

IN THE COUNTY COURT AT OXFORD

Case No: 9CB01831

St Aldates, Oxford OX1 1TL

Date: 8 March 2019

Before:

HER HONOUR JUDGE MELISSA CLARKE

Between:

TIMOTHY FRANCIS LAGE HAYES

Applicant

- and -

MICHAEL JOHN WILLOUGHBY

Respondent

Mr Guy Sims (instructed on a direct access basis) for the **Applicant**
Mr Clive Wolman (instructed on a direct access basis) for the **Respondent**

SENTENCING REMARKS

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.

Her Honour Judge Melissa Clarke:

Introduction

1. Mr Michael John Willoughby, on 1 February 2019 after a three day trial and in a 115-paragraph reserved judgment, I found you to be in contempt of court for five breaches of an injunction order. This injunction originally was made by the Court of Appeal in December 2011 and amended and varied by the Court of Appeal in January 2012, and by HHJ Moloney QC in May 2013 and substituted by new injunctive terms by HHJ Moloney QC in July 2015 (“the Injunction”).
2. The Injunction was imposed following HHJ Moloney QC finding that you had waged a course of conduct amounting to harassment of Mr Timothy Hayes, the Applicant for these committal proceedings and the person whom the injunction was intended to protect, in what he described as *“on any view, a lengthy and persistent campaign of correspondence and investigation”*, which exceeded *“even the widest limits of reasonableness and became unreasonable and excessive”*. The Court of Appeal, on appeal, found that you were liable for this course of conduct from 14 June 2007 to 2009.
3. You appealed the Court of Appeal judgment, and the Injunction, to the Supreme Court which upheld both. Lord Sumption described you as having a vendetta against Mr Hayes which *“was more than objectively unreasonable. It was irrational. His persistence was obsessive”*.
4. The Injunction prevented you from, amongst other things: communicating directly or indirectly in any way whatsoever with any third party any matter concerning Mr Hayes; and collecting any information physical or digital, relating to Mr Hayes. However, it contained provisos. The provisos have been varied over time but the purpose of them, broadly speaking, was to ensure that the Injunction did not prevent you from defending yourself in any proceedings in which you were an

expressly named party or being or preparing to be a witness in any litigation involving Mr Hayes.

5. This is the latest chapter in a long history of litigation between these two parties (and others) over the last fifteen years or so, in the county court, High Court, Court of Appeal and Supreme Court. The others include Mrs Carol Hayes who is Mr Hayes ex-wife, Mr Graham Butters, who is Mrs Carol Hayes' current partner, and Stephen Grant, who became Mr Hayes' trustee in bankruptcy in 2012.
6. The allegations of breach which I found proven to the criminal standard are that you:
 - i) met with Carol Hayes, Graham Butters and Stephen Grant on 26 June 2013 and discussed Mr Hayes' harassment claim against Carol Hayes and Graham Butters with a view to preventing Mr Hayes litigate it, and further his financial affairs and intentions, in breach of paragraph 2 of the Injunction;
 - ii) following that meeting, instructed counsel (Clive Wolman) to draft, and then entered into, an agreement on 8 July 2013 ("**the Quadripartite Agreement**") and communicated in respect of Mr Hayes' affairs by causing or permitting his signed agreement to pass to Carol Hayes, Graham Butters and Stephen Grant, in breach of paragraph 2 of the Injunction;
 - iii) entered into an indemnity agreement with Carol Hayes and Graham Butters, dated 28 July 2014 ("**the Indemnity Agreement**"), to indemnify Stephen Grant in respect of any claims arising from: costs awarded against Stephen Grant in his claim HC13D03075 (erroneously referred to as HC130375) on 11 July 2014 in favour of Mr Hayes; the appeal from the decision of Nugee J in HC13D03075; and the application by Carol Hayes for a third party debt order in respect of the interim costs order of £2000 in HC13D03075 in favour of Mr Hayes; all in breach of paragraphs 2 and 3 of the Injunction;

- iv) on 1 April 2015, and pursuant to the Indemnity Agreement, paid £2000 to Carol Hayes to discharge the liability of Stephen Grant to Carol Hayes, following Carol Hayes obtaining a third party debt order in respect of the interim costs order of £2000 in favour of the Applicant on 11 July 2014 in HC13D03075, in breach of paragraph 2 of the Injunction;
 - v) made ancillary communications and retained information in respect of the Quadripartite Agreement, in breach of paragraphs 2 and 3 of the Injunction. Those communications and information are set out at paragraph 5(g)(v) of the application for committal and are made up of witness statements, emails, and letters from July 2015 to September 2017 which you either sent, signed, or retained. I found that this breach represents a return by you to the obsessive type of behaviour which characterised your harassment of Mr Hayes from 2002 – 2009, and which the Injunction was intended to stop.
7. The penalties available to me are an unconditional discharge, a fine of such amount as is appropriate and which you are able to pay, or committal to prison for a fixed term of up to 2 years. If I determine that the breaches cross the custody threshold so that only sentence of imprisonment will do, then I will sentence you to the lowest sentence commensurate with the seriousness of the contempts. I will then consider whether to suspend this, for up to two years.
8. The Sentencing Council Guidelines for Contempt of Court do not apply for civil contempts, although they provide me with some guidance. Of course a criminal court has wider powers of sentence and can consider other non-custodial penalties which I cannot, in the county court, impose.
9. In relation to your culpability, Mr Sims submits that in your actions, which have been found to be contempts, you appeared to give little consideration as to whether they were within the terms of your injunction or not. Mr Wolman submits on your behalf that you believed at all times that you were acting within the terms of the

injunction, and that you were doing so reasonably. He submits that you accept now that you may have misjudged the reasonableness of some of your actions, and that you may have been 'sailing too close to the wind'. I am not satisfied that you properly turned your mind to whether you were acting within the terms of your injunction or not, which is surprising given that your discussions about the Quadripartite Agreement came only weeks after the Supreme Court upheld the Injunction. To that extent, I am satisfied that your culpability is not at the lowest level. However I have made no finding, and do not believe, that you set out deliberately to breach the injunction. I put your culpability in the low second quartile.

10. In relation to harm, I have considered Mr Hayes' witness statement which serves as a victim impact statement, in which he sets out some significant physical and other difficulties and diagnoses, supported by a letter from his GP, a report from a consultant psychiatrist and a consultant neuropsychiatrist. I will not go into detail now to protect Mr Hayes' personal medical information, but Mr Willoughby has that witness statement and the attachments to it. Mr Hayes says that the stress of these proceedings has had an adverse effect on his physical and mental health. I am satisfied that there is medical evidence to support the contention that his conditions are vulnerable to worsening through stress. Mr Hayes also says that the Quadripartite Agreement in particular has caused significant delay to his claim for harassment against Mr Butters and Mrs Carol Hayes and I am satisfied that it has had such a delaying effect. It has been going on for longer than the harassment claim against Mr Willoughby, without resolution, and although not all of the delay can be laid at the door of the Quadripartite Agreement, I am satisfied that a material part of it can. That delay gives rise to two types of harm: first increased stress

arising from the delay itself, which again I accept is adverse to Mr Hayes health, and secondly an adverse effect on Mr Hayes' access to justice in that claim. So I am satisfied that there is real harm to Mr Hayes resulting from the injunction breaches. Although that is not actual physical harm or damage, in my judgment it is nonetheless significant harm.

11. I take into account and give you credit for the following:
12. You are a 70 year old man. I am told that you have no previous convictions or contempt findings at all. Until this long history of proceedings relating to Mr Hayes began, you had little to no involvement with the legal system. You are married with grandchildren, but without caring responsibilities. You are in good health.
13. You did not admit any of these five acts which I have found to be in contempt, but sought to justify them either as not falling within the injunction at all, or falling within the provisos to the injunction.
14. Mr Wolman submits that you are contrite and sorrowful and accept the findings of fact that I have made, although still dispute some matters of law. You filed a witness statement in response to Mr Hayes victim impact statement which expressed no contrition or sorrow at all, but instead asked me to treat carefully Mr Hayes' evidence of ill health as "*at least one of the Claimant's previous assertions in these proceedings in respect of his health has proved to be misleading*" and you attached medical information of Mr Hayes from 2009, and other documents from 2005, to try to make your point. I am concerned that your contrition is more to do with being found to be in contempt rather than for the harm that your actions have caused to Mr Hayes.

15. You have, too, been put to considerable stress and financial expense in dealing with this committal application, although in my view this has been exacerbated by the manner in which you used this application to try and run legal arguments already rejected by the High Court, Court of Appeal and Supreme Court. You have limited means and income of about £20,000 per annum.
16. I am satisfied that the contempts I have found, taken together, and in the circumstances, breach the custody threshold. I consider, taking into account the contempts together, that the appropriate starting point is 6 months imprisonment. When considering the mitigating and aggravating features there is little overall effect from that starting point, in my judgment. I sentence you to a custodial sentence of 6 months. That is the shortest period of time I consider appropriate for the contempts of court, which you now appreciate are each an attack on the administration of justice.
17. For the purposes of sentencing I will give 6 months for each breach, to run concurrently, but the effect is one of a single six month sentence. I have considered long and hard whether I should suspend this sentence. On the one hand, there is the real risk identified by Mr Sims for Mr Hayes that the court will not learn of any further breaches until after the period of suspension has passed. On the other, Mr Wolman was persuasive that you now understand the seriousness of a breach of injunction and a suspension will have the effect of securing your compliance with the Injunction in the future, per *Hale v Tanner* [2000] 1 WLR 2377. I also bear in mind the desirability of keeping first time offenders out of prison. On balance, I will suspend it. I suspend it for a period of 18 months.
18. What this means is that if you commit no further breaches of the injunction in the next 18 months, that will be the end of the matter. If you commit further breaches

in this time you will come back before me and I may activate your sentence and also sentence you for the further breaches. Do you understand?

19. That concludes the sentence.