

**FOLLOW-UP PRE-ACTION LETTER — UNLAWFUL REVOCATION OF
PARTICIPATION MEASURES, PROCEDURAL BIAS & DISABILITY
DISCRIMINATION**

Date: 21 October 2025

Court of Appeal Case No. CA-2024-001342

To:

Ministry of Justice — public.enquiries@justice.gov.uk

HM Courts & Tribunals Service — contacthmcts@justice.gov.uk

Civil Appeals Registry — civilappeals.registry@justice.gov.uk

Cc:

Rt Hon David Lammy MP — Lord Chancellor and Secretary of State for Justice

House of Lords — Autism Act 2009 Committee

Parliamentary Justice Committee

Bcc: Selected Peers, MPs, advocacy organisations, and media (for transparency)

1. Purpose of this Letter

This correspondence is issued under the Pre-Action Protocol to give formal notice of unlawful conduct by HM Courts & Tribunals Service (HMCTS) and the Ministry of Justice (MoJ) in the administration of DH v RH (No 3) [2024] EWFC 79 and DH v RH (No 4) [2024] EWFC 114.

It concerns:

1. The revocation of participation measures under FPR Part 3A without notice or review;
2. The suppression of disability evidence and biased characterisation of autism-related behaviour; and
3. The resulting discriminatory findings forming the basis for adverse costs and reputational harm.

These acts breach FPR Part 3A, PD 3AA, Equality Act 2010 (ss 20 & 29), and Articles 6 & 14 ECHR.

2. Legal Framework

- FPR 3A.2 & 3A.7–3A.9 — Courts must identify, record, and keep under review participation measures throughout proceedings.
- PD 3AA §§ 4.1–4.4 — The duty to review measures continues “throughout proceedings.”
- Equality Act 2010 ss 20–21 & 29 — Courts must anticipate and make reasonable adjustments.
- Articles 6 & 14 ECHR — Guarantee a fair hearing free from discrimination.
- Authorities: *Re S (Vulnerable Party)* [2022] EWFC 30; *English v Emery Reimbold* [2002] EWCA Civ 605; *Griffiths v SS for Work & Pensions* [2015] EWCA Civ 1265; *Fairclough v SS for Justice* [2021] EWCA Civ 143.

3. Chronology of Breach

Trial (19–28 Feb 2024). Justice MacDonald ordered participation measures — frequent breaks, restricted questioning, assistance in the witness box, screened seating. The transcript (NZ-R) records 22 references to PTSD and Autism.

Post-trial revocation. On or about 28 Feb 2024 all measures ceased without order, notice, or reassessment — contrary to FPR 3A.9(2). HMCTS later confirmed no order records the revocation.

Judgment 18 Apr 2024. 111 paragraphs; zero references to disability or Part 3A.

Paragraph 64 states:

“The wife’s presentation in the witness box on the issue of alleged non-disclosure bordered on the concerning. Her belief that the husband has vast hidden assets is so powerfully held, and such was her urgent need to impress that belief on the court from the witness box, that at times everything she wished to say on the matter tried to emerge at once, causing her very obvious distress. However, whilst I accept that the wife very firmly believes that the husband has tens of millions of pounds in assets hidden and, I am satisfied, has become obsessed with demonstrating that in the context of this litigation, I must conclude that that belief is not borne out by the evidence before the court.”

The transcripts of oral evidence disproves this: distress in the witness box reflects autism-related overload, not obsession. Removing all disability context created an evidentiary vacuum that enabled a fabricated inference of bad character.

Furthermore, the transcripts of oral evidence show that the question of “hidden assets” was put to the Applicant only once during cross examination:

Opposing Counsel: *“Let’s move on to what you do think is important, the undisclosed assets. Do you think this is important?”*

NZ: *“Not strictly true, what is important is freedom from everything and justice.”*

Costs Order 24 May 2024. Paragraph 10(xi) found “*the wife’s behaviour ... disruptive ... her litigation misconduct is at the extreme end of the scale.*” This flows directly from the same mischaracterisation.

Appeal 2024–2025. The Court of Appeal endorsed those findings without engaging the equality issues, thus ratifying bias and procedural unfairness.

4. Legal Breaches

| Duty / Provision | Breach | Consequence |
|------------------------------|--|----------------------------------|
| FPR 3A.7–3A.9 & PD 3AA §4 | Failure to maintain and review participation measures | Denial of equal participation |
| Equality Act 2010 ss 20 & 29 | Failure to adjust; adverse treatment of disability behaviour | Direct / indirect discrimination |
| Articles 6 & 14 ECHR | Failure to ensure effective participation | Procedural unfairness |
| Common law fairness | Suppression of material evidence | Biased judgment; unsafe findings |

Indicators of Bias

1. Deletion of all disability references from judgment.
2. Insertion of pejorative terms (“obsessed,” “disruptive”).
3. Attributing courtroom distress to moral failing rather than impairment.
4. Costs linked explicitly to autism/PTSD manifestations.

A fair-minded observer (*Porter v Magill* [2002] 2 AC 357) would see a real possibility of bias.

Consequences

The revocation and mischaracterisation:

- rendered the proceedings procedurally voidable;
- produced discriminatory cost orders; and
- caused severe mental-health relapse (Dr Poyer 2025; Dr Hayse 2025).

A seven-day extension was not a reasonable adjustment for autism or PTSD; it did not ensure participation or equality of arms.

Requested Institutional Action

Within 13 days, the MoJ and HMCTS are requested to:

1. **Acknowledge receipt** and formally recognise breaches of **FPR Part 3A, PD 3AA, and ss 20 & 29 Equality Act 2010.**
2. **Issue a written apology** for failures of procedure, support, and reasonable adjustment.
3. **Open an internal investigation** into the unlawful revocation of participation measures after the February 2024 trial.
4. **Confirm whether any audit or oversight process exists** to ensure continuing compliance with FPR 3A after the conclusion of the trial, including review of judgments and orders where measures have been withdrawn or ignored.
5. **Establish a formal, independent enforcement mechanism** allowing vulnerable parties to request, review, and challenge non-compliance with participation measures and obtain immediate relief through independent oversight.
6. **Undertake a policy review** to secure consistent implementation of Part 3A measures and autism adjustments across all courts.
7. **Provide training and guidance** for judges and staff to recognise neurodivergent and trauma-related behaviours and distinguish them from misconduct.

8. **Include this case in the Autism Act 2009 Committee** review of access to justice and recommend creation of an enforcement mechanism for FPR Part 3A.
9. **Consider compensatory or restorative measures** for the loss of fair-hearing rights and resulting harm.
10. **Confirm accountability** within HMCTS and the judiciary for the suppression of disability evidence and state what measures will prevent recurrence.
11. **Acknowledge that the cumulative procedural and equality failures rendered the original proceedings unsafe.** The Applicant reserves her right to seek a re-trial or full rehearing before an impartial tribunal with appropriate participation measures in place, should the Ministry and HMCTS fail to provide an adequate remedy.
12. **Confirm what review or corrective mechanism exists for discriminatory or procedurally defective judicial findings. In particular, the Applicant seeks removal or correction of paragraph 64 of the judgment of 18 April 2024 and paragraph 10(xi) of the costs order of 24 May 2024,** which are unsupported by the evidence and result directly from the suppression of her diagnosed disabilities.

Public Accountability

This is a matter of **public interest** and **constitutional importance**. The MoJ and HMCTS are responsible for ensuring justice for disabled litigants. This letter is therefore shared with Parliament and the media to ensure transparency and scrutiny.

Sincerely,

Signed: *Nadia Zahmoul*

Nadia Zahmoul

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