the parties as to sub-section (b) which
4 is that the charity must be subject to complete control of the High Court. And there
5 is no enactment which might disapply that so, we are simply looking at sub-section
6 one of the Charities Act.

7 Section two, “Meaning of Charitable Purpose” – “For the purposes of the law of
8 England and Wales, a charitable purpose is a purpose which (a) falls within
9 Section 3(1)”, which I think I’ve mentioned earlier, and (b) “is for the public benefit
10 – see Section 4”. I move on from that, straight away, to Section 3. Sub-section one
11 says this – I’m not going to read it all out but simply look at the key headings for
12 current purposes. “A purpose falls within this sub-section if it falls within any of the
13 following descriptions of purposes”, and it’s, “(a) the prevention or relief of poverty;
14 (b) the advancement of education; (c) the advancement of religion”, and then, you
15 have letters (d) to (m). Within (d) to (m), I’d simply ask you to look at (h), which
16 says this, “The advancement of human rights, conflict resolution or reconciliation or
17 the promotion of religious or racial harmony or equality and diversity”.

18 Now, the reason I read the three and then (h) is this; when one gets to the authorities,
19 in due course, most of them were from a time before the Act was passed when charity
20 law was essentially entirely the creation of the courts and, in that context, items (a),
21 (b) and (c) were frequently described as the first three heads of charity. The reference
22 there being to a summary made in the case at the end of the 19th Century called
23 *Pemsel*. The principal focus relevant to this hearing is likely to be the fourth head
24 cases and the fourth head was, essentially, a group of varying and varied decisions
25 which were other than those under the first three heads.

26 What the statute sought to do was to try and give a greater taxonomy, if I can call it
27 that, to how the fourth head should be reviewed – should be considered and it also
28 introduced or clarified the charitable status of things that, perhaps, originally weren’t
29 charitable; in particular, recognising developments in society – (h) is very much a
30 modern evolution of the law that historically focused far more on other issues and
31 it’s particularly (h) that we will be considering in respect of focuses in this case. And,
32 I move on, in the light of that, to Section 4, which is headed “Public Benefit
33 Requirements”. Sub-section one says this, “In this Act, the public benefit
34 requirement means the requirement in Section 2.1(b)” – which I have already read –
35 “that a purpose falling within Section 3(1) must be for the public benefit if it is to be

1 a charitable purpose. Sub-section two says there is no presumption that a particular
2 head of Section 3(1) is for the public benefit.

3 That is not something which is likely to detain us but it was a matter that was
4 discussed at some length in the ISC case, which we will come to in due course. And
5 sub-section three, “In this chapter, any reference to the public benefit is a reference
6 to the public benefit as that term is understood for the purposes of the law relating to
7 charities in England and Wales”. Now, the net effect of those provisions – again, as
8 the tribunal will be aware is that, albeit charity has been put on a more firmly statutory
9 footing, over recent years, nevertheless, it is not meant to change the historic law
10 except, for instance, by clarifying that certain heads are charitable within Section
11 3(1). So, the old law still applies, if I can put it briefly.

12 So, that’s what I wanted to look at on the initial part of the Act. I wanted, briefly,
13 next to look at Section 30, which is-

14 JUDGE GRIFFIN: Internal page 12.

15 MR GIBBON: Internal 12 or 13. I’ve got 13 – yes, internal 12 on the numbering on the
16 page; 13 in the electronic copy. Section 30 is headed “Charities Required to be
17 Registered: General”. Sub-paragraph one says this, “Every charity must be
18 registered in the register unless sub-section two applies to it”, and nobody is
19 suggesting that sub-section two is of relevance so, that is the provision which says
20 that every charity, for our purposes, must be registered.

21 Then, moving forward, in terms of the numbering on the page, page 15 – Section 36
22 says this, “Claims and Objections to Registration”. Sub-section one, “A person who
23 is or may be affected by the registration of an institution as a charity may, on the
24 ground that it is not a charity, sub-section (a), object to its being entered by the
25 Commission” – and I stress that word “commission” in the register, will be applied
26 to the Commission for it to be removed from the register”. Then, sub-section three,
27 “Sub-section four applies if there is an appeal to the tribunal against any decision of
28 the Commission; (a) to enter an institution in the register or (b) not to remove an
29 institution from the register”.

30 So, the tribunal comes in slightly further into the section than what one might
31 normally see but our focus, obviously, is on appeals to the tribunal, rather than
32 objections to the Commission; that’s the stage which has passed and what sub-section
33 four says, “Until the Commission is satisfied whether the decision of the Commission
34 is – or is not to stand the entry in the register is to be maintained but is in suspense
35 and must be marked to indicate that it’s in suspense”. So, again, that refers to the

1 Commission but when one looks to Section 37, we see there, “An institution is, for
2 all purposes other than rectification of the register, conclusively presumed to be or to
3 have been a charity at any time when it is or was on the register”, but sub-section
4 two, “For the purposes of sub-section one, an institution is to be treated as not being
5 on the register during any period when the entry relating to it is in suspense under
6 Section 36.4”.

7 So, one has that background procedurally and then, the next thing; and this is
8 electronic bundling, page 21 and page heading 153 in the extract from the Act – this
9 is about appeals generally-

10 JUDGE GRIFFIN: Section 319, yes?

11 MR GIBBON: Section 319, under the heading “Chapter Two Appeals and Applications to
12 the Tribunal” – first, “Except in the case of a reviewable matter”, and that doesn’t
13 apply – “an appeal may be brought to the tribunal against any decision, direction or
14 order mentioned in column one of schedule six and such an appeal” – this is sub-
15 section two – “may be brought by the Attorney General or any person specified in
16 the corresponding entry of Schedule 6”. Three, “The Commission is to be the
17 respondent to such an appeal”, as the Commission is in this case and, four, “In
18 determining such an appeal, the tribunal must consider afresh the decision, direction
19 or order appealed against and sub-section (b) may take into account evidence which
20 was not available to the Commission”.

21 And the final thing I wanted to show you by way of the architecture of the legislation
22 is found at electronic 24, which is 179 on the extract and that is Schedule 6 –
23 “Appeals and Applications to the Tribunal” and there are three columns, as you will
24 see there. The first deals with the relevant decision; the second deals with who the
25 appellants or applicants should be and the third is the tribunal’s powers if the appeal
26 or application is allowed and the first of the headings in column one is, “Decision of
27 the Commission under Section 30”, etc., “to enter or not to enter an institution in the
28 Register of Charities or to remove or not to remove an institution from the register”.
29 Under column two – “The person” – so, the appellants/applicants – “are (a) the
30 persons who are or claim to be the charity trustees of the institution; (b) if a body
31 corporate, the institution itself and (c) any other person who is or may be affected by
32 the decision” and the dispute is to be dealt with in due course, as to whether my
33 clients fall within sub-section (c) there and within the third column, “The tribunal’s
34 powers are to quash the decision and, if appropriate, (a) remit the matter to the
35 Commission; direct the Commission to rectify the register”.

1 That's as much as I wanted to show to emphasise what the scope of the relevant
2 provisions are; the scope of the matters that have to be considered by the tribunal.
3 Unless there is anything further at this stage-

4 MS MONAGHAN: I would like to answer – Mr Gibbon went slightly further than I had
5 anticipated-

6 MR GIBBON: I apologise.

7 MS MONAGHAN: Not at all. Just one matter; I think it was suggested that the tribunal
8 would not have to concern itself with any controversial determinations in relation to
9 equality law. I regret this tribunal may very well have to, because of the way
10 Mermaids have put their case. They have made it clear, for example, at paragraph –
11 sorry page 42 – if I could, perhaps, take you briefly there – that's page-

12 JUDGE GRIFFIN: In the skeleton?

13 MS MONAGHAN: I beg your pardon, it's the core bundle and it's the grounds of appeal –
14 grounds of appeal and I'm looking at page 42 and as to which at paragraph 12, you
15 can see the context at paragraph 10 – “Purposes” – that is in the articles above – “do
16 not fall within any of the descriptions of charitable purposes” and then, at paragraph
17 12, “The purposes at paragraph eight do not satisfy the public aspect. In reality, LGB
18 Alliance seeks only to operate for the benefit for lesbian and gay people who are both
19 not transgender and who share LGB Alliance's beliefs. Since this class of
20 beneficiaries is restricted capriciously, and in a matter which does not accord with
21 public policy, it does not represent a sufficient section of the public”.

22 Now, pausing there, LGB Alliance does operate to the benefit of trans people, where
23 they are lesbian and gay, having regard to their biological characteristics, as we'll
24 come to, but in any event, lesbian and gay people are a discrete protected group under
25 the Equality Act and they are entitled, we say, and we'll make submissions on this in
26 due course – they are entitled to establish themselves and operate for the benefit of
27 homosexual people and there's nothing contrary to public policy in that respect and
28 it's similarly an issue because if I can ask you now, please, to go to paragraph 17 of
29 the – of Mermaids' skeleton argument, which you'll find at page 12 of bundle four,
30 volume four-

31 JUDGE GRIFFIN: Remind me of the paragraph-

32 MS MONAGHAN: Yes, it's paragraph 17.

33 JUDGE GRIFFIN: Thank you.

34 MS MONAGHAN: And you'll see, it's said by Mermaids – “Statements of case in evidence
35 touch on certain issues of equality and discrimination law, including LGB Alliance's

1 campaigning activity and definition of same sex attraction; is it underpinned by or
2 seeking to enforce the Equality Act?” And, they refer to various documents.
3 “Conversely, is it operating on a fundamental misreading of the Equality Act by
4 misreading Section 7” – that’s the provision that addresses gender reassignment,
5 madam/sir and/or by neglecting the position of trans people, who are also LGB. We
6 say that raises, in terms, the question, “What does Section 7 mean and what’s the
7 operation of the Equality Act in relation to the directing of a charity’s attention
8 towards a particular protected community – LGB?” And, perhaps, more particularly,
9 17.3, “Flagging their notice of appeal, is the pursuit of LGB Alliance’s objects
10 contrary to any public policy recognised in the equalities legislation, for example,
11 reflected in Section 7?”

12 Now, we say Mermaids have misunderstood Section 7 and to the extent that it’s
13 relevant to their case, and it appears to be so then, that may be an issue that does have
14 to be addressed. They also deal with protected beliefs and we’ll have to touch upon
15 that; that is, whether or not what’s generally characterised as gender-critical beliefs,
16 protected beliefs – we say they most certainly are, both under the Equality Act and
17 under human rights law and not just protected but also valued, very many people do
18 not agree with gender critical views – very many – but many do.

19 So, there will need to be not disproportionate attention paid to that issue; not
20 disproportionate attention. There are a very many other issues, as Mr Gibbon has
21 outlined but I wouldn't want this tribunal to be left with the impression that there’s
22 nothing in that point that’s been raised in the notice of the appeal and the skeleton
23 argument by Mermaids.

24 MR GIBBON: If it helps, I certainly was not intending to be controversial in my settings
25 out of matters earlier. Paragraph 17 was in the context of paragraph 18; namely, that
26 these issues have been touched on – the one that my learned friend has read but our
27 specific submission was, none of these are likely be determinative of the appeal and
28 it was in that context that the observation was made but I don't want to get into debate
29 now; these are clearly matters which will be addressed in due course and you’ve got
30 what I hope is otherwise an entirely neutral and-

31 MS MONAGHAN: Certainly, absolutely; I just felt it was improper not to have the tribunal
32 be able to park that point, if you like. It’s likely to have some significance. As I say,
33 it can be dealt with proportionately. Nevertheless, it’s been raised as an issue so,
34 there will need to be some consideration given to it, I anticipate.

35 MR GIBBON: I clearly have no objection to my friend having raised those points and, as I

1 say, otherwise, I believe everything else that was said was entirely neutral as far as
2 all parties are concerned and I hope that is of assistance to those here and remotely.
3 JUDGE GRIFFIN: I can see that Mr Steele agrees so, thank you all very much for that. That
4 is very helpful. Could we turn the phone off, please? Can you take it outside? Thank
5 you. These things happen. All right, so, is there anything else that we can usefully
6 do before the short adjournment at 1.00? Right, as I say, Judge Neville and I will
7 discuss how we want to proceed and will be in touch with you as to the remainder of
8 the day. Thank you very much, indeed.
9 **Court rises.**

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