



Neutral Citation Number: [2020] EWHC 2658 (QB) Case No: QB-2019-000194

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 8 October 2020

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

Simon Oliver

Claimant

- and -

Javed Shaikh

Defendant

Ben Silverstone (instructed by Government Legal Department) for the Claimant
The Defendant did not attend and was not represented

Hearing date: 8 October 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. On 24 August 2020, I handed down judgment finding the Defendant in contempt of Court for 20 breaches of the Order of Julian Knowles J dated 10 December 2019 ([2020] EWHC 2253 (QB) (“the Liability Judgment”). I will use the same definitions in this judgment as were used in the Liability Judgment.
2. I adjourned the issue of penalty for contempt of court to a hearing today. Mr Silverstone has appeared again to represent the Claimant. The Defendant has not attended, and nor has he been represented. Indeed, the Defendant has now disengaged with communicating with the Court and the Claimant’s solicitors. The last communication from the Defendant was an email sent on 22 July 2020 (see [24] Liability Judgment).
3. Under the heading “Next Steps” in the Liability Judgment, I said this:

[103] As indicated above (see [43]), I intend now to fix a date for a further hearing at which the Court will consider the penalty to be imposed for the findings of contempt against the Defendant. A copy of this judgment, and consequent order, will be provided to the Defendant. Pursuant to CPR 23.11(2) and/or CPR 39.3(3), the Defendant has the opportunity to apply to the Court to ask for the Committal Application to be reconsidered and/or the order set aside. I will direct that any such application must be made within 14 days. The Defendant remains eligible for legal aid for the purposes of obtaining advice and representation.

[104] The Defendant should consider his position very carefully. The Court has found him to be in contempt of court. The continued publication of the JBB Website represents an ongoing defiance of the Court. If, by the time of the penalty hearing, the JBB Website (and other material the Defendant has been ordered to remove) has not been removed, that will be a serious aggravating factor.
4. The Order from the hearing on 24 August 2020 identified the 20 breaches of the Order of 10 December 2020 that I found proved to the criminal standard. The Order contained a prominent notice in the following terms:

IMPORTANT NOTICE TO THE DEFENDANT

You did not attend the hearing on 27 July 2020, either in person or using the remote facility provided by the Court. The Court refused the Adjournment Application and proceeded to hear the Committal Application in your absence. The Court handed down judgment on 24 August 2020. As explained, and for the reasons set out in that judgment, you have been found to be in contempt of Court. At the hearing on 8 October 2020, the Court will decide what penalty should be imposed for your contempt. The Court has power to send you to prison, to fine you or seize your assets. You must attend court on 8 October 2020. If you fail to attend, without good reason, the Court may issue a warrant for your arrest and/or proceed in your absence.

Because the hearing on 27 July 2020 took place in your absence, pursuant to CPR 23.11(2) and/or CPR 39.3(3), you can ask the Court to reconsider the

Committal Application and/or the Adjournment Application and/or to set aside or vary this Order. Paragraph 3 of this Order requires you to do so by 4pm on 7 September 2020.

The Injunction Order remains in force. If you continue to disobey it, you may be guilty of further contempt of Court.

LEGAL AID IS AVAILABLE FOR THOSE FACING COMMITTAL PROCEEDINGS. YOU ARE ADVISED TO SEEK ADVICE FROM A SOLICITOR.

5. The Defendant has made no application to the Court to reconsider the Committal Application and/or the Adjournment Application or to vary or set aside the Order of 24 August 2020.

Events since 24 August 2020

6. The Claimant's solicitor, Ms Lloyd-Jones, has filed a further Affidavit setting out events since the last hearing.
7. On 29 September 2020, Ms Lloyd-Jones visited the URLs of each of the websites specified in paragraph 6 of the Order of 10 December 2019. Six of the websites were still available, one appears to have been removed. Importantly, the JBB Website is still online; indeed, as at 29 September 2020, 26 further entries had been posted since 24 August 2020. No evidence is available to the Court that would displace (or call for reconsideration of) the conclusion that the Defendant continues to control the JBB Website.
8. On 26 August 2020, the website *Legal Futures* published an article reporting the Liability Judgment (<https://www.legalfutures.co.uk/latest-news/former-trainee-doctorin-contempt-for-online-campaign-against-judge>) ("the Article").
9. Shortly after the Article was published, at 13.01 on 26 August 2020, an individual purporting to be the Claimant sent an email from a Hotmail account asking *Legal Futures* to remove the Article on the claimed basis that it was affecting the Claimant's ability to do his job. The editor of *Legal Futures* queried the request by a reply email and then received a further email from the Hotmail account at 14.08:

"I work as a judge in the courts myself and i (sic) do not want the media circulating this judgement as it is having the public go back to the actual offending publication... It would be appreciative (sic) if the article can be taken down so i (sic) can continue working without having the offending. Material (sic) draw back to me."
10. A further email was sent at 15.48 from the Hotmail account asking for clarification as to whether the Article would be removed.
11. Suspicious of the emails, *Legal Futures* quite properly forwarded them to the Judicial Office Press Office. *Legal Futures* also reported that they had received a telephone call, on the date the Article was published, from someone claiming to be the Claimant asking for the Article to be removed.
12. The evidence confirms that the Claimant did not make any contact with *Legal Futures*. In her Affidavit, Ms Lloyd-Jones states:

“The strong inference is that the Defendant made each of these communications. This arises from the facts that: (a) it was plainly in the Defendant’s interests that the report of the Judgment should be removed from the Legal Futures website; (b) the Defendant has previously been found to have published online communications without identifying himself as the author (see for instance paragraphs 73-78 of the [Liability] Judgment) and (c) the unusual style of the emails is consistent with that of the Defendant: examples being the use of “i” in lower case, on two occasions... (see paragraph 56 of the [Liability] Judgment) and the spelling of “judgement” in the same email (see paragraphs 56, 73-74, 75-76 and 94-95 of the [Liability] Judgment and the entries for 1 July 2020 and 21 July 2020 (18.02) in Appendix 2 to the [Liability] Judgment).”

13. The evidence strongly suggests that the Defendant was responsible for contacting *Legal Futures* purporting to be the Claimant. It certainly has all the hallmarks of actions of the Defendant. It is not necessary for me to reach a concluded view. This issue only has potential relevance to the issue of whether I am satisfied that the Defendant is aware of the judgment of 24 August 2020 finding him in contempt. I am so satisfied, but this is as a result of his having been sent the Liability Judgment and the Order directly using the email address that he had previously using effectively to communicate with the Court and no non-delivery receipt being received. I remain satisfied that the Defendant has judged that his best interests lie in not engaging with the Claimant’s solicitors or the Court in relation to this matter. The Court will not be thwarted by this strategy. In the absence of a request for adjournment, explanation for his absence or other communication, I have again decided that I should proceed in the Defendant’s absence.

Punishment for contempt of court: the law

14. A new CPR Part 81 came into force on 1 October 2020. In terms of the punishment phase, the position has not substantially changed. CPR 81.9 now provides:
 - “(1) If the court finds the defendant in contempt of court, the court may impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law.
 - (2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the court decides to suspend execution of the order or warrant.
 - (3) An order or warrant of committal must be personally served on the defendant unless the court directs otherwise.
 - (4) To the extent that the substantive law permits, a court may attach a power of arrest to a committal order.
 - (5) An order or warrant of committal may not be enforced more than two years after the date it was made unless the court directs otherwise.”
15. The changes to the procedural rules in CPR Part 81 have not affected previous authorities as to the approach to penalty that the Court should adopt.

16. The decision on sanction is entirely for the Court (*Attorney General -v- Hislop* [1999] 1 WLR 514, 522). Similar to the role of the prosecution in a criminal court where the Court is considering sentence, the party seeking punishment of the contemnor does not urge the imposition of any particular penalty on the contemnor. The role is limited to making submissions as to the circumstances and the consequences of the breach and ensuring that the court's attention is drawn to all relevant authorities.
17. The following principles can be derived from *Crystal Mews Limited -v- Metterick* [2006] EWHC 3087 [8]–[13]:
 - i) The object of sanction imposed by the court is two-fold: (1) to punish the historic breach of the court's order by the contemnor; and, (2) to secure future compliance with the order. In my judgment, if those objects in any way conflict in terms of sanction, then the primary objective is to secure compliance.
 - ii) The sanctions available to the Court range from making no order, imposing an unlimited fine or the imposition of a sentence of imprisonment of up to two years. The Court has the power to suspend any warrant for committal.
 - iii) As with any sentence of imprisonment, that sanction should only be imposed where the Court is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate. It is a measure of last resort. A suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. A sentence of imprisonment must not be imposed because the circumstances of the contemnor mean that he will be unable to pay a fine. A sentence of imprisonment may well be appropriate where there has been a serious and deliberate flouting of the Court's order.
 - iv) The Court's task when determining the appropriate sanction to assess is to assess culpability and harm. The Court will consider all the circumstances, but typical considerations when assessing the seriousness of the contemnor's breach are:
 - a) the harm caused to the person in respect of whose interests the injunction order was designed to protect by the breach;
 - b) whether the contemnor has acted under pressure from another;
 - c) whether the breach of the order was deliberate or unintentional; and
 - d) the degree of culpability of the contemnor.
 - v) Mitigation may come from:
 - a) an admission of breach - for example, admitting the breach immediately and not requiring the other party to go to the expense and trouble of proving a breach;
 - b) an admission or appreciation of the seriousness of the breach;
 - c) any cooperation by the contemnor to mitigate the consequences of the breach; and

- d) genuine expression of remorse or a sincere apology to the court for his behaviour.
18. The mitigating factors may also have a bearing on the Court's view as to the likely risk of repetition of breach and therefore the assessment of the degree to which the sanction needs to serve the objective of securing future compliance. If a contemnor, even belatedly, demonstrates a genuine insight into the seriousness of his prior conduct and its unlawfulness, then the Court may well be able to conclude that the contemnor has 'learned his lesson' and the risk of future breach is thereby diminished.
19. In *Financial Conduct Authority -v- McKendrick* [2019] 4 WLR 65, the Court of Appeal stated:
- [40] Breach of a court order is always serious, because it undermines the administration of justice. We therefore agree with the observations of Jackson LJ in [*JSC BTA Bank -v- Solodchenko (No.2)* [2012] 1 WLR 350] ... as to the inherent seriousness of a breach of a court order, and as to the likelihood that nothing other than a prison sentence will suffice to punish such a serious contempt of court. The length of that sentence will, of course, depend on all the circumstances of the case, but again we agree with the observations of Jackson LJ as to the length of sentence which may often be appropriate. Mr Underwood was correct to submit that the decision as to the length of sentence appropriate in a particular case must take into account that the maximum sentence is committal to prison for two years. However, because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum.
- [41] As the judge recognised, it may sometimes be necessary for the sentence for this form of contempt of court to include an element intended to encourage belated compliance with the court's order. Where that is the case, that element of the sentence is in principle one which may be remitted if the contemnor subsequently purges his contempt by complying with the order...
20. In that latter respect, CPR Part 81.10 now provides:
- “(1) A defendant against whom a committal order has been made may apply to discharge it.
- (2) Any such application shall be made by an application notice under Part 23 in the contempt proceedings.
- (3) The court hearing such an application shall consider all the circumstances and make such order under the law as it thinks fit.”
21. The effect of this is that where the punishment imposed by the Court contains both elements of punishment for previous breaches and encouragement to belated compliance, the Court may reduce a previously imposed penalty on an application made under CPR 81.10.

Decision

22. The Defendant's culpability for the breaches of the Order of 10 December 2019 is extremely high:

i) the breaches began immediately; the Defendant simply refused to comply with the Order to remove the various websites, in particular the JBB Website; ii) there have been 20 breaches of the order;

iii) the breaches have continued (a) after warnings from the Claimant's solicitors; (b) after proceedings were issued seeking to punish the Defendant for contempt; and (c) after the Court had found the Defendant in contempt; and iv) the breaches have been conscious and deliberate.

In summary, the Defendant's contempt has been deliberate, persistent and blatant. They continue to this day. The Defendant has shown no remorse or insight. On the contrary, he has consciously chosen to disobey and defy the Court's order and, particularly through his continued publication of the JBB Website, attempted to draw as much public attention to his defiance as he can.

23. In terms of harm, there are two issues. First, the harm to the rule of law and the authority of the court is very significant. Court orders must be obeyed. If they are not, it corrodes the rule of law. Those who flout the orders of the Court do serious harm to the rule of law. Second, the Order of 10 December 2019 was a protective order to prevent further harassment of the Claimant. The Claimant is a circuit judge. All judges have to expect public scrutiny of their work and potential criticism. But a judge is also a citizen, who is equally entitled to the protection of the law as any other citizen. When the actions of an individual passes from robust criticism to, in this case, menacing threats and abuse that are quite clearly illegal, the citizen is entitled to the protection of the law. The evidence provided to the Court by the Claimant demonstrates the impact this campaign of harassment has had on him.

24. For the reasons I have explained, this is a very serious example of contempt of court. The defendant clearly considers that he is above the law; that he does not need to comply with orders of the court. He even appears to enjoy his defiance. It is my duty to make clear that he is mistaken and to reassert the authority of the law. I am satisfied that this case is so serious that only a period of immediate imprisonment is sufficient to reflect the culpability of the Defendant and the harm caused by his repeated breaches of the Court's order. As the Defendant has not attended today, a warrant for his arrest will be issued. When he is apprehended, and subject to any application under CPR 81.10, he will be committed to prison for a period of 16 months.