Neutral Citation Number: [2024] EWHC 2732 (KB)

Case No: QB-2019-001740

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 October 2024

Before :

MR JUSTICE JOHNSON

- -

Between :

HM SOLICITOR GENERAL	**Applicant**
- and -	
STEPHEN YAXLEY-LENNON (AKA TOMMY ROBINSON)	**Defendant**
-and-	
JAMAL HIJAZI	**Claimant**

- -
- -

Aidan Eardley KC and Adam Payter (instructed by the Government Legal Department) for the Applicant
Sasha Wass KC (instructed by Carson Kaye Solicitors) for the Defendant

Hearing date: 28 October 2024

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Approved Judgment

Mr Justice Johnson:

1. On 22 July 2021, following the trial of a libel claim, Nicklin J granted the claimant an injunction. The injunction prohibited the defendant from publishing certain specified allegations in relation to the claimant which Nicklin J had found to be defamatory and untrue.

2. The applicant contends that the defendant has, on 10 separate occasions, breached the injunction. She makes two contempt applications. The defendant admits breaching the injunction on the occasions and in the manner alleged by the applicant. The issue is the appropriate, if any, sanction.

The facts

The order of Nicklin J

3. The background is set out in two sworn statements of Debra Chan-Smith, the Joint Head of Criminal Casework, and a senior lawyer at the Attorney General's office. The accuracy of the content of those statements is supported by extensive exhibits to the statements. The defendant did not challenge the accuracy of Ms Chan-Smith's account of the background.

4. In October 2018 the claimant, then 15, was involved in a short altercation with a slightly older pupil at his school. A recording of the altercation was published on social media on or around 27 November 2018. The following day, the defendant published videos in which he spoke about the claimant and said that he had, as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries and that he had threatened to stab another child. The defendant's videos were viewed almost one million times. As a result, the claimant became a target of abuse; he had to abandon his education, and his family had to leave their home.

5. The claimant brought a claim for libel. The defendant defended the claim on the ground of truth, that what he had said was substantially true: section 2 of the Defamation Act 2013. A trial took place over 4 days before Nicklin J. Judgment was given on 22 July 2021: [2021] EWHC 2008 (QB). Nicklin J rejected the defence of truth and gave judgment for the claimant. Days before the handing down of judgment, the claimant placed a recording on social media in which he indicated his intention to publish "the total evidence and proof" showing what the claimant "was like" and the "reality of what he had done": *per* Nicklin J at [165]. In light of that evidence, Nicklin J heard submissions from the parties on 22 July 2021 as to whether an injunction should be granted and, if so, on what terms: [166].

6. After hearing submissions, Nicklin J granted an injunction the same day in the following terms:

> "The Defendant must not, whether by himself, his servants, agents or otherwise howsoever publish, or cause or authorise or procure the publication of, the following allegations or any similar allegations in relation to the Claimant:
>
> (1) that the Claimant had, as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries;

> (2) that the Claimant had threatened to stab another child;
>
> (3) that the Claimant had bullied a child referred to in the Judgment as BWI;
>
> (4) that the Claimant had behaved in an aggressive and bullying manner towards girls and women;
>
> (5) that the Claimant had a propensity towards using or making threats of violence against other pupils at Almondbury Community School; and/or
>
> (6) that the Claimant had attacked and injured a pupil at Almondbury Community School with a hockey stick."

7. The defendant was present in court when Nicklin J made the order. He was sent an unsealed copy of the order the same day, and he was served with a sealed copy of the order on 23 July 2021. The order contained a penal notice in red capitalised text on the first page of the order telling the defendant that if he disobeyed the order he might be held to be in contempt of court and imprisoned or fined or have his assets seized.

The first contempt application

8. On 26 June 2023, the claimant's solicitors wrote to the Attorney General and drew attention to what they said were breaches of the injunction by the defendant. They invited the Attorney General to consider investigating the matter in the public interest.

9. On 1 November 2023, the applicant sent a letter before action to the defendant. The defendant's solicitor responded on 8 November 2023, stated that the allegations of breach of the injunction were denied, and asked that all further correspondence be sent to the defendant electronically at a specified email address. That is an address that the defendant was continuing to use in September 2024 to communicate with the court ("the defendant's email address").

10. On 7 June 2023, the applicant made a contempt application ("the first contempt application"). By that application, the applicant contends that the defendant breached the injunction in the following respects:

> "(1) The defendant published, or caused or authorised or procured the publication of, a film entitled Silenced, which was made available online at [url given] and thereafter widely republished online (as intended or reasonably foreseeable by the Defendant), for example on YouTube ("the Film"). The Film includes statements prohibited by the Injunction;
>
> (2) The defendant made a statement in an online interview with Gareth Icke, made available on rumble.com on 2 February 2023, in breach of the Injunction;
>
> (3) The defendant made a statement in an online interview with Gavin Mclnnes, made available on censored.tv on 26 May 2023, in breach of the Injunction;

> (4) The defendant made a statement in an online interview with Emerald Robinson, made available in a podcast called The Absolute Truth on 1 June 2023, in breach of the Injunction."

11. The evidence in support of the application is set out in an affidavit of Ms Chan-Smith dated 15 May 2024, and the extensive exhibit to that affidavit.

The directions hearing

12. On 14 June 2024 Nicklin J made an order listing the first contempt application for a directions hearing. He ordered that the defendant attend the directions hearing. A notice, in capitalised red text on the first page of the order, states that the defendant must attend the hearing and that if he does not a warrant for his arrest might be issued pursuant to CPR 81.7(2). The order also sets out the defendant's procedural rights in relation to the hearing (including the right to legal representation) and states that if he admits the contempt then that is likely to reduce the seriousness of any punishment by the court.

13. The hearing was listed to take place at the Royal Courts of Justice on Monday 29 July 2024. On Saturday 27 July 2024, the defendant led a march from the Royal Courts of Justice to Trafalgar Square. A film, "Silenced" was played (see paragraphs 57 – 62 below). The film showed that the defendant was aware of the injunction and the consequences of breaching it. During the film, the defendant repeated statements that the applicant says are prohibited by the terms of the injunction. On 28 July 2024, the defendant sought to leave the United Kingdom. He was arrested for reasons that are unconnected to these proceedings, and he was interviewed. He was reminded that he was due to attend court the following morning. He was released. The defendant then left the jurisdiction. He did not attend the directions hearing on 29 July 2024.

14. At the hearing on 29 July 2024, I decided to proceed in the defendant's absence: [2024] EWHC 1991 (KB) at [22] – [23]. In the light of a certificate of service, and evidence as to service of the proceedings on the defendant, I ordered that the defendant had been served with the first contempt application. I made directions for the determination of the application.

15. Adam Payter then, as now (with Aidan Eardley KC), represented the applicant. It appeared from Mr Paytor's submissions and his account (on instructions) as to what happened on 27 July 2024, that the applicant might wish to bring a further contempt application. I considered that it was in the interests of justice (and in the defendant's own interests for the reasons given at paragraph 38 below) that any further contempt application should be dealt with at the same time as the first contempt application. I made directions accordingly. I also issued a warrant for the defendant's arrest to secure his attendance at the hearing. I directed that the defendant was permitted to apply to set aside the warrant within 7 days of service of the order. I also directed that the warrant should not be executed prior to 2 October 2024 (both to give the defendant time to set aside the warrant without being at risk of arrest, and to reduce the maximum period for which the defendant might be in custody before the hearing). The order was served on 8 August 2024. No application was made, at that stage, to set aside the warrant. The defendant apparently remained outside the jurisdiction.

The second application to commit the defendant

16. As had been heralded at the directions hearing, the applicant made a further contempt application on 19 August 2024 ("the second contempt application"). By that

application, the applicant contends that the defendant breached the injunction in the following respects (continuing the numbering from the first contempt application):

"(5) In an interview at an event held in Denmark on or about 14 June 2024 which was livestreamed and a video of which was subsequently made available (and remains available) on YouTube.

(6) In an online interview with Jordan Peterson made available on YouTube on 30 June 2024 (and which remains available there).

(7) By playing his film "Silenced" (in a version that included a new introduction) at a rally in Trafalgar Square, London, on 27 July 2024.

(8) By sharing the Film (in its new version) on his X social media account on 27 July 2024 (which remains available there).

(9) By publishing or causing, authorising, or procuring the publication of the said film (in the version that included the new introduction) on YouTube on 28 July 2024.

(10) In an online interview with Brogan Garrit Smith on her podcast entitled "Getting There" made available on YouTube on 28 July 2024 (and which remains available there)."

17. The evidence in support of the second contempt application is set out in an affidavit of Ms Chan-Smith dated 19 August 2024, and the extensive exhibit to that affidavit.

The application to set aside the warrant for the defendant's arrest

18. No application was made to set aside the warrant for the defendant's arrest within the time required by the directions order (that is, by 15 August 2024). On 21 September 2024, the defendant emailed the court (from the defendant's email address) and said that he would attend the hearing on 28 and 29 October 2024 voluntarily and asked if the warrant could be set aside. He was informed that he would need to make an application, supported by evidence. No application was made at that stage.

19. On 21 October 2024, the defendant made an application to set aside the warrant for his arrest. The totality of the information provided in support of the application was this:

> "I was never severed with the proceedings and have been out of the country until 20th October 2024. I was not aware of the details of the warrant until recently and I have not been able to instruct (and are currently still in the process of instructing) lawyers due to financial issues as I was de-banked."

20. I made directions for the determination of the application, including for the parties to make representations.

21. On 22 October 2024 Carson Kaye Solicitors were instructed to act on behalf of the defendant and filed a notice of acting. On 24 October 2024, the defendant filed a witness statement in support of his application to set aside the arrest warrant. He said that he was making the application to set aside the warrant only now because he had previously been confused about how to do so. He denied that he had been served with the proceedings. He said that he was due to attend a police station on 25 October 2024, to

attend a rally on 26 October 2024, and to attend the hearing on 28 October 2024. He gave his current address and said that he "currently had no plans to leave the UK."

22. I refused the application to set aside the warrant for the reasons given in an order dated 25 October 2024. In summary, the defendant had breached an order to attend the previous hearing and had, instead, left the jurisdiction. He had given no explanation for that. I considered it remained necessary for the defendant to be arrested to secure his attendance at the hearing on 28 October 2024.

The application to set aside the order that the defendant had been served with the proceedings

23. On 25 October 2024, the defendant issued an application notice asking for the order that he had been served with the proceedings be set aside. He provided evidence which, he says, shows that he was outside the jurisdiction at the time when the process server had said that he had personally served the defendant with the proceedings. Be that as it may, he gave no good explanation for the delay in making the application to set aside the order of 30 July 2024. Further, he did not identify any purpose in the order that he sought: even if he were correct that the proceedings had not been served on him on 13 June 2024 they did subsequently come to his attention. It is inevitable that if the order in relation to personal service on the defendant were set aside, a further order would be made to dispense with personal service. In the event, Sasha Wass KC, on behalf of the defendant, indicated that the application was not pursued.

The execution of the arrest warrant

24. The appellant was arrested, in the execution of the warrant that I had issued on 30 July 2024, when he attended a police station on 25 October 2024. He was, accordingly, brought to court on 28 October 2024.

The legal framework

Injunctions

25. An injunction is a court order prohibiting a person from doing something or requiring a person to do something: Glossary to Civil Procedure Rules. When granting an injunction that would restrict freedom of expression, the court must have regard to the importance of freedom of expression: section 12 of the Human Rights Act 1998. There is a right of appeal against the grant of an injunction by the High Court, subject to securing permission to appeal from the High Court or the Court of Appeal. Permission to appeal may only be given where the court considers that an appeal would have a real prospect of success or where there is some other compelling reason for the appeal to be heard: CPR 52.6.

26. The injunction in the present case was made following a trial at which evidence was heard and following which Nicklin J determined that the defendant was liable in law to the claimant for the tort of defamation, and that a grant of an injunction was justified to protect the claimant's legal rights. There was no appeal from that decision.

Enforcement of injunction

27. In a democratic society underpinned by the rule of law, court injunctions must be obeyed. A party who has lost a case is entitled to appeal, or to disagree with the result, or to criticise the decision. But they are not entitled to disobey a court injunction.

> Nobody is above the law. Nobody can pick and choose which laws, or injunctions they obey, and which they do not. Even if a person is convinced that an injunction was wrongly granted, or is contrary to their views, or is contrary to what they regard as the weight of the evidence, they must comply with the injunction unless or until it is discharged. They are not entitled to stand as a judge in their own cause. Otherwise, the administration of justice and the rule of law would inevitably break down. It is in the interests of the whole community that court injunctions are obeyed, so that the rights and freedoms that are enjoyed by individuals can be protected and enforced.

28. In *Attorney General v Punch Ltd* [2002] UKHL 50 [2003] 1 AC 1046 Lord Nicholls said (in the context of temporary injunctions, but the same observations apply to final injunctions) at [32]:

> "if a temporary injunction is to be effective the law must be able to prescribe appropriate penalties where a person deliberately sets the injunction at nought. Without sanctions an injunction would be a paper tiger. Sanctions are necessary to maintain the rule of law..."

29. The mechanism for sanctioning a breach of an injunction is regulated by the common law, buttressed by statute and procedural rules. It is known, anachronistically, as the law of contempt of court. This has nothing to do with protecting courts or judges from criticism or "contempt" in the non-technical sense of that word. It has everything to do with enforcing the rule of law and facilitating the delivery of justice by protecting "the integrity of civil and criminal proceedings by imposing appropriate penalties on those who interfere with, obstruct, impede or prejudice the due administration of justice, or expose the process to risk that these consequences will follow": *Attorney General v Yaxley-Lennon* [2019] EWHC 1791 (QB) *per* Dame Victoria Sharp PQBD at [25], *Morris v Crown Office* [1970] 2 QB 114 *per* Salmon LJ at 129, *Attorney General v Times Newspapers Ltd* [1974] AC 273 *per* Lord Cross at 322.

30. Where a contempt application is brought for breach of an injunction, the court's role is fairly and independently to determine the application in accordance with the law and the procedural rules. It is no part of the court's role to relitigate the issues which resulted in the injunction, or to review the judge's factual findings, or to second guess the decision to grant an injunction. Nor is it necessary to scrutinise the defendant's motivation for his actions.

The role of the Law Officers

31. The applicant is one of the Government's Law Officers. The role of the Law Officers includes acting as guardians of the public interest in the administration of justice. In that role, they may, where that is required by the public interest, institute proceedings for contempt of court: *Attorney-General v Times Newspapers Ltd* [1974] AC 273 *per* Lord Reid at 293. That is what the applicant has done by making these two contempt applications. The applicant did so following a request from the claimant's solicitor which drew attention to alleged breaches of the injunction.

Permission to make a contempt application

32. The court's permission is required to make a contempt application where the application is made in relation to interference with the due administration of justice, except where it relates to existing High Court proceedings: CPR 81.3(5)(a). I have

previously determined that the first committal application relates to existing High Court proceedings: [2024] EWHC 1991 (KB) at [26] – [31]. For the same reasons, the second committal application also relates to existing High Court proceedings. The applicant does not therefore require the court's permission to make either the first contempt application or the second contempt application.

Sanction

33. If the court finds that the applicant has proved her case, and that the defendant is therefore liable for contempt, it may impose a sanction for the contempt. The purpose of imposing a sanction is to punish the breach of the injunction, to encourage belated compliance, and to deter future breaches of court injunctions: *National Highways Ltd v Buse* [2021] EWHC 3404 (QB) *per* Dingemans LJ.

34. The sanctions that may be imposed are a period of imprisonment, a fine of unlimited amount, sequestration (confiscation of assets) or other punishment permitted under the law: CPR 81.9(1). Or it may impose no order or adjourn the case: *Hale v Tanner* [2000] 1 WLR 2377 *per* Hale LJ at 2381A. Community orders that are available under Part 9 of the Sentencing Act 2020 when sentencing for a criminal offence are not available as a sanction for contempt of court.

35. A sanction may include both a penal element and a coercive element. The latter may be remitted of the contemnor purges his contempt: *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524 [2019] 4 WLR 65 *per* Hamlen LJ and Holroyde LJ at [41].

36. A period of imprisonment is imposed by way of an order of committal. Execution of the order requires the issue of a warrant of committal. The court may suspend execution of the order or warrant of committal: CPR 81.9(2). The length of the term of imprisonment should be determined without reference to whether it is to be suspended: *Hale* at 2381B.

37. If a contemnor is committed to prison, then the term imposed must be as short as possible consistent with the circumstances of the case: *Claire A v George A* [2004] EWCA Civ 504 *per* Clarke LJ at [14].

38. The maximum term for which a contemnor, on one occasion, may be committed to prison is 2 years: section 14(1) Contempt of Court Act 1981. That is so, however many separate acts of contempt have been proved: *In re R (A Minor) (Contempt: Sentence)* [1994] 1 WLR 487 *per* Sir Thomas Bingham MR at 491A-F.

39. If a term of imprisonment is imposed, the Secretary of State must release the contemnor unconditionally once they have served one-half of the term for which the contemnor was committed: section 258(2) Criminal Justice Act 2003.

40. The purpose of the penalty is to punish a breach of the court's order and to secure future compliance with the court's order by holding out the threat of future punishment: *Hale* at 2381C, *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch) *per* Lawrence Collins J at [8], *National Highways Ltd v Buse* [2021] EWHC 3404 (QB) *per* Dingemans LJ at [28].

41. Where the contemnor has admitted the contempt and entered the equivalent of a guilty plea, that may justify a reduction in the sanction imposed, with the level of reduction

corresponding to the stage at which the admission is made: *Aspect Capital Ltd v Christensen* [2010] EWHC 744 (Ch) *per* Lewinson J at [52].

42. The sanction imposed for a contempt should, where possible, "not be manifestly discrepant" with the appropriate sentence in criminal proceedings for equivalent conduct: *Lomas v Parle* [2004] 1 WLR 1642 *per* Thorpe LJ at [50].

43. The time spent on remand is not automatically deducted from the term of imprisonment imposed by way of a warrant of committal. It is therefore necessary to take that into account when determining the appropriate term: *R (Zahide Sevketoglu (Mustafa)) v Sevketoglu* [2003] EWCA Civ 1570 *per* Hale LJ at [8].

44. No surcharge is payable under section 42 of the Sentencing Act 2020: *Re Yaxley-Lennon* [2018] EWCA Crim 1856 [2018] 1 WLR 5400 *per* Lord Burnett CJ at [76].

45. The approach to be taken by the court was summarised by the Supreme Court (Lord Lloyd-Jones, Lord Hamblen and Lord Stephens) in *HM Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103:

> "1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.
>
> 2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
>
> 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
>
> 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
>
> 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.
>
> 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
>
> 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension."

Service of the order of Nicklin J

46. The defendant was in court when the order of Nicklin J was made, and he was subsequently served with copies of the order by email to the defendant's email address. The order came to his attention well before the first alleged contempt. It is also clear that the defendant has always been aware of the consequences of breaching the order. He does not suggest otherwise.

47. CPR 81.4(2)(d) requires a contempt application based on an allegation of breach of a court order to include a statement confirming that the order was personally served, and the date it was served, unless the court or the parties dispensed with personal service. This reflects a general common law rule that an order must be served before it can form the basis for contempt proceedings. However, that rule does not apply in respect of a prohibitory injunction where the defendant is in court at the time that the order is made and is aware of it by those means. Also, an objection to a committal application on the grounds that the underlying prohibitory order was not personally served will not succeed where the respondent was aware of the terms of the order: *Hearn v Tennant* (1807) 14 Ves Jun 136 *per* Lord Eldon LC, *Hyde v Hyde* (1888) 13 PD 166 *per* Cotton LJ at 171-172, *Hall & Co v Trigg* [1897] 2 Ch 219 *per* Kekewich J at 221-222, *MBR Acres Ltd v Maher* [2023] QB 186 *per* Nicklin J at [67] – [78].

48. In the present case, the mechanism of service of the injunction of Nicklin J does not present any bar to these contempt proceedings. In case there is an obligation personally to serve the order on the defendant, I direct that the steps taken to bring the document to the defendant's attention amount to good service and I dispense with the requirement for personal service: CPR 6.15(2) and 6.27. That is because I am satisfied so that I am sure that:

    (1) The defendant was in court when the order was made on 22 July 2021.

    (2) The defendant was emailed an unsealed copy of the order by the court on 22 July 2021.

    (3) The defendant was emailed a sealed copy of the order by the claimant's solicitors on 23 July 2021, and that was an authorised method of service within the proceedings.

    (4) It is clear from the film "Silenced" that the defendant was aware of the injunction.

    (5) The defendant has publicly referenced the injunction on many occasions.

    (6) The defendant was subsequently served with a copy of the order, and the defendant was aware of the terms of the order and the consequences of breaching the order.

Submissions

49. Mr Eardley KC and Mr Payter submit that the evidence of Ms Chan-Smith clearly demonstrates that the defendant has breached the injunction on 10 separate occasions, as is now admitted by the defendant. They say that the defendant has a high level of culpability because of the nature and extent of the breaches of the injunction. They say that the primary harm caused is to the administration of justice. They accept that there is no evidence of harm being caused to the claimant. They sought an order for the costs of the applications.

50. As to the defendant, on pre-action correspondence, the defendant denied breaching the injunction. Provision was made for the defendant to file evidence in response to the contempt application (whilst not requiring him to do so) in the directions order made on 30 July 2024:

> "By 4pm on 9 September 2024, the defendant must file and serve on the applicant any evidence on which he wishes to rely. Any such evidence shall be in the form of an affidavit. The defendant is not required to provide evidence, but if he chooses to do so he must file and serve the evidence by the time and in the form set out in this paragraph."

51. The defendant chose not to file any evidence in response to the applications. The directions order also drew attention to the fact that if the defendant admitted the breaches of the injunction then that might reduce the seriousness of any sanction imposed. Each of the contempt applications also made this clear. The defendant chose not to make any admissions.

52. The directions order also required the parties to lodge skeleton arguments by 21 October 2024. The applicant complied with this direction. The defendant did not do so, and no skeleton argument was filed on his behalf. Accordingly, until the eve of the hearing it was entirely unclear what the defendant's response would be.

53. At the hearing, Sasha Wass KC represented the defendant. Ms Wass made it clear that the defendant admitted the breaches of the injunction on the occasions and in the manner alleged by the applicant. In mitigation, she drew attention to the fact that the defendant had complied with the injunction for a lengthy period before the first breach, his motivation for breaching the injunction which was, she said, to ensure that the public were informed of what he regarded to be the truth, and the custodial conditions that would apply in the event of committal to prison. She also sought an enhanced reduction for his admissions, drawing attention to the difference between criminal proceedings and civil proceedings (where there is no "first appearance" before a Magistrates' Court), and to the fact that when the defendant breached the injunction he publicly acknowledged that that was what he was doing.

The breaches of the injunction

Meaning of the injunction

54. There is little scope for the interpretation of the meaning of the injunction. Its meaning and effect are clear from the language of the injunction itself. It sets out in terms the allegations that fall within the scope of the injunction. It states that the defendant must not "whether by himself, his servants, agents or otherwise howsoever publish, or cause or authorise or procure the publication of" the specified allegations or any similar allegations.

55. The language of the injunction reflects that it was made following a successful libel claim. The intention is to prohibit further publication of the libellous allegations. In the context of the tort of defamation, a defendant is responsible for the "publication" of a statement not only if they publish it themselves, but also if they authorise its publication by another person intending that person to publish it, or if they otherwise knowingly involve themselves in its publication: *Bunt v Tilley* [2006] EWHC 407 (QB) [2007] 1 WLR 1243 *per* Eady J at [22] – [23], *Monir v Wood* [2018] EWHC 3525 (QB) *per*

Nicklin J at [135] – [136], *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2912 (QB) [2021] EMLR 5 *per* Warby J at [106] – [111].

56. Also, in the content of a defamation claim, a "similar" allegation can be regarded as an allegation that conveys the same defamatory sting.

"Silenced"

57. The applicant identified, and the defendant admitted, 10 breaches of the injunction. Four of these are instances of a publication of a film called "Silenced". The defendant took part in the making of that film. It appears to be "the total evidence and proof" that the defendant was threatening to publish at the time the injunction was granted, and which threat precipitated the grant of the injunction – see paragraph 5 above.

58. Much of the film contains statements made by the defendant which are delivered to camera. Other parts of the film show other participants who make statements in response to questioning by the defendant. Much of the film does not, in isolation, breach the injunction and is a lawful exercise of the defendant's right to free speech.

59. However, a significant part of the film is concerned with the defendant seeking to show that Nicklin J was wrong to find that the statements that he had made about the claimant were false. He repeats allegations that are prohibited by the injunction, and those he interviews do likewise.

60. It follows that, since 22 July 2021 (when the order containing the injunction was made) the defendant is prohibited by the injunction from publishing the film, or by causing or authorising or procuring the publication of the film.

61. The defendant was centrally involved in the creation and the production of the film. He narrates and presents the film throughout. It starts with the defendant speaking to camera and saying that the film is a "documentary". It is, in part, concerned very much with the same subject matter as the defamation proceedings which resulted in the injunction: at an early stage of the film the defendant says that the film is "also a documentary about how an everyday playground incident between two young lad was spun into global news... Our story appears to start and end in a brief playground incident at Almondbury Community School in Huddersfield."

62. There is no evidence as to the date on which the film was produced. In particular, there is no direct evidence that it was produced after, rather than before, the injunction. There are strong reasons to infer that it was produced (or at least that production was finalised) after the injunction and with a view to publishing it in deliberate breach of the injunction. Why else was it called "Silenced"? And parts of the film were certainly created after the judgment of Nicklin J, (because the defendant, during the film, gives an account of the trial and its outcome, including displaying parts of the judgment of Nicklin J). Nevertheless, it is not suggested that the production of the film, in itself, amounts to a breach of the injunction.

63. I deal with the 10 admitted breaches of the injunction in turn.

(1) Interview with Gareth Icke published on 2 February 2023

64. On 2 February 2023, in a published interview with Gareth Icke, the defendant made a number of allegations about the claimant, including that he had attacked girls and threatened to stab someone. There is no evidence as to the extent of publication.

(2) Publication of Silenced on 25 May 2023

65. The film was published on the website of Mice Media at about 6pm on 25 May 2023. The defendant admits that this amounted to a breach of the injunction. I do not have any information about the extent to which it was viewed, but a re-publication of the film was viewed 2.2 million times.

(3) Interview with Gavin Mclnnes published on 26 May 2023

66. On 26 May 2023 (so the day after the film was published), in a published interview with Gavin McInnes, the defendant repeated the allegations that the claimant had beaten up girls and threatened to stab somebody, and did stab somebody, at school.

(4) Interview with Emerald Robinson published on 1 June 2023

67. On 1 June 2023, in a published interview with Emerald Robinson, the defendant repeated allegations about the claimant that fall within the scope of the injunction. Again, there is no evidence as to viewing figures.

(5) Interview at an event held in Denmark on 14 June 2024

68. A letter of claim in these proceedings was sent on 1 November 2023, and on 7 June 2024 the first contempt application was made.

69. On 14 June 2024, a video was published online of the defendant being interviewed at an event in Denmark. The event was organised by the Free Press Society, and it was entitled "Tommy Robinson, The Decline of England and the Rule of Law." Again, the defendant made allegations that fall within the scope of the injunction. There are no viewing figures.

(6) Interview with Jordan Peterson published on 30 June 2024

70. On 30 June 2024, a video appeared on YouTube of the defendant being interviewed by Jordan Peterson on his channel. He made allegations that fall within the scope of paragraphs (2) – (6) of the injunction. According to what the defendant has said, this video and a related figure have (possibility in total) been viewed 4 million times.

(7) Publication of Silenced at Trafalgar Square on 27 July 2024

71. On 27 July 2024, the defendant led a march from the Royal Courts of Justice to Trafalgar Square. Silenced was screened at Trafalgar Square. This was 2 days before the directions hearing. The version of the film that was screened included a new introduction that showed the defendant outside the Royal Courts of Justice in which he said that he should have played the film immediately after the court hearing but had been scared to do so because he had been "silenced".

(8) Publication of Silenced on X on 27 July 2024

72. The defendant published the film on his social media account on 27 July 2024. As of 16 August 2024, it had been viewed 44 million times.

(9) Publication of Silenced on YouTube on 28 July 2024

73. The film was uploaded to YouTube on 28 July 2024. That had been viewed 1 million times as of 1 August 2024.

(10) Interview with Brogan Garrit Smith

74. On 28 July 2024, an interview of the defendant by Brogan Garrit-Smith for her "Getting there" podcast appeared on YouTube entitled "No longer silenced". It is clear from the content that the interview took place shortly before the event in Trafalgar Square on 27 July 2024. Again, the defendant repeated allegations that are within the scope of the injunction.

What sanction should be imposed?

75. Where a defendant is convicted of a criminal offence, and the court is considering forming the opinion that the custodial threshold is passed, the court must obtain a pre-sentence report unless it considers that to be unnecessary: sections 230 and 30 of the Sentencing Act 2020. Here, there is no power to obtain a pre-sentence report. I have, however, given the defendant a full opportunity to make representations as to the sanction to be imposed, including a full opportunity to identify factors to be considered in mitigation. I have also reviewed previous decisions of the courts as to the mitigation that is available to this particular defendant, specifically *Re Yaxley-Lennon* [2018] EWCA Crim 1856 [2018] 1 WLR 5400 *per* Lord Burnett CJ at [20], [68] –[69] *Attorney General v Yaxley-Lennon* [2019] ACD 101 *per* Warby J at [8].

Culpability

76. The defendant had indicated what he was planning to do in advance of the injunction. The injunction was intended to protect the claimant's rights by prohibiting the very conduct in which the defendant has subsequently engaged. The defendant was aware of the terms of the injunction and the consequences of breaching it. The breaches are not accidental or reckless. Each breach of the injunction amounted to a considered, planned, deliberate, direct and flagrant breach of the court's order in disregard of the claimant's rights. Many of the breaches took place over a sustained period, in that not only did they involve a lengthy interview, or film, but the product was uploaded to the internet or social media and left on the internet or social media as a continued publication. Each breach also involved other people. The defendant was not subject to any pressure from others, and nor did he play a minor or subordinate role in the publication of material in breach of the injunction. He has, throughout, performed a leading and orchestrating role in breaching the injunction. There was a degree of sophistication in the breaches in that they involved the planned release of material in a way to seek to achieve maximum coverage.

77. The defendant bears the highest level of culpability for each breach of the injunction.

Harm

78. The primary harm that is caused by the breach of the injunction is the corrosive effect that it has on the administration of justice and the ability of the courts to deliver justice. That can be measured in part by the extensive publication of the defendant's videos in breach of the injunction, and the message they convey that courts orders can and should be breached.

79. It can also be taken that each breach amounts to further unlawful defamation of the claimant, having a further injurious impact on his reputation. However, I have no direct evidence about that, and Mr Eardley accepted it is not a significant factor.

80. There is evidence that the original publication of the allegations by the defendant caused a significant impact on the claimant's private and personal life. He was subject to abuse, he had to leave his home, and he had to leave education. All that took place before the breaches of the injunction. They do not form part of the harm that is to be considered when calibrating the appropriate sanction. There is no evidence that the claimant has been subject to further difficulties. In the absence of evidence, Mr Eardley accepted that it is not appropriate to speculate.

81. I consider that the harm caused by each breach is best categorised as being at a medium-to-high level within the overall spectrum of cases covered by contempt. I agree with Ms Wass that it is no at the highest end of the spectrum.

Aggravating factors

82. Those breaches of the injunction that were committed after 7 June 2024 were aggravated by reason of the fact that they were committed after the first committal application had been instituted.

83. The defendant does not contend that he is of good character in the sense of not having any previous convictions, but I do not, have any evidence before me as to the defendant's previous convictions. There is therefore no question of increasing the sanction to be applied by reference to previous convictions.

84. I do, however, have material (from previous decisions of the courts) as to previous findings of contempt against the defendant. These do render more serious the breaches of the injunction in this case, and are to be treated as aggravating the seriousness of those breaches:

    (1) On 22 May 2017, the defendant received a suspended committal order of three months' imprisonment. He had filmed in the precincts of the Crown Court at Canterbury and had made prejudicial comments about an ongoing trial, which risked derailing the trial. He admitted that his conduct amounted to a contempt. The judge made it clear that if the defendant "were to embark upon similar conduct in future it was likely he would face immediate custody": *In re Yaxley-Lennon* [2018] EWCA Crim 1856, [2018] 1 WLR 5400 *per* Lord Burnett CJ at [12].

    (2) On 5 July 2019, the Divisional Court (Dame Victoria Sharp PQBD and Warby J) found that the defendant was in contempt for breaching a reporting restriction order in connection with a long-running and important criminal trial: *Attorney General v Yaxley-Lennon* [2019] EWHC 1791 (QB). The contempt was reckless, but not deliberate. On 11 July 2019, the court imposed a penalty of 6 months'

imprisonment. It also activated in full the 3-month suspended committal order that had been imposed by the Crown Court at Canterbury, resulting in a 9-month term of imprisonment: [2019] ACD 101.

(3) On 1 August 2022, the defendant was found to be in contempt for failing to attend a hearing for an oral examination in connection with these proceedings. He was fined £900, with an order for his committal to prison for 28 days in the event of default of payment within 28 days. I was told that he paid the fine.

85. Those breaches that were committed after 7 June 2024 were further aggravated by reason of the fact that they were committed after the first committal application had been instituted.

Mitigating factors

86. I take into account that the defendant complied with the injunction, to the letter, from the moment it was ordered until February 2023, a period of around 18 months.

87. I take account of the impact that prison conditions will have on the defendant. It is well known that the high prison population in adult male prisons has impacted on prison conditions. On 24 February 2023, the Deputy Prime Minister wrote to the Lord Chief Justice and said that more prisoners were being held in crowded conditions, as well as being further away from home. There is no evidence that the recent releases of prisoners because of a change to early release provisions has substantially changed the position. The Government has not communicated to the courts that prison conditions have returned to a more normal state: *R v Ali* [2023] EWCA Crim 232 [2023] 2 Cr App R (S) 25 *per* Edis LJ at [22].

88. Further, there may be a particularly onerous impact on the defendant. He is well known. So are his views. They provoke considerable hostility. The prison governor has a legal obligation to take reasonable steps to keep the defendant safe. The discharge of that obligation may impact on the conditions in which the defendant is kept, reducing his ability to associate with others. In this respect, incarceration may be more onerous for him than for others. I also take into account evidence that was read to me by Ms Wass to the effect that previous incarceration had on the defendant's mental health. This is a further factor to consider when determining the impact of prison conditions.

89. The defendant has not shown any remorse for his breaches of the order. It would be surprising if he had done, and any expression of remorse would have been likely to have required analysis before being accepted as genuine. It follows that there is no question of reducing the sanction on the grounds of genuine remorse as a mitigating factor. On the other hand, the absence of remorse (and the defendant's insistence that he has done nothing wrong and is justified in breaching the injunction) is not an aggravating factor.

90. In some cases, particularly involving acts of civil disobedience on the part of protestors, the courts have referred to "a bargain or mutual understanding" that arises out of a form of dialogue with the court. The practical effect is that a lesser sanction can justifiably be imposed where that is likely to be sufficient to ensure future compliance with the court's orders. This does not necessarily involve the defendant showing any remorse or contrition: in cases where this approach is apparent there may be no remorse or contrition, but there is some form of recognition of the need to comply with the law and

commitment towards doing so. In *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9 [2020] EWCA Civ 9, Leggatt LJ said:

> "It seems to me that there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Second, by reason of that difference and the fact that such a protestor is generally – apart from their protest activity – a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people's lawful activities are contrary to the protestor's own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches. This is part of what I believe Lord Burnett CJ meant in the *Roberts* case at para 34 (quoted above) when he referred to "a bargain or mutual understanding operating in such cases"."

91. This approach can be seen in cases where more severe sanctions are imposed on those who show a real determination to continue to engage in unlawful conduct compared to those who, whilst not being remotely remorseful, nonetheless show some form of commitment to future compliance with the court's orders: *National Highways Ltd v Buse* [2023] EWHC 3404 (QB) *per* Dingemans LJ at [29], [43], [52] and [54], *National Highways Ltd v Springorum* [2022] EWHC 205 (QB) *per* William Davis J at [64].

92. In the present case, the defendant has shown no inclination to comply with the injunction in future and to respect the rights of others (and, principally, the claimant). All his actions suggest that he regards himself as being above the law, and not subject to the same requirement to comply with injunctions of the court as everybody else. That is demonstrated by the number of breaches of the injunction, including breaches after committal proceedings were commenced, his failure to attend the hearing that he had been directed to attend, and the fact that he continues to maintain material on his social media account in breach of the injunction even as the substantive committal hearing takes place. There is no question of the court taking a more lenient approach than would be applied to other lawbreakers. This point does, however, also arise in a different way when considering the punitive and coercive elements of the sanction (see paragraph 103 below).

Totality

93. There are 10 separate breaches of the injunction. It would not be appropriate to aggregate the sanction that would be justified for each individual breach. That would risk resulting in a disproportionate sanction. The correct approach is to assess the

appropriate sanction that is just and proportionate in all the circumstances to cover all the breaches of the injunction, applying with appropriate adjustment the overarching guideline of the Sentencing Council on totality.

Admissions

94. The defendant made admissions, but only at the hearing. In a criminal case, the maximum reduction in sentence for a plea of guilty entered on the first day of trial is one tenth: Sentencing Council overarching guideline for reduction in sentence for a guilty plea. Although that guideline does not directly apply to contempt cases, it is well established that a reduction in penalty should be applied where the contempt is admitted, and that the amount of reduction should depend on the stage at which the admission is made. I apply the maximum reduction of one tenth. The fact that in the course of breaching the injunction the defendant said he was guilty of doing so is not the same as entering an admission and does not justify a further reduction. The defendant had every opportunity to make formal admissions in pre-action correspondence and at every stage of the proceedings. He chose not to do so.

Time spent in custody

95. The defendant was arrested on 25 October 2024 pursuant to the bench warrant that I issued on 30 July 2024. He has therefore been in custody for 3 days. That time will not automatically be considered for the purpose of calculating an early release date. Accordingly, I will reduce the term imposed by 3 days to take account of the time that the defendant has already spent in custody.

What is the minimum sanction necessary for the breaches of the order?

96. Each individual breach is so serious that a non-custodial sanction could not be justified. The custody threshold is amply crossed. Each individual breach would, in isolation, justify committal to prison for a term measured in months.

97. In aggregate, and after taking account of all aggravating features, and applying the principle of totality, but before consideration of mitigation, and reduction for the defendant's admissions and time spent in custody, the breaches of the order amply justify the imposition of the statutory maximum custodial term that may be imposed on a single occasion, that is 2 years' imprisonment.

98. By way of a cross check, the Sentencing Council's guideline for breach of a criminal behaviour order provides an offence range of up to 4 years' custody. Where there is a very serious or persistent breach, the highest culpability bracket applies. Where that causes very serious harm or demonstrates a continuing risk of serious criminal and/or anti-social behaviour, the starting point is 2 years' custody (with a range of 1 – 4 years' custody). Where it causes little or no harm or distress, the starting point is 12 weeks' custody (with a range from a non-custodial disposal to up to 1 year's custody). Where the case falls between those two harm categories, the starting point (for a single breach) is 1 year custody with a range of up to 2 years' custody. A 2-year sanction for the breaches in this case fits well within that scheme.

99. Allowing for the mitigation that I have identified, but before considering reduction for admissions, and time already spent in custody, I consider that the appropriate reduction is 4 months. So, the sanction I would have imposed if the applications had been contested would have been 20 months' imprisonment.

100. A reduction of one tenth for the admissions, and allowance for the time already spent in custody, results in a term of 18 months, less 3 days. That is a proportionate sanction and is the least sanction commensurate with the seriousness of the defendant's breaches.

101. I have considered whether to suspend the warrant of committal. I have decided not to do so. The breaches of the injunction are so serious that appropriate punishment can only be achieved by immediate custody. The defendant has a history of poor compliance with court orders. He has been subject to a suspended warrant in the past, only for that to be activated when he committed a further breach of a court order. There is no realistic prospect of rehabilitation. The defendant has not, for example, indicated any inclination to seek partially to remedy his contempt by seeking to secure the removal from online platforms of his public statements that each amount to a contempt. Although there is some mitigation, it does not amount to strong personal mitigation. An immediate custodial term will not result in a significant harmful impact on others: the defendant is not, for example, said to have any caring responsibilities.

Effect of sanction

102. Subject to any application to purge his contempt and discharge or remit the committal order, the defendant will serve one half of the 18 months less 3 days sanction in custody. At that point he will be released. He will not be subject to any form of licence condition. He will continue to be subject to the injunction, and liable to sanction for contempt of court if he breaches the injunction.

Punitive and coercive elements

103. It is appropriate to divide the sanction into punitive and coercive elements. The period of 14 months, less 3 days, is the punitive element. The balance of 4 months is the coercive element. That means that it is open to the defendant to purge his contempt and seek the remittal of 4 months of the order. In order to do that he would need to demonstrate a commitment to comply with the injunction. That is likely to require, at the least, the removal of "Silenced" from his social media accounts, and its removal (and the removal of the other publications that breach the injunction) from other online providers (or at least the taking of all possible steps to secure their removal).

Costs

104. The applicant seeks her costs of the application and has provided a schedule detailing the costs that have been incurred, of £80,350.82. She seeks a payment on account of £50,000.

105. The defendant will pay the costs of the applications, to be subject to a detailed assessment on the standard basis if not agreed. I direct the parties to submit any representations on the question of a payment on account within 7 days. I will determine that question without a further hearing and on the basis of those written representations.

Route of appeal

106. The defendant has a right of appeal to the Court of Appeal (Civil Division) pursuant to section 13(2)(c) of the Administration of Justice Act 1960 read with section 53(3) of the Senior Courts Act 1981. He does not require permission, or leave, to appeal against the order for his committal to prison (but does require permission to appeal against any

other aspect of the order). Any notice of appeal must be filed with the Court of Appeal, and also the High Court, within 21 days: CPR 52.12 and paragraph 9.1 of CPR PD 52D.

Outcome

107. The defendant has admitted that he has breached a court injunction and that he is therefore liable to sanction for contempt.

108. For the 10 admitted breaches of the injunction which each amount to a contempt of court, I commit the defendant to prison for a term of 18 months less 3 days.

109. I order the defendant to pay the costs of the applications and adjourn the determination of any amount to be paid on account.