



Neutral Citation Number: [2025] EWCA Civ 1048

Case No: CA-2025-001272

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM Family Court at Oxford
Mrs Justice Henke
OX20P00370

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2025

Before:

LADY JUSTICE KING
LORD JUSTICE SNOWDEN
and
LADY JUSTICE FALK

Between:

B (a child) (Sentencing in contempt proceedings)

Dr Onyója Momoh (instructed by WBW Solicitors LLP) for the Appellant
The Respondent represented himself

Hearing date: 29 July 2025

Approved Judgment

This judgment was handed down remotely at 3.30pm on 30 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice King:

1. This is an appeal by the appellant PK ('the father') against a decision of Henke J ('the judge') sitting in the Family Court at Oxford in committal proceedings on 6 May 2025. The father appeals against the decision of the judge not to impose any sanction on AB ('the mother') despite her having been found repeatedly to have been in breach of orders made by the court in private law Children Act 1989 proceedings in respect of their child, A. The basis of the court's decision to make no order in respect of the father's application for committal is recorded as followed:

“Upon the Court declining to make an order of imprisonment or a suspended sentence, finding that it would have no effect on the mother's attitude or secure future compliance.”

2. The parties were informed at the conclusion of the hearing that the appeal would be allowed and that the matter would be remitted for reconsideration of sentence before a High Court judge. The following are my reasons for allowing the appeal.

Background

3. The parents are Slovakian and A was born following an extra marital relationship between the parents. The parents separated in 2017 and on 27 September 2017 the mother relocated to England without the father's knowledge or consent where they have remained ever since. The father continues to live in Slovakia and served a term of imprisonment there for fraud following A's removal to this country.
4. The father initiated return proceedings under the Hague Convention in 2019. A return order was refused on the basis that A had become settled in England for more than 12 months. The father therefore initiated Children Act 1989 proceedings in 2020 and made an application seeking effective rights of access under Article 21 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction.
5. In August 2021 a fact finding hearing took place before HHJ Lloyd-Jones. At the conclusion of the hearing, HHJ Lloyd-Jones did not find the mother's allegations of domestic abuse to have been proved. On 8 December 2021, the mother's application for permission to appeal the fact finding judgment was refused.
6. A final welfare hearing took place before HHJ Lloyd-Jones which resulted in an order dated 17 May 2023. By that order the judge made a lived with order to the mother and refused her application to terminate the father's parental responsibility. The judge further ordered the mother to (i) provide a written welfare update to the father via his solicitors on a monthly basis and (ii) to allow the Guardian to meet A to carry out Storyboard work ("the orders").
7. These orders were therefore orders made with the welfare of A as the paramount consideration pursuant to section 1(3) Children Act 1989. They were not appealed by the mother.
8. In the period of time between the father making his application in June 2020 and the present, the courts have attempted to enforce this "step by step" approach whose aim was to help A to know the identity of her father and to understand something of her life

story and personal identity, before giving any consideration as to whether any direct, or two way indirect, communication between her and the father is in her best interests.

9. The mother has been and remains utterly opposed to complying with the orders, saying that to do so would cause harm to A.
10. By an order of HHJ Vincent dated 5 June 2024, the mother was found to be in contempt of court and ordered to pay a fine of £250 within 14 days. The mother continued not to comply with the orders.
11. A further finding of contempt was made by HHJ Moradifar on 9 August 2024 and a fine of £500 was ordered to be paid in monthly instalments. The mother again did not comply with the orders.
12. This appeal relates to the third set of committal proceedings instigated by the father. The following is a summary of the orders which have been made in an attempt to obtain the mother's compliance with the orders:
 - a) The requirement, made by way of specific issue order, for the mother to send a written welfare update about A to the father. This was first ordered on 12 April 2021 and repeated by orders of: 16 June 2021, 6 September 2021, 17 May 2023 (backed by penal notice), 15 August 2023 (backed by penal notice), 23 August 2023 (backed by penal notice), 22 November 2023 (backed by penal notice), and 8 January 2024 (backed by penal notice).
 - b) The requirement, made by way of specific issue order, for A to meet with the children's Guardian to carry out storyboard work about her father, the paternal family and the proceedings (to be facilitated by the mother). This was first ordered on 17 May 2023 and repeated by orders of: 15 August 2023, 23 August 2023, 22 November 2023, 8 January 2024 (backed by penal notice), and 13 June 2024 (backed by penal notice).
13. A hearing took place before the judge on 18 March 2025 which was intended to be for the purpose of making a final determination on this latest committal application.
14. At the hearing, the mother was found to be in breach in respect of six allegations set out in a schedule of breaches dated 29 November 2024. Those findings were based in large measure on the mother's own admissions. The court was satisfied that they were proved to the criminal standard. Permission to appeal the findings was refused as totally without merit by Peter Jackson LJ on 2 July 2025.
15. The findings of contempt were as follows:
 1. Paragraph 14 of the order of HHJ Lloyd-Jones: Another repeat order was made that the specific issue orders at paragraphs 26 & 27 of the order of HHJ Lloyd-Jones dated 17th May 2023 and accompanying penal notice were directed to remain in force in their entirety until further order of the Court. The mother continued to fail to comply with this order.
 2. Paragraph 14 of the order of HHJ Lloyd-Jones: Another repeat order was made that the specific issue order at paragraph 28 of the order of HHJ Lloyd-Jones

dated 17th May 2023 was directed to remain in force in its entirety until further order of the Court. The mother continued to fail to comply with this order.

3. Paragraph 2 of the order of HHJ Tolson: Another repeat order was made that the specific issue orders at paragraphs 26 & 27 of the order of HHJ Lloyd-Jones dated 17th May 2023 and accompanying penal notice were directed to remain in force in their entirety until further order of the Court. The mother continued to fail to comply with this order.
 4. Paragraph 2 of the order of HHJ Tolson: Another repeat order was made that the specific issue order at paragraph 28 of the order of HHJ Lloyd-Jones dated 17th May 2023 was directed to remain in force in its entirety until further order of the Court. The mother continued to fail to comply with this order.
 5. Paragraphs 12 & 13 of the order of HHJ Tolson (backed by penal notice): The mother was directed by way of a specific issue order to send to the father via his solicitors a written update in respect of A's welfare by 4pm on 31st January 2024, such update to be personal and to include relevant information in respect of her likes and interests, her health, education and development, and to continue to send written welfare updates to the Applicant in respect of A monthly thereafter. The mother failed to comply with paragraphs 12 & 13 of the order of HHJ Tolson dated 8th January 2022.
16. At the conclusion of the hearing, the judge decided to adjourn sentence in order to give the mother one final opportunity to comply with the Court's orders. She explained her reasons as follows:

"Only because of A am I going to do this. I am going to adjourn sentence for a month, in the meanwhile, I will direct that there will be life story work between the guardian and A, and I will request the guardian but not direct to explain to you what life story work is. If having had it explained to you, you still persist in ignoring court orders, I will consider how I will sentence you. Taking into account the fines don't work because you don't pay them in full, and you appear to think it is right to ignore court orders. This is your very last chance. You have been in continuing and continuous breach since August 2023. The purpose of these proceedings are twofold. One, to make sure that the underlying directions that have been breached are actually brought to fruition. And two, to ensure that everyone understands that court orders are not optional. I will see you in a month's time, by which time, I expect to be told that the guardian has seen A. You need to make a very big decision as to what's in your daughter's best interest. Following court orders that have been made in her best interests or going to prison.

At some point this is coming to an end. And if I have to sentence you to prison, be under no illusion a sentence is likely to be measured in months not days, sometimes they are measured in years. It is up to you now, how I sentence you. But no amount of imploring to the better nature of the court is going to get you out

of this. All you have to do is comply with the court orders. You say contact with her father is not in her best interests, but at the moment, we are not even at the stage of considering contact with her father, all you are being asked to do is give monthly reports about her and let a court appointed professional see your daughter. You should also know that if you continue on the course that you have set, then the court may think that the only way forward is to take A from you and place her in the care of her father.”

17. In an order made in the parallel welfare proceedings on 18 March 2025, the Guardian was requested to communicate with the mother “to explain what Storyboard work entails” but, the recital made clear, it was nevertheless for the Guardian to undertake the work she deemed appropriate. Similarly in respect of the mother’s objections to sending the father written updates as to A’s welfare, the court restated the mother’s obligation to comply with the order.

The Sentencing hearing: 6 May 2025

18. It perhaps came as no surprise that when the matter was listed again for sentencing before the judge on 6 May 2025, the mother had failed to comply with the Court’s orders. During the course of her judgment, the judge referred to the judgment of Cobb J in the case of *Omay Ali Elhag Elkndo v Elnoaman Gassam Elsyed (Committal: Sentence)* [2024] EWHC 2230 (Fam) (“*Elkndo v Elsyed*”). Drawing on that judgment, the judge reminded herself that there are two objectives in contempt of court proceedings; one being to mark the court’s disapproval of the disobedience to its order, the other to secure compliance with the order in the future. In that context she said:

“The seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.”

19. Notwithstanding the stern warning that she had given the mother on 18 March 2025, the judge decided not to impose any sanction upon the mother giving her reasons as follows:

“11. I have reminded myself that this is the third time a court has found the respondent to be in breach of court orders. She accepts that she has not followed court orders, and she tells me that she cannot because she cannot, “harm her”, that being a reference to her daughter, [A]. The respondent’s logic does not take into account that the court has made orders on the facts as presented to it and has done so in the best interest of [A]. I therefore have to consider what to do to mark the breaches.

12. The respondent has been fined twice, I have adjourned sentence to give her a last opportunity, and she has not taken that opportunity. I have therefore had to consider whether this is a case where I should impose a custodial sentence. I have reminded myself of the law on sentencing in these circumstances and in doing so, I have reminded myself that there are two reasons why contempt proceedings are dealt with and sentenced.

One is to mark the court's disapproval of the disobedience of a court order. I have made findings that there has been a continuous breach of the orders in this case, as I have already outlined, since August 2024. I have, however, reminded myself that the other purpose of these proceedings that are before me is to secure compliance with the order in the future. I also take into account the impact on [A] if I were to send her mother to prison. It would be direct, the harm would be emotional, psychological and financial.

13. This is the third occasion this case has come before me, and I have detected no change in the mother's attitude to the court's order. She has told me today that she cannot do it, because she cannot harm her daughter. These are grave breaches, and nothing that I say that follows, should be taken away from a need to abide by court orders. I have representatives of the tipstaff office in court, because the reality of the situation is that if I make a sentence for imprisonment, suspending it on condition that you comply with a court order, is likely to simply result in a breach.

14. I therefore have to decide how to deal with the breaches I have found. Do I send you directly to prison, or do I say these committal proceedings are having no effect on you whatsoever, and there may be another way forward.

15. Because I do not consider that sending you to prison would have any effect on your intention in the future, I have decided that there is no purpose in sending you to prison [sic]. However, I am deeply concerned for [A] and so what I am going to do, is dismiss the application to commit, and after the luncheon adjournment, I am going to hear from you, from the applicant's counsel and [A's] Guardian in the Children Act proceedings about what directions I should make to further the father's application that A should live with him.

...

17. I have found that sending you to prison is not going to change your mind. The court is now going to have to decide, not today, whether it is better for [A] to live with you, and not see her father, or live with her father and see you. Please do not think this court does not think your breaches are serious. You should know that it is a very serious thing for a High Court judge to say, that sending you to prison is not going to do any good. You will continue to set your face against the court orders..."

20. The judge did not however abandon her attempts for the Guardian to see A, as in the parallel order made in the welfare proceedings on 6 May 2025, the mother was ordered to ensure that A attended an appointment with the Guardian on 18 June 2025 at the Cafcass offices. A penal notice was attached. The mother did not attend.

The Grounds of Appeal

21. In this rather unusual case, the father issued an appellant's notice seeking permission to appeal the judge's order by which she had made no order on the application for an order of committal. Permission to appeal was granted by Peter Jackson LJ on 2 July 2025 and the matter was set down for an urgent hearing.
22. The Grounds of Appeal can be summarised in the following way; it is submitted that the judge's reasoning was deficient and failed to engage with or comply with the core purpose of contempt proceedings namely, to uphold the authority and the effective functioning of the court.
23. The sentencing judgment, Ms Momoh says on behalf of the father, reflects a mischaracterisation of the law of contempt by treating it as a matter of individual compliance rather than as a mechanism to protect the administration of justice. Ms Momoh submits that the court erred in law by treating likely future noncompliance as a reason not to impose punishment and in doing so undermined the authority of court orders and the purpose of contempt proceedings as affirmed in *Hale v Tanner* [2021] WLR 2377 and *Elkndo v Elsyed*. The judgment it was submitted, wrongly treated the aims of committal, punishment and securing compliance as interdependent concluding that the unlikelihood of future compliance rendered any sanction purposeless. Insufficient weight she said, was given to the deterrent effect of an appropriate sanction both on the contemnor and more broadly.
24. Ms Momoh submitted in relation to the facts of the case that the seriousness and repeated nature of the contempt, including the ineffectiveness of previous fines, was not adequately addressed and further that a finding that future compliance is unlikely does not absolve the court of its obligation to mark past breaches with a proportionate sanction. Finally, it was submitted that the conclusion that a custodial sentence would serve no purpose lacked analysis of the various sentencing options and failed to reflect the escalating pattern of breach. The court's decision not to impose a sanction, Ms Momoh says, has rendered the court's previous repeated warning to the mother including on 18 March 2025, as toothless.

The Legal Context

25. In *Elkndo v Elsyed* Cobb J summarised the approach to sanctions/ penalty in cases where contempt had been proved by reference to nine points. Of particular relevance to this appeal are appoints 1, 2 and 9. Namely:
 1. There are two objectives in contempt of court proceedings. One is to mark the court's disapproval of the disobedience of its order. The other is to secure compliance of that order in the future. Thus the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity (*Hale v Tanner*).
 2. The disposal of this application must be proportionate to the seriousness of the contempt.

9. Where imprisonment is contemplated, the court needs to be satisfied that the contemnor's conduct is so serious that no other penalty is appropriate; imprisonment is a measure of last resort.
26. In *Hale v Tanner* [2000] EWCA 5570, 1 WLR 2377, Lady Hale LJ (as she then was) give guidance on sentencing for contempt of court when dealing with cases under the Family Law Act. She said:
- “[25] In making these points I would wish to emphasise that I do so only in the context of Family cases. Family cases, it has long been recognised, raise different considerations from those elsewhere in the civil law. The two most obvious are the heightened emotional tensions that arise between family members and often the need for those family members to continue to be in contact with one another because they have children together or the like. Those two factors make the task of the court, in dealing with these issues, quite different from the task when dealing with commercial disputes or other types of case in which sometimes, in fact rarely, sanctions have to be imposed for contempt of court.
- ...
- [27] Secondly, there is a difficulty as Mr Brett pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn, and in a case where the alleged contemnor has not attended court that may be an appropriate course to take, although I would not say so in every case...”
27. Hale LJ went on at para [36] to say that “an important part of the exercise is that the contemnor should understand the importance of keeping court orders, of not breaking them and the likely consequences if they are so broken”. I note that in *Hale v Tanner* the court was concerned with a first set of committal proceedings and, whilst reducing the length of sentence, the court upheld the imposition of a short immediate sentence of imprisonment.
28. The mother referred the court to *Oliver v Shaikh* [2020] EWHC 2658 a case where the contemnor had been ordered on numerous occasions to take down material from the internet. Nicklin J at para [17] said that:
- “The following principles can be derived from *Crystal Mews Limited -v- Metterick* [2006] EWHC 3087 [8]–[13]:
- i) The object of sanction imposed by the court is two-fold: (1) to punish the historic breach of the court's order by the contemnor; and, (2) to secure future compliance with the order. In my judgment, if those objects in any way conflict in terms of sanction, then the primary objective is to secure compliance.

ii) The sanctions available to the Court range from making no order, imposing an unlimited fine or the imposition of a sentence of imprisonment of up to two years. The Court has the power to suspend any warrant for committal...”

29. Nicklin J was summarising the judgment of Lawrence Collins J in *Crystal Mews* and it would appear that Nicklin J’s observation that “In my judgment, if those objects in any way conflict in terms of sanction, then the primary objective is to secure compliance” is his own *obiter* comment given that the direct quote of Larence Collins J taken from the judgment in *Crystal Mews* at para.[8], is:

“In contempt cases the object of the penalty is both to punish conduct in defiance of the court’s order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to do (see Lightfoot v Lightfoot [1989] 1FCR 305 at 308, Robinson v Robinson [2001] EWCA Civ 2098 at paragraph 11, Hale v Tanner [2000] 1WLR 2377 at 2381).”

30. It is not however necessary for the purposes of this judgment further to investigate the origins or basis for Nicklin J’s observation.

The mother’s position:

31. The mother is entitled to criminal legal aid. She has had from time to time legal representation but has on each occasion parted company with them. The court assisted the mother in approaching Advocate in order to ensure that she was represented at this appeal. Although counsel agreed to act and drafted a skeleton argument on the mother’s behalf (a document which has not been read by the court, the mother having refused permission for it to do so), the mother has declined representation of counsel and represented herself with the assistance of an interpreter.
32. The mother filed statements on 16 June 2025 and on 28 July 2025. In her statement of 16 June 2025, she set out a chronology in respect of these proceedings and made allegations in relation to the father. She repeated in paragraph 2 of that document what she says is a clear way for the father to behave in order for her to change her position in relation to contact, a position repeated orally in her submissions to the court:

“My 11.2.2025 statement in committal proceedings para.84: *All I am waiting for from him is to publicly, in court: Admit the harmful things he has done. Apologize for his wrongdoing and repeated lies. Provide evidence proving that the allegations I made were true. Demonstrate a genuine interest in providing care for my daughter through actions that have a cost, sustained over a significant period of time.*”

33. The mother says, further into her statement, that she refuses to allow contact with someone who is willing to “destroy a child’s life for money” and who treats his own child as “just another victim in his life long criminal career”. “I also do not want” she

said “my daughter to become comfortable with compulsive lying, destroying people’s lives and leading a criminal life”.

34. In her statement of 28 July 2025 the mother submitted that the judge had directed herself properly as to the law and that her decision that nothing would be served by imposing a sanction on the basis of her likely non-compliance, was a conclusion reasonably open to the judge. The judge had rightly taken into account the impact on A if her mother was sent to prison.

Discussion

35. It is undoubtedly the case that making no order is within the range of sanctions available to a court having made findings of contempt. I note Nicklin J’s view in *Oliver v Shaikh*, that where there is a conflict as between marking the court’s disapproval of disobedience to its order and securing compliance with the court’s order then the primary objective is to secure compliance. This court has not heard argument (i) as to whether, and if so, in what circumstances, primacy should be given to either one of the two objectives in contempt proceedings or (ii) what would amount to ‘conflict’ between those two pillars. In my judgment in this case there is no conflict, so the issue does not arise and I would not in any event wish to be thought in those circumstances to be endorsing the passage in *Oliver v Shaikh* referred to us by the mother and set out above.
36. In the present case the mother has repeatedly flouted the court’s orders and again made her continued refusal to comply clear at the hearing of this appeal. The two orders in question were orders which HHJ Lloyd- Jones determined were in A’s best interests as long ago as 17 May 2023. The first order permitted a father who has parental responsibility to have some basic information as to the welfare of his child, whilst not permitting him to send any information about him or his family to A. The second and, at this stage, the more important order, was to allow the Guardian to do some Storyboard work with A so that she would know who her father is but again, without at this stage there being any plan for there to be an introduction or contact. The mother’s refusal to allow the Guardian to see A not only prevents that important work from taking place, but also places an effective brake on the enquiries which are necessary for the Guardian to make in order for her to prepare a report to inform the welfare hearing which is listed for four days starting on 19 August 2025.
37. The mother said to the court that she did not know what the Guardian would say to A and what information would be given to her, information which she did not believe to be true and which she, as her mother, may not wish her to have. It is however obvious, if only from the order of 18 March 2025, that the mother has had every opportunity to discuss the Guardian’s approach to her meeting with A, albeit with the mother not having any sort of a veto on what was to be discussed with A. The fact remains that it is not for the mother to refuse to comply with these modest child-focused orders, made in the best interests of A, in the absence of a successful appeal against them.
38. In my judgment the judge fell into error in two respects, one of which runs from the other. First, the judge should not have accepted that the mother would not comply with the orders even if a custodial sentence (whether suspended or not) were imposed based only on the mother’s current assertion that that was the case. The mother emphasises again and again that she has only her child’s interests at heart. As the judge recognised on 18 March 2025, if a sentence of imprisonment was imposed she would have to make

a decision as to whether to “[Follow] court orders that have been made in [A’s] best interests or [go] to prison”. Notwithstanding her repeated defiance of the court’s orders, the mother has not yet had to face that decision.

39. Secondly, the judge was wrong to rely on the mother’s continued refusal to co-operate as a reason not to punish her for her continuing contempt. The judge’s failure to consider that the real possibility of a custodial sentence might in fact secure compliance and instead to decide not to do anything in the face of the mother’s intransigence, was not in my judgment a proper application of the regime for ensuring the compliance of court orders, which relies on the court’s ability to ensure that non-compliance has real consequences. The judge as a consequence, far from escalating the sanction to be imposed in the face of repeated breaches of the orders, gave in to the mother’s opposition to her child having any knowledge of her father. Whilst understanding the judge’s attempt to try a different route via the order in the welfare proceedings that the mother take A to the Guardian’s offices, it is hard to think how that would achieve anything given that the sanction for disobeying that new order was only the threat of fresh committal proceedings instigated as a consequence of the imposition of a penal notice.
40. As Hale LJ said in *Hale v Tanner*, family cases raise different considerations from other cases given their emotional overlay. Often the best interests of a child or children, underpin the orders which found the applications for committal. It cannot be the case that a parent can repeatedly refuse to comply with orders made in the best interests of their child, knowing that a judge may well in those circumstances dismiss the committal proceedings as serving no purpose. To do so would undermine the authority of the court and have significant implications for other cases. Punishment for breach of court orders serves as an essential aspect of upholding judicial authority as well as ensuring compliance.

Conclusion

41. I have considerable sympathy for the judge who, in a very difficult situation and in circumstances where the mother was declining representation, was trying to find an effective way to achieve access by the Guardian to A by an alternative route, an outcome which had becoming increasingly important given the imminence of the welfare trial. Even so, in my judgment the judge was wrong in imposing no sanction on the mother and in those circumstances the matter will be remitted to the High Court for reconsideration of sentence.

Lord Justice Snowden:

42. I agree.

Lady Justice Falk:

43. I also agree.