Neutral Citation Number: [2025] EWCA Civ 476

Case No: CA-2025-000535

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
MR JUSTICE JOHNSON
[2024] EWHC 2732 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2025

Before :

THE LADY CARR OF WALTON-ON-THE-HILL
LADY CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE EDIS
and
LORD JUSTICE WARBY

- -

Between :

STEPHEN YAXLEY-LENNON	**Defendant/Appellant**
- and -	
HM SOLICITOR GENERAL	**Applicant/Respondent**
-and-	**Claimant/Respondent**
JAMAL HIJAZI	

- -
- -

Alisdair Williamson KC and Carl Buckley (instructed by **Carson Kaye Ltd**) for the **Appellant**
Aidan Eardley KC and Adam Payter (instructed by **Government Legal Department**) for the **Respondent**
The Claimant/Respondent was not represented and did not appear

Hearing date: Friday 11 April 2025

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JUDGMENT

(subject to editorial corrections)

This judgment was handed down remotely at 10.00am on Wednesday 16 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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The Lady Carr of Walton-on-the-Hill CJ, Lord Justice Edis and Lord Justice Warby:

Introduction

1. This is the judgment of the court on an appeal against sanction for contempt of court. The appellant is Stephen Yaxley-Lennon, also known as Tommy Robinson. The respondent is His Majesty's Solicitor General, who brought the contempt application.

2. In 2021, at the end of a libel trial, the appellant was ordered not to repeat the allegations complained of by the claimant in that case. On 28 October 2024, he admitted committing ten breaches of that order and that this conduct was in contempt of court. After hearing submissions from leading counsel for the appellant, the judge imposed a sanction of committal to prison for 18 months less 3 days which the appellant had already spent in custody on remand. The appellant has since been detained at HMP Belmarsh (for 4 days) and then HMP Woodhill.

3. On 4 March 2025 a new legal team filed a judicial review claim form on behalf of the appellant seeking to challenge the lawfulness of the conditions of his detention. On 10 March 2025 they filed an appellant's notice to challenge the sanction for contempt as excessive. The grounds of appeal related to three topics: (1) the prison conditions faced by the appellant, which were said to be unexpectedly harsh and inadequately reflected in the judge's reasoning; (2) the appellant's mental health, which was said to be worse than was thought and to make the impact of prison conditions still worse; (3) differences between the release regimes that apply to those detained for contempt and those serving a criminal sentence, which were said to have been overlooked or given insufficient weight by the judge.

4. The appellant's notice was out of time by some 105 days. An extension of time for appealing was sought. The appellant also applied for permission to rely on evidence that was not placed before the judge, in the form of a report from an expert psychologist. The respondent resisted the application to extend time and, for the most part, the fresh evidence application. The respondent cross-applied for permission to rely on two witness statements about the prison conditions. The appellant responded by making a witness statement of his own and a second fresh evidence application in respect of it.

5. On 20 March 2025, Mr Justice Chamberlain heard the judicial review claim. On the next day, he handed down judgment refusing permission for judicial review.

6. We heard the contempt case on Friday 11 April 2025 when, as we shall explain, the appellant pursued only some of the grounds of appeal. After hearing argument we reserved our decision. We now give our decision and reasons.

Background to the appeal

The libel action

7. In and after November 2018, the appellant published videos on social media making allegations that Jamal Hijazi, then aged 15, had, as part of a gang, participated in a violent assault on a young girl which had caused her significant injuries, that he had threatened to stab another child, and four further allegations of a similar kind, defamatory of Mr Hijazi. The videos had over a million views and led to Mr Hijazi

becoming the target of abuse. Mr Hijazi brought a libel action against the appellant. The claim was tried before Mr Justice Nicklin over four days in 2021. On 22 July 2021, the judge gave judgment rejecting the appellant's defence of truth and awarding damages to the claimant: [2021] EWHC 2008 (KB). The judge granted an injunction prohibiting the appellant from further publishing the defamatory allegations complained of.

The contempt proceedings

8. On 7 June 2023, prompted by the claimant's solicitors, the respondent brought an application to commit the appellant to prison for his contempt of court in breaching the injunction in four respects. He had published online a film called 'Silenced' which included statements prohibited by the injunction. He had also made statements in breach of the injunction in online interviews in February, May and June 2023. On 19 August 2024 the respondent brought a second contempt application identifying six further breaches. The appellant had made prohibited statements in two further online interviews in June 2024. On 27 July 2024 he had played a revised version of the film at a rally in Trafalgar Square. From that day onwards he had continued to breach the injunction by sharing the new version of the film on his social media account. On 28 July 2024 he had published it on YouTube and given a further online interview containing prohibited statements. Those two breaches were also continuing.

9. In pre-action correspondence the appellant denied breaching the injunction. Procedural directions given by the court in advance of the hearing stated that the appellant was not required to provide evidence but, if he wished to rely on any evidence at the hearing, he should file and serve an affidavit by a stated deadline; that if he admitted breaching the injunction that might reduce the seriousness of any sanction imposed; and that he should lodge a skeleton argument by another stated deadline. The appellant chose not to file any evidence. He made no pre-hearing admissions. No skeleton argument was filed on his behalf.

10. On 28 October 2024, the contempt applications were heard by Mr Justice Johnson. The respondent was represented by Aidan Eardley KC and Adam Payter. The appellant was represented by Sasha Wass KC. The appellant admitted breaching the injunction on the occasions and in the manner alleged by the respondent. The issue was the appropriate sanction, if any. The judge gave a detailed written judgment, [2024] EWHC 2732 (KB). At [33]-[45], he set out the legal principles governing the court's approach to sanctions for contempt. At [46]-[48] he addressed the question of service and knowledge of the injunction. He was satisfied that the appellant had been present in court when the injunction was granted, had been served with it by email, and that it was clear from the film and by other means that the appellant was aware of the terms of the order and the consequences of breaching it.

11. At [49]-[53] the judge summarised counsel's submissions. For the respondent it was argued that the appellant had a high level of culpability and there was harm to the administration of justice. For the appellant, counsel drew attention to the fact that the appellant had complied with the injunction for a lengthy period before the first breach, his motivation for breaching, which was said to be to ensure the public were informed of what he regarded as 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 and the fact that when he breached the injunction the appellant publicly acknowledged that that was what he was doing.

12. At [54]-[74] the judge considered the facts of the breaches. He found, among other things, that the appellant was "centrally involved in the creation and the production of the film" which he narrated and presented. Although much of it did not, in isolation, breach the injunction, "a significant part of the film is concerned with the defendant seeking to show that Mr Justice Nicklin was wrong to find that the statements that he had made about the claimant were false". In the film, the appellant repeated allegations prohibited by the injunction and those he interviewed in the film did likewise. In May 2023 the film was published on the website of Mice Media. There was no evidence as to the extent of that publication but "a republication of the film was viewed 2.2 million times." The new version of the film that was published in and after July 2024 had been viewed 44 million times on the appellant's social media account and 1 million times on YouTube.

13. At [75]-[103] the judge gave detailed consideration to the question of what sanction should be imposed. He began by observing that in a criminal case, when the court is considering forming the opinion that the custodial threshold is passed, the Sentencing Act 2020 requires it to obtain a pre-sentence report unless it considers that to be unnecessary. Here, there was no power to obtain such a 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".

The judge referred here specifically to *Re Yaxley-Lennon* [2018] EWCA Crim 1856, [2018] 1 WLR 5400 [20], [68]–[69] (Lord Burnett, CJ) and the decision on penalty in *Attorney General v Yaxley-Lennon* [2019] ACD 101 [8] (Dame Victoria Sharp, P and Warby J (as he then was)).

14. The judge began by assessing in turn the topics of culpability, harm, aggravating factors, and mitigating factors. He concluded that the appellant bore "the highest level of culpability for each breach". He accepted Ms Wass's submission that the harm caused was not at the highest end of the spectrum but concluded that it was at "medium-to-high level". The aggravating factors were three previous findings of contempt, in 2017, 2019 and 2022, and the fact that the breaches of the injunction that were the subject of the second committal application were carried out when the first committal application was already pending. There was no remorse nor any reason to show leniency with a view to encouraging future compliance. The appellant had shown "no inclination to comply with the injunction in future" and "continues to maintain material on his social media account in breach of the injunction even as the substantive committal hearing takes place." There were however three mitigating factors: (1) the appellant's compliance with the injunction "to the letter" for a period of around 18 months; (2) the impact of prison conditions; and (3) the prospect that these might be particularly onerous for the appellant.

15. It is appropriate to set out in full what the judge said on the second and third of these points of mitigation:

> "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."

16. The judge went on to consider totality, admissions, time spent in custody, and the minimum sanction necessary for the admitted breaches. He held that, although there were 10 separate breaches of the injunction, the correct approach was to assess the sanction that was just and proportionate in all the circumstances to cover all the breaches. Each individual breach was so serious that a non-custodial sanction could not be justified. Each would in isolation justify committal for a period of months. In aggregate the breaches would "amply justify the imposition of the statutory maximum" of two years' custody. Allowance for the appellant's mitigation reduced that by four months. The sanction, had the applications been contested, would therefore have been 20 months' custody. Reducing that by one tenth for the late admissions brought the sanction down to one of 18 months. That in turn was reduced by three days to reflect time spent in custody which would not automatically be considered for the purposes of calculating the appellant's release date. The sanction would not be suspended because appropriate punishment could only be achieved by immediate custody; there was no realistic prospect of rehabilitation; the mitigation did not amount to "strong" personal mitigation; and an immediate custodial term would not have a significant harmful impact on others.

17. In conclusion, the judge addressed the structure and effect of the sanction:

> "*Effect of sanction*
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> 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)."

The judicial review claim

18. The claim was brought against the Secretary of State for Justice. It sought permission to apply for judicial review of the appellant's "ongoing detention in solitary confinement" at HMP Woodhill and his treatment there on the grounds that these were contrary to section 6 of the Human Rights Act 1998. The contention was that he was being held in conditions that violated his rights under Articles 3 (torture, inhuman or degrading treatment), 8 (respect for private life) and 14 (non-discrimination) of the European Convention on Human Rights. He also challenged his continued segregation on public law grounds.

19. The statement of facts and grounds in support of the claim relied heavily on a report by a clinical psychologist, Dr Theresa Connolly ("the Connolly report"). This was prepared on 26 February 2025 on the basis of a 2 ½ hour interview of the appellant, 2 hours with his mother, and a review of his medical records. The Connolly report advised that the appellant met the diagnostic criteria for adult ADHD; that between 2018 and 2021 (after release from "solitary confinement" on a previous occasion) he met the criteria for complex PTSD; and that, although the complex PTSD had resolved, it was now being reactivated by segregation. Dr Connolly reported fears that the appellant had expressed for his own safety and that of his family, feelings of panic, worry and checking on their safety, sleep disturbance, irritability, quickness to anger, negative self-perceptions and difficulties in sustaining interpersonal reactions. Dr Connolly advised that aspects of solitary confinement were likely to be particularly difficult for a person with ADHD.

20. In response to the claim, the Secretary of State relied on witness statements from Nicola Marfleet ("Marfleet") and Alex Worsman ("Worsman"), respectively the Governor of HMP Woodhill and the Head of the Long-Term and High-Security Prisons Group at the Ministry of Justice. Ms Marfleet set out the characteristics of the prison, identified the policy under which the appellant had been segregated from other prisoners, the basis on which this had been implemented in his case, and how and when his continued segregation had been periodically reviewed. Ms Marfleet identified that on 10 January 2025 the appellant indicated concern about the impact of segregation on his mental

health and explained the steps taken in response to that indication. She described the appellant's daily regime, giving details of ways in which this differed from the regime that applies to prisoners serving criminal sentences. Mr Worsman explained how and why the Ministry had considered but rejected the option of housing the appellant in alternative accommodation.

21. The application was heard by Mr Justice Chamberlain. He granted permission to rely on the Connolly report. He accepted the content of Marfleet and Worsman. Having considered all the evidence, he held that none of the grounds of review was arguable and refused permission for judicial review: [2025] EWHC 695 (Admin). The judge found that it was not accurate to refer to the appellant's regime as "solitary confinement" at all. The absence of association with other prisoners had an effect on his mental health, but it was not arguable that the regime as a whole gave rise to a risk of breaching Article 3. The decision to segregate the appellant interfered with his Article 8 rights, but no less intrusive way of implementing the decision to impose a custodial sanction was "obvious or feasible" in the circumstances. It was not arguable that the appellant had been discriminated against because of his political views. His suggestion that the Governor had adopted an inflexible policy of continued segregation could not be maintained on the evidence. Still less could it be shown that the Secretary of State had fettered her discretion in the matter.

The applications to this court

22. Most appeals to this court can only be brought if the court gives permission, having been persuaded that the appeal has a realistic prospect of success on the merits or that there is some other compelling reason to hear it. An appeal against sanction for committal is an exception. An appeal can be brought as of right, provided it is brought in time.

Extension of time

23. In general, the principles applied to applications to extend time for appealing are the same as those that apply to an application for relief from sanctions under CPR rule 3.9: see *R (Hysaj) v Secretary of State for the Home Department* [2014] EWCA Civ 1633, [2015] 1 WLR 2472 [37]. They are known as the '*Denton'* principles: *Denton v T H White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926. The court will consider (i) whether the failure or default was serious or significant; and (ii) why it occurred; and then (iii) evaluate all the circumstances of the case so as to enable the court to deal justly with the application. At stage (iii) the court will give particular weight to two factors identified in CPR r. 3.9(1) namely "the need (a) for litigation to be conducted efficiently and at proportionate cost; and (b) to enforce compliance with rules, practice directions and orders." Unless the proposed appeal can readily be seen to be very strong or very weak, the court will not investigate its merits.

24. In *Lakatamia v SU* [2019] EWCA Civ 1626 the court applied the *Denton* principles to an application to extend time for appealing against a committal order. The contempt in question involved multiple breaches of freezing orders, disclosure orders, and prohibitions on leaving the jurisdiction. It was not argued in that case that different principles should be applied to applications to extend time for appealing in cases of committal for contempt. Nor was that argued before us. We proceed on the footing that

the general approach is no different, although the nature and circumstances of the case could make a difference to the outcome.

25. It was conceded that the default here was serious and significant. The reasons given were that the actual conditions of imprisonment were not and could not have been known at the time of the judge's decision; in the event they were significantly more onerous than anticipated; they have had a cumulative effect, increasing over time beyond the deadline for appealing; and the Connolly report was not available until late February 2025. It was argued that these were good reasons for the delay, or alternatively that the absence of a "good" reason is not of itself fatal to an application of this kind if the court is otherwise persuaded that it is fair and just to grant the application.

26. We consider this last (alternative) submission to be correct. At paragraph [31] of their judgment in *Denton*, the court (Lord Dyson MR and Vos LJ, as he then was) said that there had previously been an "important misunderstanding", namely that if (i) there is a serious or significant breach and (ii) no good reason for it the application for relief from sanctions will automatically fail; the true position is that in every case the court is required to consider "all the circumstances of the case, so as to enable it to deal justly with the application". The same point was made at [38], where the court explained that it was wrong to approach applications for relief on the basis that, unless a default can be characterised as trivial or there is a good reason for it, the court is bound to refuse relief. "A more nuanced approach is required".

Fresh evidence

27. The evidence in question is the Connolly report (first application), Marfleet and Worsman (second application), and the appellant's witness statement in response to those statements, dated 26 March 2025 (third application).

28. CPR r 52.21(3) provides that unless it orders otherwise an appeal court "will not receive (a) oral evidence or (b) evidence which was not before the lower court". The right approach to this provision was not in dispute before us. It was explained in *Hertfordshire Investments Ltd v Bubb* [2000] 1 WLR 2318, which has been followed and applied ever since. The power to admit fresh evidence is to be exercised in accordance with the overriding objective; the principles identified in *Ladd v Marshall* [1954] 1 WLR 1489 remain relevant, not as rigid rules but as matters for consideration.

29. The first application was not opposed in so far as it relied on Dr Connolly's evidence of changes in the appellant's mental health since 28 October 2024. The respondent submitted, however, that the remainder of the Connolly report covered matters that could and should have been addressed before the hearing last October. Neither side opposed the other's application to adduce evidence of the prison conditions experienced by the appellant.

The grounds of appeal

30. The written grounds of appeal were: (a) that the judge failed to apportion clearly the reduction in sentence for the onerous conditions the appellant would face; (b) that the reduction was in any event insufficient, in that the conditions of detention are in fact more onerous and severer than was envisaged at the time of making the impugned order; (c) that the conditions of detention are significantly more onerous than

envisaged; (d) that the effect of incarceration upon the mental health of the appellant is significant, and demonstrably more significant than that which might be envisaged in passing a custodial sentence; (e) that the appellant has now been diagnosed with ADHD, a factor that was not known about at the time of the passing of the impugned order, might have impacted upon the length of imprisonment ordered, and ought to be considered by the court; (f) that the judge gave insufficient, or any, weight to the fact that by virtue of the sentence passed being civil in nature, the appellant has to serve 50% of the sentence before release, whereas those serving a custodial sentence for the commission of a criminal offence may only have to serve 40% of that sentence (subject to the nature of that sentence, and thus the appellant is treated more harshly); (g) that the learned judge gave insufficient, or any, weight to the fact that by virtue of the sentence passed being civil in nature, the appellant is not eligible to be released on Home Detention Curfew (HDC) whereas those serving a custodial sentence for the commission of a similar length would be so eligible and thus the appellant is treated more harshly.

31. It will be seen that there is some repetition within the grounds. In substance they raise two points under each of the three main headings we have identified at paragraph [3] above. It is under those headings that we will address them.

Legal framework

32. Contempt of court is not a criminal offence. However, the sanctions for contempt include committal to prison, a fine, and other punitive measures. The court's approach to the imposition of sanctions of this kind is similar in many respects to the way it deals with sentencing in crime. In a contempt case the court will draw upon general principles of sentencing and on sentencing guidelines for analogous criminal wrongdoing: *Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103, [44].

33. The judge's reasoning, which we have summarised above, reflects this. His reasoning also reflects some of the differences between the sanctions for contemnors and criminals. These include the fact that a custodial sanction for disobeying an injunction may include a "coercive" element, which the court may "remit" in whole or in part if the contemnor takes step to "purge" the contempt and applies for a reduction in the custodial term. The judgment also refers to the release regime for contemnors which is, as the grounds of appeal point out, different from that which applies in crime.

34. This is a civil appeal. The court conducts a review, not a re-hearing of the case: CPR r.52.21(1). It will interfere only if satisfied that the decision under appeal is "(a) wrong, or (b) unjust because of a serious procedural or other irregularity": r 52.21(3). A decision is "wrong" for this purpose if it involved an error of law, which includes a failure to take account of a relevant factor, or a decision that falls outside the range of decisions reasonably available to the court. Sometimes, fresh evidence that was not available to the judge may show that the decision was wrong for reasons which the judge could not have appreciated.

35. The nature of the case means that it is appropriate to take account of the court's approach to appeals against sentence for crime. In that context also the function of the appeal court is to review the decision of the court below. The general rule is that it will only interfere if persuaded that at the time it was passed the sentence was unlawful or

wrong in principle or manifestly excessive: *R v Shaw* [2010] EWCA Crim 982 [11]. In this case, the following points are relevant:

(1) As a general proposition, a sentencing judge is not obliged to attribute specific percentage values or figures to matters taken into account in aggravation or mitigation as part of the sentencing exercise; there is no parallel to be drawn with the approach to discounts for guilty pleas, for which a quantified reduction is made at a discrete stage in the sentencing process: *R v Ratcliffe* [2024] EWCA Crim 1498 [81] and *R v Hallam* [2025] EWCA Crim 199 [26(iii)].

(2) The court will not normally entertain an appeal based on events which occurred only after sentence, of which the sentencing judge was unaware, though it may take account of "updating" information which builds on or undermines a matter that was seen below as bearing on the appropriate sentence: *R v Watson* [2021] EWCA Crim 1248, [2022] 1 Cr. App. R. (S) 39.

(3) Fresh evidence of a serious medical condition will not generally afford a basis for an appeal against sentence. It will on occasion be appropriate for an appeal court to have regard to matters which have arisen since sentence was passed (*R v Shaw*, above) and in cases of serious ill-health the court may have regard to a significant deterioration in a medical condition which was known at the time of sentencing, but the cases in which it will be appropriate to do so are rare: *R v Hall* [2013] EWCA Crim 82, [2013] 2 Cr. App. R (S) 68 [20]; *R v S(A)* [2018] EWCA Crim 318, [2018] 1 WLR 5344 [17]-[20].

(4) An appeal against sentence based on release provisions could only succeed in exceptional circumstances; there is a longstanding general principle that a sentencing court will and should determine the length of a custodial sentence without regard to release provisions: *R v Patel* [2021] EWCA Crim 231, [2021] 1 WLR 2997 [22]-[26]. This approach has been followed by this court in the sphere of contempt: *Westcott v Westcott* [1985] FLR 616.

Assessment

Prison conditions

36. Ground of appeal (a) plainly could have been pursued within time. Moreover, it is clearly answered by the well-established principles identified at [35(1)] above. There is nothing about the facts and circumstances of this case to take it outside the general rule. The judge did not arguably err in identifying a global reduction of four months to reflect the various mitigating factors he had identified. At the hearing Mr Williamson KC realistically acknowledged this and did not pursue this aspect of the appeal. We therefore refuse the application to extend time to pursue an appeal on ground (a).

37. Grounds (b) and (c) are indistinguishable. Each contends that the sanction should now be reduced due to unexpectedly onerous prison conditions. Self-evidently, this is not a point that could have been made to Mr Justice Johnson, nor could the evidence now relied on have been put forward. There is an explanation for the delay. Although an appeal on this point could perhaps have been raised sooner than it was, it does appear that time for appealing had expired before the facts relied on became apparent. This was a dynamic situation. The delay was relatively short. The respondent has been able

to adduce its own evidence on the issue. In all the circumstances we consider it just to extend time, admit the fresh evidence, and address the merits of the issue.

38. Having considered the updating evidence with care we do not accept that it shows that the conditions which the appellant has experienced are materially harsher or more onerous than the judge foresaw.

39. The factors identified by the judge expressly included the general conditions currently experienced by prisoners sentenced for criminal offending and particular factors that might affect the experience of this appellant. The general matters identified in *Ali* (above) at [20] were "crowded conditions ... reduced access to rehabilitative programmes, as well as being held further away from home (affecting the ability for family visits)". The additional factors affecting this appellant in particular were, in summary, the prospect that he would experience hostility, segregation for his own safety, and a consequent reduction in association with others.

40. The respondent's evidence, contained in Marfleet, is summarised in the judgment of Mr Justice Chamberlain in the judicial review claim. In short, the appellant has been designated a Category C prisoner. He has been segregated for his own safety following threats and intelligence suggesting a real risk of violence. However, as a civil prisoner, detained for contempt, he is entitled to three hours a day out of his cell, as compared to 1 hour 15 minutes for a segregated criminal. As a civil prisoner he is not required to work but he decided to carry out some work, giving him an additional 2 hours 45 minutes out of cell on three days a week. In his cell, the appellant has access to reading material, a laptop, a TV, a DVD player and a CD. He is able to send and receive emails, and he does so, in the hundreds. He can use a telephone to make calls to friends and family for up to four hours a day. He can go to the gym. He is offered two hours, four times a week, for social visits. He has had 80 such visits, not including those from family members.

41. The appellant's witness statement takes issue with some of the detail of this account. He says, for instance, that he has opted to carry out cleaning work, giving him only an additional 1 hour 30 minutes out of cell. He thinks that he has three visits a week rather than the four referred to. He says that he cannot now watch GB News. The DVDs that he has are limited. He is not given as much time for telephone calls as has been suggested and these are "continually cut". The appellant says that he thinks that other inmates may have greater access to telephone calls.

42. In the written skeleton argument it was submitted on the appellant's behalf that the conditions of his segregation amounted in fact to "solitary confinement". That was an argument raised but rejected in the judicial review claim. Mr Williamson did not pursue it before us. He focused his submissions on three main points: (1) whereas the judge foresaw limited association with others, the appellant in fact has no association whatever; (2) the appellant has often been held in his cell with no association for 21 hours a day; and (3) there has been persistent unreasonable interference with the appellant's ability to make telephone calls.

43. In our judgement the first point has very limited, if any, weight. The previous decisions and the documentary evidence referred to by Mr Justice Johnson made it clear that in custody the appellant was likely to be in danger and segregated for his own safety. A bar on association with other inmates was a clear possibility. The appellant has in fact

been able to associate with others by email, by telephone, and in person, to a considerable extent. The evidence does not support the submission that the appellant is "often" held in his cell for as long as 21 hours a day. In any event, the evidence shows that this would be consistent with the normal regime for civil prisoners and that this is better than the criminal regime to which the judge referred. The third point seems to us to raise grievances about the conduct of the prison authorities. Marfleet answers them. She says, for instance, that the appellant's telephone use has been curtailed due to his breaches of the communications rules. We cannot resolve such issues, nor is it the role of a sentencing court to do so. In any event, even taking the appellant's case at its highest, we see no reasonable basis for the contention that the conditions that he is experiencing are so substantially worse than the judge anticipated at the time of the sanction decision as to call for a downward adjustment. We therefore dismiss grounds of appeal (b) and (c).

Mental health

44. The Connolly report has been tendered as evidence that since incarceration the appellant has, over a period of time, suffered a significant exacerbation of a pre-existing health condition (response to trauma) that was taken into account by the judge, coupled with symptoms of an additional health condition (ADHD) that was undiagnosed and so unforeseen at that time. On that basis we do not think it inconsistent with principle or the authorities in this area to extend time to pursue this aspect of the appeal, to admit the evidence, and to consider the submissions based upon it. Having done so, however, we have concluded that the new medical evidence affords no grounds for reducing the custodial sanction imposed.

45. The evidence referred to by Mr Justice Johnson in his paragraph [88] (see [15] above) is a report from Dr Tara Cutland Green, a chartered clinical psychologist, prepared for the purposes of a hearing before the Divisional Court on 10 July 2019 to decide sanction for contempt. After three sessions with the appellant, Dr Cutland Green reported that for many months the appellant had persistently suffered symptoms of trauma including (but not limited to) anxiety, panic, irritability, and sleep problems. He had previously been affected by a high level of threat and being managed in segregation for his own protection. In prison, he was likely to be targeted by particular groups. He was not only fearful for his life, imprisonment was also predicted to "increase his risk of violence" and to be detrimental to his mental health and prospects of recovery.

46. Dr Cutland Green's report was provided to and considered by Dr Connolly, who annexed it to her own report. But Dr Connolly was not asked to comment on whether and if so how her own findings differed from those that had gone before. Nor does Dr Cutland Green appear to have been asked to carry out any such comparison. On that issue we have only the two reports and the arguments of counsel.

47. We can see, of course, that the Connolly report contains formal diagnoses which were not set out by Dr Cutland Green. But, so far as PTSD is concerned, the findings of Dr Cutland Green appear very much on the lines of those in the Connolly report, if not worse. The two reports identify the same manifestations of a condition caused by trauma and a likelihood that this condition would be triggered by imprisonment and segregation. The judge's reasoning makes clear that he took into account not only the evidence of Dr Cutland Green but also the way that in 2019 the Divisional Court,

presented with that evidence, had made an appropriate reduction on account of the appellant's mental health when making its decision on sanction for contempt.

48. In his submissions, Mr Williamson laid particular stress on the diagnosis of ADHD. Although Dr Cutland Green did not make such a diagnosis, we have identified nothing in the Connolly report that persuades us that this additional diagnosis has any substantial bearing on the issue for decision. Mr Williamson highlighted Dr Connolly's observation that the appellant was, due to ADHD, "likely to struggle to regulate himself" in a prison setting. Dr Cutland Green had however noted the appellant's persistent "severe anxiety" and an increased "risk of violence" if imprisoned. Counsel suggested that the new diagnosis explained the conflict between the appellant and the authorities over the prison's communication rules. The Connolly report provides only limited and tentative support for that submission, noting "concerns of breaches" which "could show a disregard for rules" but "could also be explained by manifestations of CPTSD and ADHD". At the same time, the Connolly report identifies steps the appellant has taken to address his need to deal with the effects of ADHD. Marfleet shows that the appellant's mental health and psychological needs are kept under review and addressed by NHS Mental Health and Psychology personnel. They are now in possession of the Connolly report. We note that it is common ground that the appellant receives daily visits from a medical professional.

49. In these circumstances the evidence falls far short of the standard for a successful criminal appeal based on fresh medical evidence. Mr Williamson suggested that the court should take a more accommodating approach to fresh evidence of this kind in a case of civil contempt. We agree that criminal principles are not necessarily to be adopted wholesale in this different context. But, even if a more flexible approach might properly be taken, we are clearly of the opinion that it could not extend to a case where, as we have said, the fresh evidence does not on analysis show either a significant exacerbation of a known medical condition or a material new factor. The appeal on grounds (d) and (e) is therefore dismissed.

Release regimes

50. There is no doubt that the regimes are different for those imprisoned for contempt and those in prison for crime. The written grounds of appeal identify two of the differences. In his judgment, the judge correctly identified the regime that applies to the appellant and accurately explained its effect. He did not consider or factor into his decision the differences that are now relied on. That cannot, however, be a proper matter for complaint. The judge was not asked to do this. Rightly so. For the reasons we have given, such matters are not relevant to sentencing decisions and the same must hold good for decisions on sanction for contempt. It would have been wrong in principle for the judge to engage in the exercise that is now suggested. At the hearing, Mr Williamson acknowledged this and did not pursue this limb of the proposed appeal. Accordingly, we refuse the application to extend time in respect of grounds (f) and (g).

51. In doing so we would observe that comparison, if it were legitimate, would not be a straightforward matter, nor would it obviously benefit the appellant. First, as we have already explained, the custodial regime for contemnors is in certain respects more favourable than the regime for criminals. Secondly, a contemnor sanctioned in the fashion adopted in this case can, as the judge explained, obtain early release by purging his contempt and applying to have the custodial period remitted. Thirdly, there is a

difference post-release. A person sentenced to custody for a criminal offence will remain on licence and subject to recall throughout the post-release portion of the sentence. As the judge made clear, when the appellant is released he will not be subject to any such conditions.

Conclusions

52. The judge's analysis of the relevant law is not criticised. We wish however to commend it as both scrupulous and impeccable. The judge's application of the law and his reasoning on the appropriate sanction in this case both exhibit a meticulous approach, entirely in line with the authorities he had cited earlier including, in particular, *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524, [2019] 4 WLR 65 and *HM Attorney General v Crosland* (above).

53. Three of the seven grounds of appeal were abandoned at the hearing before us. For the reasons we have given, the remaining grounds of appeal afford no basis for this court to reduce the sanction imposed by the judge. The appellant could, however, still reduce the period he has to spend in custody by taking the steps identified at paragraph [103] of the judgment below.

54. In summary, therefore:

i) we refuse an extension of time to appeal on grounds (a), (f) and (g);

ii) we grant an extension of time to appeal on grounds (b), (c), (d) and (e) and admit the fresh evidence in the Connolly report, Worsman and Marfleet;

iii) we dismiss the appeal.

55. We invite the parties to agree all consequential matters, including costs, and to submit a draft order by 4pm on Wednesday 30 April 2025. Failing such agreement, short written submissions on any outstanding matters are to be lodged by 4pm on Wednesday 7 May 2025.