



HM SOLICITOR GENERAL

Applicant

- and -

**STEPHEN YAXLEY-LENNON
(AKA TOMMY ROBINSON)**

Defendant

-and-

JAMAL HIJAZI

Claimant

**Sanction for contempt of court
Summary of reasons¹ of Mr Justice Johnson**

1. Introduction

- 1.1 His Majesty's Solicitor General brings 2 contempt applications in respect of 10 alleged breaches of an injunction by the defendant.
- 1.2 In short, the background is that the defendant had made a number of allegations about a 15 year old school boy. That boy is the claimant in these proceedings. He brought a claim for libel. The defendant advanced a defence of truth. He said that the allegations he made were substantially true. There was a trial before Nicklin J in April 2021. The trial lasted 4 days. The judge heard from the claimant, and from other witnesses called by each of the parties. Having reserved his judgment, Nicklin J gave judgment in July 2021. His judgment, excluding an appendix, runs to 172 paragraphs over 47 pages. He found that the allegations that the defendant had made against the claimant were untrue and defamatory. He awarded damages of £100,000 and costs. He also imposed an injunction to prohibit the defendant from further publication of the untrue allegations.
- 1.3 By her two contempt applications the Solicitor General alleged that the defendant breached the injunction that was imposed by Nicklin J on 10 separate occasions.

¹ A written judgment will be handed down by circulation to the parties and release to The National Archives.

2. Finding as to breach of injunction

- 2.1 This morning, the defendant has admitted that he breached the injunction on the occasions and in the manner alleged by the applicant. The admissions were made on his behalf by leading counsel, and he confirmed in answer to a question from me that he made those admissions. He breached the injunction by publishing a film that he had made in which he repeated the allegations. He published that film on his X social media account and by playing it at Trafalgar Square. He also repeated the allegations in published interviews. He did this over the time period from February 2023 to July 2024. Some of the breaches occurred after the Solicitor General had brought her first contempt application, which is why a second application was brought so that all the breaches were before the court.
- 2.2 It is necessary to decide whether to impose any sanction for those breaches and, if so, what sanction to impose.

3. Sanction

- 3.1 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. They are entitled to disagree with the result. They are entitled 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 set themselves up as a judge in their own cause and simply breach the injunction. Otherwise, the administration of justice and the rule of law would 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.
- 3.2 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 legal proceedings. It does that by imposing appropriate penalties on those who interfere with, obstruct, impede or prejudice the administration of justice.
- 3.3 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 procedural rules. It is no part of the court’s role to re-litigate the issues which resulted in the injunction, or to review the judge’s factual findings, or to second-guess the decision to grant the injunction. Nor is it necessary to scrutinise the defendant’s motivation for his actions.
- 3.4 In determining the appropriate sanction to be imposed in this case, I consider the minimum sanction necessary to punish the breach of the injunction, to deter

the defendant from breaching the injunction in future, and to deter others from breaching court injunctions. I do so by assessing the defendant's culpability, the harm he has caused, and the aggravating and mitigating features of the case.

Culpability

- 3.5 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 subsequently engaged. The defendant was well aware of the terms of the injunction and the consequences of breaching it. The breaches were not accidental or negligent or merely reckless. Each breach of the injunction was 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 breaching the injunction. He has, throughout, performed a leading and orchestrating role in doing so. There was a degree of sophistication in the breaches in that they involved the planned release of material in a manner that was designed to seek to achieve maximum coverage.
- 3.6 The defendant bears the highest level of culpability for each breach of the injunction.

Harm

- 3.7 The primary harm that is caused by each 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 seek to convey that courts orders can and should be breached.
- 3.8 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 specific evidence about that.
- 3.9 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 the harm in respect of each individual breach is not at the highest end of the spectrum.

Aggravating features

- 3.10 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.

- 3.11 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.
- 3.12 I do have material (from reported decisions of the courts) as to previous findings of contempt against the defendant. These render more serious the breaches of the injunction in this case. They 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 told the defendant that if he embarked on similar conduct in future it was likely he would face immediate custody.
 - (2) On 5 July 2019, the Divisional Court found that the defendant was in contempt for breaching a reporting restriction order in connection with a long-running and important criminal trial. 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.
 - (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.

Mitigation

- 3.13 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.
- 3.14 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 as a result 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 normal state.
- 3.15 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 as 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.

- 3.16 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 here 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.
- 3.17 I take into account that the defendant says he was motivated by a desire to ensure that the public had what he saw as the truth. 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.
- 3.18 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 as everybody else. That is demonstrated by his antecedents, by the number of breaches of the injunction, including breaches after committal proceedings were commenced, by his failure to attend the hearing that he had been directed to attend, and by 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 in respect of him than would be applied to other lawbreakers. I will come back to this point when considering the balance between the punitive and coercive elements of the sanction.

Totality

- 3.19 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 a disproportionate sanction. The correct approach is to assess the 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

- 3.20 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 see no reason not to apply the approach taken in criminal cases. 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 admit his breaches of the injunction in pre-action correspondence, or at any point during the course of the proceedings. He did not do so until the hearing.

Time spent in custody

- 3.21 The defendant was arrested on 25 October 2024 pursuant to the bench warrant that I issued on 30 July 2024. He has been in custody for 3 days. That time will not automatically be taken into account 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?

- 3.22 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.
- 3.23 In aggregate, and after taking account of all aggravating features, and applying the principle of totality, but before consideration of mitigation, 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.
- 3.24 By way of a cross check, I have considered the Sentencing Council's guideline for breach of a criminal behaviour order, recognising that it applies in a different context and reflects different underlying principles. It 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 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.
- 3.25 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.
- 3.26 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 and proportionate to the seriousness of the defendant's breaches. It is not imposed

as a sanction for the exercise of freedom of expression but as a sanction for breach of the injunction. To the extent that the sanction involves an interference with freedom of expression, I am satisfied that that is a proportionate interference.

- 3.27 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.

Effect of order

- 3.28 Subject to any application to discharge the committal order, the defendant will serve one half of the 18 month less 3 day term 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

- 3.29 I divide the sanction into a punitive element and a coercive element. The period of 14 months, less 3 days, is the punitive element. The balance of 4 months is the coercive element. That means that the 14 months less 3 days is intended to punish the breaches. The 4 months is intended to encourage and incentivise future compliance. It is open to the defendant to purge his contempt and to seek the remittal of 4 months of the order, which would result in his earlier release.
- 3.30 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

- 3.31 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.
- 3.32 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

- 3.33 The defendant has a right of appeal to the Court of Appeal pursuant to section 13(2) of the Administration of Justice Act 1960. He does not require permission, or leave, to appeal.

Outcome

- 3.34 For the 10 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. I order the defendant to pay the costs of the applications, and adjourn the determination of any amount to be paid on account.