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Case No: BS13C00858

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
BRISTOL DISTRICT REGISTRY
(In Open Court)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 October 2014

Before :

SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

- -

In the matter of an application by Gloucestershire County Council for the committal to prison of Matthew John Newman

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- -

Mr Benjamin Jenkins (instructed by the local authority) for Gloucestershire County Council
Ms Rebecca Scammell (of Bevirs) for the children's guardian
Mr Newman in person

Hearing date: 25 September 2014

- -

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.

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SIR JAMES MUNBY PRESIDENT OF THE FAMILY DIVISION

This judgment was delivered in open court

Sir James Munby, President of the Family Division :

1. I have before me an application by Gloucestershire County Council seeking the committal to prison for contempt of court of Matthew John Newman. It is the aftermath of care proceedings in relation to Mr Newman's son, who I will refer to as X, which culminated in the making by His Honour Judge Wildblood QC on 16 May 2014 of care and placement orders. An application by Mr Newman for permission to appeal against those orders was refused by the Court of Appeal (Macur LJ) at a hearing on 30 July 2014. I understand from Mr Newman that he is minded to apply for the revocation of the placement order. That is a matter for another day and another judge. I am concerned exclusively with the local authority's application for committal.

2. The application before me is based on alleged breaches by Mr Newman of parts of two orders made by Judge Wildblood, one on 16 May 2014 and the other on 16 July 2014. The orders were directed against both Mr Newman and his wife, but he alone is alleged to be in contempt. So far as material for present purposes, the order of 16 May 2014 ordered that Mr and Mrs Newman were forbidden (paragraph 1) from:

> "taking any steps to ascertain the whereabouts of the child and/or foster placement, including using their mobile phone or laptop GPS positioning systems"

and (paragraph 5) from:

> "harassing employees of the Local Authority's Children's Team and/or Legal Department."

So far as material, the order of 16 July 2014 provided as follows:

> "BY CONSENT
>
> IT IS ORDERED THAT:
>
> 1 The father shall forthwith and by no later than 12 noon 17th July 2014 take the following action:
>
> (i) Delete the facebook account in the name of X or using the name of;
>
> (ii) Delete any twitter account in the name of X or using the name of;
>
> (iii) Delete all 'threads' from the facebook and twitter accounts in the name of X or using the name of;
>
> (iv) Having deleted the facebook account, twitter account and any threads, not to reactivate the account and to take all possible steps to ensure that the information that was contained within these accounts has been permanently deleted;

> (v) Delete from any public computer network, internet website and social networking website all documents created in and relating to these proceedings including the care and placement proceedings and all injunction proceedings;
>
> (vi) Delete from publicly available electronic sources all photographs, pictures, images, recordings (voice or video) identifying X;
>
> (vii) Delete all photographs of and contact details (including inter alia, telephone numbers, addresses) for any employee of the Local Authority involved with the care and / or placement of the child for adoption.
>
> 2 Further, the court makes the following prohibitions:
>
> (i) This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite service for the purpose of preventing the identification (whether directly or indirectly) of the child: the names and addresses of X and any picture, image, voice and/or video recording of X and the names and addresses of any employee of the Local Authority involved in relation to the care and/or placement of the child for adoption and any picture, image, voice and/or video recording of any employee thereof."

3. So far as material for present purposes, rule 37.9(1) of the Family Procedure Rules provides that:

> "a judgment or order to do or not do an act may not be enforced … unless there is prominently displayed, on the front of the copy of the judgment or order … , a warning to the person required to do or not do the act in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets."

Neither the order of 16 May 2014 nor the order of 16 July 2014 complied with this requirement. In the order of 16 May 2014 the penal notice appeared at the end of the order on the second page. Although the order of 16 July 2014 contained, prominently displayed, the statement on the front of the order that "A Penal Notice shall be attached to paragraphs 1 and 2 of the injunctive consent order", the penal notice itself was set out, just before the text of the injunctions, on the third page of the order.

4. Paragraph 13.2 of PD37A provides that "The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect." I was satisfied that no injustice would be caused to Mr Newman by waiving these defects. In the one case, the penal notice was prominently displayed at the end of a short, two page, order which also contained a recital that Mr and Mrs Newman had "previously received

legal advice as to the implications of breaching the terms of this Order." In the other case, the father was present and consented to the grant of the injunctions. He cannot by that stage in the proceedings have been in any doubt as to the consequences of breach.

5. Although in this case I was prepared to waive these procedural defects, I cannot emphasise too strongly the need for meticulous compliance with all the requirements of Part 37 and PD37A. I might add, for the benefit of the doubters, that this surely serves only to demonstrate the need for the family justice system to adopt, as I have been proposing, the use of standard forms of order available to all in readily accessible and user-friendly templates.

6. On 26 August 2014 the local authority issued an application seeking Mr Newman's committal for contempt. The application was supported by affidavits from five of the local authority's employees. The matter came on for hearing before me in Bristol on 25 September 2014. The local authority was represented by Mr Benjamin Jenkins and X's guardian by Ms Rebecca Scammell. Mr Newman appeared in person and gave evidence on oath. In an order made by Judge Wildblood on 10 September 2014, Mr Newman had been "strongly advised to seek legal representation" and told that "legal aid would be available for you to be so represented": see *Chelmsford County Court v Ramet* [2014] EWHC 56 (Fam), [2014] 2 FLR xxx, paras 32-33. I asked Mr Newman whether he wanted legal representation and made clear that, if he did, I would be able to grant him legal aid then and there. He said that he preferred to represent himself.

7. On the afternoon of 23 September 2014, that is less than two days before the hearing, the local authority attempted to serve Mr Newman with a further application seeking his committal to prison for further alleged contempts, sending him copies of the documents by email at 15.33. Mr Jenkins sought an order that I abridge time for service, which is specified in paragraph 12.2 of PD37A as being not less than 14 days "unless the court otherwise directs." I was not prepared to contemplate such a drastic abbreviation of time in a matter as serious as contempt and refused the order Mr Jenkins was seeking. I ensured that Mr Newman was served with all the relevant documents before he left court after the hearing. Mr Jenkins said that the local authority wished to have time to consider whether or not to pursue the further application against Mr Newman. I directed that the local authority notify the court and Mr Newman no later than 4pm on 9 October 2014 whether or not it intends to pursue the application. I reserved both that application and any further committal application by the local authority to myself.

8. The application dated 26 August 2014 alleges four grounds of contempt: (i) breach of paragraph 1 of the order of 16 May 2014; (ii) breach of paragraph 5 of the order of 16 May 2014; (iii) breach of paragraph 1 of the order of 16 July 2014; and (iv) breach of paragraph 2 of the order of 16 July. Each requires to be considered separately.

9. These being allegations of contempt, they require to be proved to the criminal standard of proof. Mr Newman has to prove nothing. The local authority must prove its case. In relation to each allegation I cannot find Mr Newman guilty unless I am satisfied so that I am sure or, as it is sometimes put, beyond reasonable doubt.

10. It is also important to note, this being a matter of committal, that the defendant – here, Mr Newman – is entitled to make a submission that there is, in relation to any particular allegation, no case to answer. Moreover, where, as here, the defendant has chosen to represent himself, it is, in my judgment, the responsibility of the judge to consider on the papers whether there are grounds upon which, if the defendant was represented, his counsel might realistically make such a submission and, if there are, then to raise the matter with the applicant's counsel. In relation to both ground (i) and ground (iv) I had serious doubts as to whether there was in fact even a prima facie case against Mr Newman fit to go trial, that is, a case in which it would be open to the fact-finder, correctly applying the law, to find the case proved. In relation to each of these two grounds, having explained my concerns to him, I therefore required Mr Jenkins to respond, as it were, to a submission of no case to answer.

11. I deal first with ground (i), the alleged breach of paragraph 1 of the order of 16 May 2014. This, it will be recalled, forbad Mr Newman from "taking any steps to ascertain the whereabouts of [X] and/or foster placement, including using [his] mobile phone or laptop GPS positioning systems."

12. The evidence in support of the allegation of breach was two-fold. First, there was evidence from one of the social workers who had supervised contact between Mr Newman and his son on 5 August 2014 that, following this contact, a mobile phone of unknown ownership was found in the bottom of X's changing bag. Second, there was evidence that, when a key on the phone was touched, it began intermittently sounding what was described as a siren alarm tone and the front screen of the phone displayed the following text:

> "! Help ! I lost my device! Can you please help me get it back?
> You can reach me at 000000 newman1985@hotmail.co.uk
> Blow me fucker, give me my son back".

That is the extent of the factual evidence, though in his affidavit the local authority's team manager says that "This action could be considered as an attempt to locate X or to intimidate his prospective adopters, carers or involved Children's Services staff." Be that as it may, the relevant allegation in relation to this incident is not of intimidation, only of breach of paragraph 1 of the order of 16 May 2014.

13. There was a clear prima face case that Mr Newman had deliberately placed the mobile phone in X's changing bag, but despite hearing what Mr Jenkins had to say, I remained unpersuaded that there was even a prima facie case against Mr Newman that his actions had, within the meaning of paragraph 1 of the order of 16 May 2014, involved him "taking steps to ascertain the whereabouts of" either X or the foster placement. It was hardly to be imagined that the only people likely to pick up the phone – either a social worker or foster carer – would be so obliging as to contact Mr Newman and volunteer the information. And if the concern, as indeed the order itself would suggest, was that Mr Newman was using the phone itself in such a way (eg as a tracking device) as to reveal the relevant location, then that is not something, in my judgment, that could properly be inferred in the absence of evidence – and there was none – demonstrating how the phone could be used in that way. Absent such evidence there was, in my judgment, not even a prima facie case against Mr Newman.

14. Accordingly, I ruled that this part of the application should not proceed and therefore made an order dismissing the allegation of breach of paragraph 1 of the order of 16 May 2014.

15. I turn to ground (iv), the alleged breach of paragraph 2 of the order of 16 July 2014. This it will be recalled provided, so far as material for this point, that "the court makes the following prohibitions … This order prohibits the publishing [etc]." What paragraph 2 does not do, at least explicitly, is to specify who the order is directed to, who is required to obey it. This, as it seemed to me, raised the question which, as it happens, I had left open in *Re HM (Vulnerable Adult: Abduction) (No 2)* [2010] EWHC 1579 (Fam), [2011] 1 FLR 97.

16. In that case I had occasion to consider the form of order which Sir Stephen Brown P had made in *Re G (Adult Patient: Publicity)* [1995] 2 FLR 528. The order in that case (it is set out in my judgment in *Re HM*, para 16) contained three paragraphs. Referring to Sir Stephen's order I said this (*Re HM*, paras 17-18):

> "17 … Paragraph 3 was, in form and effect, an injunction. It prohibited the publication of certain information: certain names, addresses and photographs. In contrast to the orders in paras 1 and 2, it was directly addressed to those intended to be bound by it, just as, in my judgment, every injunction must be if it is not to fail on grounds of unacceptable ambiguity: see *Harris v Harris; Attorney-General v Harris* [2001] 2 FLR 895 at para [288] and *Re S-C (Contempt)* [2010] EWCA Civ 21, [2010] 1 WLR 1311, [2010] 1 FLR 1478, at para [17]. Since the injunction was contra mundum it accordingly provided that 'no person shall publish … etc'.
>
> 18 On the other hand, neither the order in para 1 nor the order in para 2 was an injunction, whether in form or in effect. Neither was addressed to anyone in particular or to any group or class of individuals. They may have directed, in the abstract as it were, that something was or, as the case may be, was not to be done. But they did not order anybody or any group of people either to do or not to do something."

17. The point arose because, at an earlier stage of the litigation in *Re HM*, Sumner J had made an order (see *Re HM*, para 9) which, so far as material for present purposes, provided that "nothing shall be reported that would identify H." In relation to that order I said this (*Re HM*, paras 24-25):

> "24 In the present case the order included the words 'and nothing shall be reported that would identify H'. As matters have turned out there is no need for me to decide whether this would have been enforceable as an injunction. I am not saying that it would not, but I have to say that I have my doubts, given the principle as I have summarised it in para [17] above. Hence my scepticism when the issue first arose last year …

> 25 The practical message is, I hope, clear. If it is desired to have an order enforceable, if the need arises, as an injunction it should be drafted in the way in which injunctions are usually drafted and, moreover, in terms which are clear, precise and unambiguous."

18. An injunction cannot be enforced by committal unless it is in terms which are clear, precise and unambiguous. That general principle is clear and, indeed, long established. In my judgment a necessary application of the principle is that an order is not enforceable as an injunction unless it is directly and specifically addressed to the person or persons, or to the group or class of persons, who are intended to be bound by it. Those intended to be bound by an injunction must be clearly and unambiguously identified in the order. An injunction which fails that test, and in my judgment paragraph 2 of the order of 16 July 2014 does fail that test, is unenforceable by committal. As I put it in *Re HM*, para 17, an order which is not directly addressed to those intended to be bound by it must fail as an injunction on grounds of unacceptable ambiguity.

19. Mr Jenkins sought to persuade me that paragraph 2 of the order of 16 July 2014 could nonetheless be saved. His argument proceeded in two stages. First, he submitted that, since the application that led to the making of the order had been addressed to Mr and Mrs Newman, it could properly be inferred that there was no-one else to whom paragraph 2 was addressed. There are two problems with that. First, one cannot construe an injunction by looking at other documents not specifically incorporated by reference. Secondly, the order of 16 July 2014 records the respondents as being Mrs Newman, Mr Newman and X, and it can hardly be suggested that paragraph 2 was intended to bind X. As the second stage of the argument, Mr Jenkins suggested that the word "Further" which introduces paragraph 2 of the order naturally carried one back to the preceding paragraph, which was specifically directed to Mr Newman. So, he submitted, paragraph 2 was by implication directed, as paragraph 1 clearly was, to Mr Newman, and only to Mr Newman. There is, in my judgment, a short answer to this. The word "Further" will not bear the weight which Mr Jenkins would have me attach to it. In my judgment, the requisite degree of certainty is simply not to be found in paragraph 2.

20. Nor can the order be saved on the basis that, whatever might be the position in relation to Mrs Newman, Mr Newman is, on any hypothesis, either the person or one of the persons intended to be bound by the order. But why should I, how can I, make that assumption? Why should it be assumed that paragraph 2 was not intended to apply only to Mrs Newman? For all I know, the surrounding circumstances and the history of the proceedings may demonstrate that to be most unlikely, but that is not the point. An injunction should be set out complete in a single document so that, looking only at that one document, the party enjoined can see exactly what it is that he must do or not do: see *Harris v Harris, A-G v Harris* [2001] 2 FLR 895, para 292, following *Rudkin-Jones v Trustee of the Property of the Bankrupt* (1965) 109 Sol Jo 334.

21. Accordingly, I ruled that this part of the application should not proceed and therefore made an order dismissing the allegation of breach of paragraph 2 of the order of 16 July 2014.

22. I must point out that Judge Wildblood is an experienced family judge who is careful, indeed, meticulous. On this occasion, however, he made a slip, failing to ensure, if this is what was intended, that paragraph 2 of the order of 16 July 2014 included specific reference to the father. Homer nodded.

23. I should add that, since announcing my decision, I have recalled that this is a matter which I also had occasion to deal with in *The Solicitor General v J M J (Contempt)* [2013] EWHC 2579 (Fam), [2014] 1 FLR 852, a case where paragraph 1 of an order made earlier in the proceedings by Hedley J had provided that certain named children "shall be returned forthwith" to Spain. Referring back to what I had said in *Re HM*, I said this (para 18):

> "The Solicitor General does not base any allegation of contempt on a breach of para 1 of Hedley J's order. He was right to adopt that stance, for para 1 was not an injunction, whether in form or in effect. [It] was not addressed to anyone in particular. It directed, in the abstract as it were, that something was to be done. But it did not order the mother, or anybody else for that matter, to do something: see the analysis in *Re HM (Vulnerable Adult: Abduction) (No 2)* [2010] EWHC 1579 (Fam), [2011] 1 FLR 97."

I went on (para 21) to refer to:

> "the … principle that in relation to committal 'it is impossible to read implied terms into an order of the court': *Deodat v Deodat* (unreported) 9 June 1978: Court of Appeal Transcript No 78 484) per Megaw LJ. An injunction must be drafted in terms which are clear, precise and unambiguous."

I added (para 22):

> "Speculation founded on uncertainty is no basis upon which anyone can be committed for contempt."

I made the same points in a later judgment in the same litigation: *Cambra v Jones and anor* [2014] EWHC 2264 (Fam), para 18.

24. I add these references for the sake of completeness. They merely confirm my decision, announced during the hearing and explained in paragraph 18 above. There is, therefore, no need for me to invite further submissions.

25. Having thus dismissed grounds (i) and (iv) on the basis that Mr Newman had no case to answer, I was left with grounds (ii) and (iii). Matters here were very different.

26. I turn to ground (ii), the allegation that Mr Newman has been guilty of "harassing" employees of the local authority. The allegation is based on the contents of fourteen emails sent to various of the local authority's employees (who I will refer to respectively as R, J, K, L and V) between 17 July 2014 and 18 August 2014 inclusive and a message sent on 18 August via facebook to the mother of another of these employees. I set out in the Table annexed to this judgment the dates and recipients of

each of these email messages and, in full, the text of each message exactly as sent. The facebook message was sent on 9 August 2014 to the mother of another social worker, Kimberley H. The message read "This is what Kimberley does." Attached to the message were newspaper articles about social workers who boast about removing children.

27. Mr Newman admits the authorship of each of these messages, and does not dispute that each of the emails was sent to one or more of the class of persons referred to in paragraph 5 of the order of 16 May 2014. The only question is whether Mr Newman's conduct amounted to "harassing" within the meaning of paragraph 5. Mr Jenkins submits that it did. Mr Newman says that what he did was neither intended to be nor did it in fact amount to harassing.

28. What the word "harassing" means in paragraph 5 of the order of 16 May 2014 is a matter of construction, and therefore a matter of law. Whether, in the light of that meaning, what Mr Newman did amounted to harassing is a matter of fact and degree. I adopt the same approach as commended itself to the Court of Appeal in *Vaughan v Vaughan* [1973] 1 WLR 1159 when considering, also in the context of committal, the meaning of the word "molesting" when used in an injunction. All three judges had recourse to the dictionary.

29. "Harassing", like "molesting", is an ordinary English word and there is nothing in the order of 16 May 2014 to suggest that it was being used in any special sense, let alone as a term of art. It is to the dictionary that I accordingly turn. The Oxford English Dictionary provides, in addition to a number of more antique meanings, an apt definition of harass which, in my judgment, reflects what the word harassing means when used in this order:

> "To subject (an individual or group) to unwarranted (and now esp. unlawful) physical or psychological intimidation, usually persistently over a period; to persecute. Also more generally: to beleaguer, pester."

30. Whether emails constitute harassment will, of course, depend upon the circumstances, in particular the number and frequency of the emails, their content and tone, the persons to whom and more generally the context in which they are sent. Here we have fourteen emails sent in a little over four weeks. On one day (9 August 2014) there were three. Initially, R seems to be singled out; then the emails are sent to a wider group of people. There is a pervading tone of menace: the personalised attacks ("How do you sleep at night?", "If you have kids ask yourself what would you do to keep them"); the threats ("I have everything ready to completely ruin everyone who stands against us", "people's names … spread all over the world along with their pictures", "set things right before they go terribly wrong", "Soon your tyranny will end", "Soon all your names will be appearing on a newspaper", "someone, someday will be held accountable", "unless you wish to put your career on the line", "Hope you are looking forward to an early retirement", "The revolution is coming are you ready"); the threatening count down; and the repeated unwarranted demands that X is returned.

31. In my judgment this was quite plainly harassment, not just pestering but psychological intimidation. It was deliberate. It was intended to achieve, by the

making of unwarranted demands accompanied by menaces, the return of X to his parents notwithstanding the orders of the court. It is a bad case.

32. The facebook message sent to Kimberley H's mother is, from one point of view, even worse. What aggravates the contempt is not so much the actual message, which in comparison with some of the others is comparatively innocuous; it is the fact that it was sent to Kimberley H's mother. For someone in Mr Newman's position to extend his campaign to a member of his primary victim's family, whether partner, child or, as here, parent, is despicable. It is deliberately putting pressure on his victim by attacking their nearest and dearest.

33. Accordingly, I am in no doubt at all, I find as a fact, and to the criminal standard of proof, that Mr Newman is in breach of paragraph 5 of the order of 16 May 2014 as alleged by the local authority.

34. Finally, I turn to ground (iii), the alleged breach of paragraph 1 of the order of 16 July 2014. The evidence here consists of screenshots showing entries on what purports to be X's facebook account on 5 July 2014, 8 July 2014, 11 July 2014 and 16 August 2014. Each of these screenshots shows X's name in full. The screenshot on 5 July 2014 reproduces a letter from the local authority to Mrs Newman dated 2 July 2014 alleging breaches of the order of 16 May 2014 and carries the message "The more letters sent like this and the more threats from social services to take legal action the more I will make things public." The screenshots on 8 and 11 July 2014 reproduce the corresponding letter from the local authority to Mr Newman dated 2 July 2014 and the screenshot on 11 July 2014 also carries the message "Lol so [names of various social workers] think that trying to impose more rules and prohibitions against my father is going to work, no the only way to stop him bringing down Social services is to return me [full names of X] to him." The evidence is that each of these screenshots was still accessible when the facebook account was accessed on 4 and again on 18 August 2014. The screenshot on 16 August 2014 (a Saturday) shows a photograph of X and Mr Newman beneath the caption "[Full names of X] changed their profile picture."

35. Mr Newman does not dispute that he was the author of each of these facebook entries. Nor can he dispute knowledge of the order made on 16 July 2014 because, as it recites, he was present in court, consented to the order and was served at court with a sealed copy of it.

36. So far as material for immediate purposes, paragraph 1 of the order of 16 July 2014 required Mr Newman to do two things: first, by 12 noon on 17 July 2014 to "delete the facebook account in the name of X … and all 'threads' from the facebook … account in the name of X"; and, secondly, "having deleted the facebook account … and any threads, not to reactivate the account and to take all possible steps to ensure that the information … has been permanently deleted." The fact that the material I have described in paragraph 34 above was still accessible during August 2014 demonstrates that Mr Newman must have been in breach of one or other (or conceivably both) of the relevant limbs of the order in paragraph 1. (I should add that there is no suggestion of any impossibility in his complying with the order because, as he told me, he has in fact since taken all the offending material down. Whether or not that is true, it is plainly inconsistent with any argument – and he made no such argument – that he was not able to comply with the order.)

37. There can in my judgment be no doubt at all, I find as a fact, and to the criminal standard of proof, that Mr Newman is in breach of paragraph 1 of the order of 16 July 2014 as alleged by the local authority.

38. At the end of the day, therefore, I dismissed the application insofar as it alleged breaches of paragraph 1 of the order of 16 May 2014 and paragraph 2 of the order of 16 July 2014. I found Mr Newman guilty of the alleged breaches in paragraph 5 of the order of 16 May 2015 and paragraph 1 of the order of 16 July 2014. In relation to each of those matters I was satisfied so that I was sure that Mr Newman had indeed committed the breaches alleged as summarised in paragraphs 26 and 34 above.

39. Mr Newman is therefore guilty of contempt of court. I decided not to proceed forthwith to sentence but to defer consideration of that issue until such time as it becomes apparent whether or not the local authority intends to pursue its further application for committal. That delay will not prejudice Mr Newman. On the contrary, were those further alleged contempts to be proved against him, my dealing with all the matters on the one occasion would permit him to take advantage of the principle, explained in *Villiers v Villiers* [1994] 1 WLR 493, [1994] 1 FLR 647, that the aggregate sentence for contempt imposed on any one occasion cannot exceed two years, even though if dealt with on different occasions the sentences imposed for different contempts could exceed that amount in the aggregate.

40. Accordingly at the end of the hearing I made an order requiring Mr Newman to attend for sentencing on the breaches I have found proved "if called upon by the court to do so." I will decide how I ought to proceed once I know whether the local authority intends to proceed with its further application and, more generally, having regard to how matters then stand, including, as I made clear to Mr Newman, whether he has in the meantime complied with the injunctions which, in large measure reproducing those previously imposed by Judge Wildblood, I granted on the local authority's application following my determination of its application for his committal.

41. Before parting from this case, there is an important matter which I must address.

42. In *Re J (Reporting Restriction: Internet: Video)* [2013] EWHC 2694 (Fam) [2014] 1 FLR 523, a case that attracted much attention at the time, I articulated, not for the first time, two points which in my judgment are and must remain of fundamental, indeed constitutional, importance.

43. The first (para 36), was the recognition of "the importance in a free society of parents who feel aggrieved at their experiences of the family justice system being able to express their views publicly about what they conceive to be failings on the part of individual judges or failings in the judicial system." I added that the same goes, of course, for criticism of local authorities and others.

44. The second (para 38), was the acknowledgement that the "fear of … criticism, however justified that fear may be, and however unjustified the criticism, is, however, not of itself a justification for prior restraint by injunction … even if the criticism is expressed in vigorous, trenchant or outspoken terms … or even in language which is crude, insulting and vulgar." I added that a much more robust view must be taken today than previously of what ought rightly to be allowed to pass as permissible criticism, for "Society is more tolerant today of strong or even offensive language." I

summarised the point (para 80): "an injunction which cannot otherwise be justified is not to be granted because of the manner or style in which the material is being presented … nor to spare the blushes of those being attacked, however abusive and unjustified those attacks may be."

45. I stand by every word of that. But there is a fundamental difference between ideas, views, opinions, comments or criticisms, however strongly or even offensively expressed, and harassment, intimidation, threats or menaces. The one is and must be jealously safeguarded; the other can legitimately be prevented.

46. The freedom of speech of those who criticise public officials or those exercising public functions, their right to criticise, is fundamental to any democratic society governed by the rule of law. Public officials and those exercising public functions must, in the public interest, endure criticism, however strongly expressed, unfair and unjustified that criticism may be. But there is no reason why public officials and those exercising public functions should have to endure harassment, intimidation, threats or menaces.

47. There is freedom of speech, a right to speak. But this does not mean that the use of words is always protected, whatever the context and whatever the purpose. As Holmes J famously observed in *Schenck v United States* (1919) 249 US 47, 52:

> "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force."

Freedom of speech no more embraces the right to use words to harass, intimidate or threaten, than it does to permit the uttering of words of menace by a blackmailer or extortionist. Harassment by words is harassment and is no more entitled to protection than harassment by actions, gestures or other non-verbal means. On the contrary, it is the victim of harassment, whether the harassment is by words, actions or gestures, who is entitled to demand, and to whom this court will whenever necessary extend, the protection of the law.

48. I do not wish there to be any room for doubts or misunderstanding. The family courts – the Family Court and the Family Division – will always protect freedom of speech, for all the reasons I explained in *Re J (Reporting Restriction: Internet: Video)* [2013] EWHC 2694 (Fam) [2014] 1 FLR 523. But the family courts cannot and will not tolerate harassment, intimidation, threats or menaces, whether targeted at parties to the proceedings before the court, at witnesses or at professionals – judges, lawyers, social workers or others – involved in the proceedings. For such behaviour, whatever else it may constitute, is, at root, an attack on the rule of law.

49. I emphasise, therefore, that Judge Wildblood was perfectly justified in granting the injunction in paragraph 5 of the order of 16 May 2014. Such orders can, should, and no doubt will, be made in future by the family courts when the circumstances warrant. I should add, moreover, that the protection of the law is not confined to the grant in appropriate circumstances of such injunctions. Harassment is both a criminal offence and an actionable civil wrong under the Protection from Harassment Act 1997. And,

quite apart from any order of the court, it is a very serious contempt of court to take reprisals after the event against someone who has given evidence in court.

50. I do not want anyone to be left in any doubt as to the very serious view that the court takes of such behaviour. In appropriate cases immediate custodial sentences may be appropriate. And deterrent sentences may be justified. The court must do what it can to protect the proper administration of justice and to ensure that those taking part in the court process can do so without fear.

TABLE

1	17 July 13.27 R	Well now it's confirmed, how does it feel to have absolutely no morals and represent people who it's confirmed make money for each adoption? How do you sleep at night knowing this, I know you need to work but at what point do you sacrifice what is morally right in order to continue the job you do?
2	30 July 14.05 R	I guve you one opportunity to have the placement order removed amd [X] returned to us as I will never give up and I will get him back iwould just rather do it the easy way that doesn't cost the government a lot of money. I will be going to the court of human rights, I have the paperwork ready to go. I have the form to revoke an adoption order ready to go and if all else fails I have everything ready to completely ruin everyone who stands against us, I will never allow the government to get away with what they have done so tell your client that we will accept and abide by any order that keeps us as a family and that any money that would be made by anyone for the adoption will not outway the loss that will be incurred otherwise. Threaten me with prison all you like but if I don't get him back or i go to prison I will make everything public and that includes information I have that you don't, it's not long before you are all going to be made accountable for your actions but giving me what I want will stop me causing the government any more problems and people's names won't be spread all over the world along with their pictures. Your choice to set things right before they go terribly wrong.
3	5 August 18.33 R	The case described here has arguments that are very similar tomour case so I will be using it as you used the way I was with ss as a basis for the way I would be with [X], yet according to the argument in the link that kind of argument is questionable. http://www.bailii.org/ew/cases/EWCA/Civ/2014/1133.html I will always fight for him and will not back down regardless of what you throw at me as he is attached to both of his parents and if you and social services had any morals whatsoever you'd give in now. If you have kids ask yourself what would you do to keep them.
4	7 August 10.34 J	As stated to [V] and [R] you have 6 days to return my son.

5	8 August 09.52 J K R V	5 days …
6	9 August 09.58 J K R V	4 days … Please reply to this email with a date and time that you will be returning my son to me. I am not going to be scared off by you, a sadistic judge or your henchmen formally known as the police as they have lost the right to be called that as they do not stand up for what is right.
7	9 August 12.37 J K R V	Please stop using your henchmen when you have an issue, the only way to settle the problem we have is for you to return my son to me as the money you are making from the adoption is nothing compared to what you will lose. I've already contacted every news paper in the country and there are many other people on Facebook who have had their children stolen of social services and they have had enough. Soon your tyranny will end so those of you with morals need to stand on the right side as one day your immoral actions will be judged.
8	9 August 18.05 J K R V	One of you has finally slipped up, bragging of Facebook about stealing kids off families. Soon all your names will be appearing on a newspaper. [This was a reference to a newspaper report of a social worker employed by another local authority who was facing disciplinary proceedings in relation to Facebook messages she had posted]
9	10 August 16.39 J K R V	3 days …
10	12 August 23.26 J K R V	I am still awaiting your response. It's interesting how when it comes to stealing kids you make yourself known but when you are confronted about it you cower and call others to deal with your problems when they should be dealing with real problemsm it's like the playground at school, you are the bullies whombeat people up to get their lunch money but when people fight back you retreat into some defensive fear shell. Don't bother responding if you do steal kids and make money from getting them adopted as that will be used against you one day. I say this if I don't have my son back on his first birthday then someone, someday will be held accountable for me missing it and that's not a threat as it appears you need that explained to you due to your low intelligence so stop running of to the police who have real work to do and aren't rent cops their to do your bidding. It appears according to www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/civil-division/questions-and-answers we do not need permission to appeal as wildblood is a circuit judge and if you are foolish enough to allow this back into a court room you're going to lose not just the case but your jobs as well when I prove that it's all for the money and not for the welfare of children, I have proof. I am not the only one you have done this too but I will be one of the

		last. I am smarter and more persistent than you and anything you do against me will just make me more so. So unless you wish to put your career on the line for the sake of selling my child then I suggest you return him before it goes that far.
11	13 August 15.31 J K L R V	That answers that then thank you for admitting to stealing kids for profit. Hope you are looking forward to an early retirement as your jobs won't exist soon.
12	16 August 13.10 J K L R V	[Retransmission with various attachments of no 11]
13	18 August 17.03 J K L R V	I expect to see my son again soon, we don't need permission to appeal so when we see you in court you will be decimated. The revolution is coming are you ready?
14	18 August 17.12 J K L R V	[Retransmission with various attachments of no 11]