Neutral Citation Number: [2026] EWCA Civ 138

Appeal No: CA-2024-002483
Claim No: KB-2024-000960

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
Mrs Justice Hill
[2024] EWHC 2641 (KB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2026

Before:
SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE WARBY
and
LADY JUSTICE WHIPPLE

- -

Between:

(1) TITAN WEALTH HOLDINGS LIMITED **(2) TITAN SETTLEMENT & CUSTODY LIMITED** **(3) GRETCHEN ROBERTS** **(4) TIFFANY ROBERTS**	**Claimants/ Appellants**
- and -	
MARIAN ATINUKE OKUNOLA	**Defendant/ Respondent**

Robin Lööf and **Marcus Field** (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for **the claimants** (Titan or the claimants)

The defendant submitted some submissions in writing and appeared for parts only of the appeal hearings. She (Ms Okunola or the defendant) was **not represented**

Matthew Donmall, appointed by the Attorney General, as the Advocate to the Court (the Advocate)

Hearing dates: 8 October 2025 and 4-5 February 2026

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JUDGMENT

This judgment was handed down remotely at 10:00am on 20 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

SIR GEOFFREY VOS, MASTER OF THE ROLLS, LORD JUSTICE WARBY AND LADY JUSTICE WHIPPLE:

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Section A : Introduction

1. This appeal raises one issue with several facets. The issue is whether Mrs Justice Hill (the judge) was right to dismiss the claimants' application on the ground that there was no "sound jurisdictional basis" for granting the claimants an injunction to restrain the defendant from abusing the claimants' legal team where such conduct was interfering with the conduct of legal proceedings between them (see [44] of the judgment). The facets that this issue raise include the law of contempt, the right to freedom of expression enshrined in article 10 (article 10) of the European Convention on Human Rights (the Convention), the immunity from defamation and other proceedings in relation to the conduct of litigation, the appropriate procedure for such an application, and the way in which any discretion to grant such an injunction (if it exists) should be exercised. These questions arise in a somewhat unusual context.

The basic facts

2. The first two claimants are part of the Titan Wealth Group which provides global fund, wealth and asset management services. The third and fourth claimants are employees of Titan. Titan (all four claimants) are represented by the UK office of one of the largest law firms in the world, Quinn Emanuel Urquhart & Sullivan (Quinn Emanuel). Titan brought successful proceedings against the defendant for breach of contract, breach of confidence and harassment of the third and fourth claimants under the Protection from Harassment Act 1997 (PfHA).

3. The defendant is an expert in the Client Assets Sourcebook (CASS). CASS is part of the framework of regulatory rules established by the Financial Conduct Authority (FCA) to protect the money and assets of the clients of regulated firms. The defendant was first engaged by Titan on 2 August 2022, through her private company, as a consultant. The defendant was then employed by the first claimant from 14-25 November 2022 as Senior Risk Manager (as the judge found at [11] and [79] of her judgment after the trial at [2024] EWHC 2718 (KB) (the trial judgment)).

4. After the defendant's employment, she brought 6 unsuccessful claims in the Employment Tribunal against Titan, the last of which was struck out on 20 December 2023.

5. These employment claims were followed in January 2024 by what the defendant herself called a "plan for vengeance" against the claimants, which involved sending hundreds of abusive messages to many recipients (see [17] of the trial judgment).

6. On 5 April 2024, Freedman J granted an interim pre-action injunction against the defendant restraining her from harassing the third and fourth claimants (the injunction). Titan started their proceedings against Ms Okunola on 11 April 2024. On 21 June 2024, Chamberlain J imposed a 6-month prison sentence on the defendant for breaches of the injunction, suspended on condition of future compliance. Unfortunately, despite the suspended sentence, Ms Okunola continued sending abusive messages to Titan and to Quinn Emanuel. On 9 September 2024, Titan made an application asserting continued breaches of the injunction and seeking activation of the suspended sentence, but that application was not heard until February 2025 (the activation application).

7. Meanwhile, on 18 September 2024, Titan made an application for a further order against the defendant prohibiting her from: (a) publishing any message to or about the

claimants' lawyers (or persons acting for them), which abused, belittled, demeaned, or insulted them, and (b) using profane or otherwise grossly offensive language or imagery in communications addressed or copied to the claimants' lawyers (the further injunction application). This further injunction was sought until further order "in relation to all proceedings" to which one of the claimants was a party including ongoing insolvency proceedings against the defendant.

8. The further injunction application came on for hearing before the judge at the same time as the trial of Titan's substantive claims, which took place on 9, 10 and 11 October 2024.

9. The judge gave her judgment on the further injunction application first on 18 October 2024, followed swiftly by her trial judgment on 25 October 2024.

10. The judge found at [24]-[25] of her judgment on the further injunction application that the Defendant's conduct had "fallen very far short of the expected behaviour of litigants in person" and had had the following consequences:

> the Defendant's conduct was (i) impinging upon the Claimants' legal team's ability to fulfil its duties to the Claimants as their clients; (ii) adversely affecting the Claimants' ability to conduct these proceedings properly and in accordance with the overriding objective; (iii) leading to the Claimants incurring potentially irrecoverable costs; (iv) having the indirect effect of preventing Mr Gailani, a witness, from giving his best evidence; and (v) impeding the progress of the litigation, because, for example, it led to the Defendant's skeleton argument for the strike out/summary judgment application being omitted from the trial bundle … [see the judge's judgment on the order of proceedings: [2024] EWHC 2585 (KB) at [3]].

11. At [29], the judge held that the existence of a cause of action entitling the applicant to substantive relief was an overriding requirement for an injunction. She referred to *Siskina (Owners of cargo lately laden on board) v. Distos Cia Naviera SA* [1979] AC 210 at 254 (*The Siskina*), as considered in *Convoy Collateral Ltd v. Broad Idea International Ltd* [2023] AC 389 (*Convoy Collateral*). The judge said at [30] that Mr Yasseen Gailani (the partner in Quinn Emanuel leading the claimants' legal team) would have had a credible claim for harassment under section 1(1) of the PfHA. Quinn Emanuel did not then (and do not now) intend to bring any claim against the defendant. So, the judge said at [31], that the conceptual novelty of the application was that it was brought by the claimants to protect Quinn Emanuel from the defendant's conduct. Since none of the exceptions to the "cause of action rule" applied to the situation, the judge dismissed the application. She said at [45] that if the claimants' lawyers wished to restrain the defendant from these communications, they needed to apply for their own interim injunction.

12. Kerr J heard the activation application on 12 February 2025. He activated the prison sentence with immediate effect on the basis of his findings that the defendant had breached the injunction (see [2025] EWHC 307 (KB) – the contempt judgment). The defendant was released from prison in or about May 2025. It was not suggested to us that the defendant's conduct has persisted since her release from prison.

13. Titan's appeal from the judge's decision on the further injunction application has been partly crowd-funded, which suggests that it is intended at least in part to establish a precedent of relevance to other cases. The single ground of appeal is that the judge was wrong to conclude that she lacked jurisdiction to make the order sought, and that she should have concluded that the court had jurisdiction to restrain the defendant from abusing, belittling, demeaning or insulting the claimants' legal team or using profane or otherwise grossly offensive language towards them where such conduct was interfering with the conduct of the proceedings. It is implicit in that ground of appeal, and part of the case advanced on appeal, that if the judge had recognised her jurisdiction, she would and should have granted the injunction.

14. Before the first hearing of the appeal (at which the argument was adjourned), the court asked the parties how, even assuming that the court had the power contended for, it should take into account, amongst other things: (i) the right to freedom of expression under article 10, (ii) the immunity from proceedings explained in *Iqbal v. Dean Manson Solicitors* [2011] EWCA Civ 123, [2011] IRLR 428 (CA) (*Iqbal (1)*), *Iqbal v. Dean Manson Solicitors* [2013] EWCA Civ 149 (CA) (*Iqbal (2)*), and *Iqbal v. Dean Manson Solicitors* [2014] EWHC 2418 (QB) (Warby J) (*Iqbal (3)*), and (iii) whether a CPR Part 23 application notice was an appropriate procedure for seeking final injunctive relief to restrain harassment by publication.

15. Titan has now significantly amended the further injunction that it seeks as follows:

> 1. The Defendant is prohibited from addressing to [Titan's] legal representatives, or any person acting for, on behalf, or at the instruction of [Titan's] legal representatives, any message or communication which is indecent or grossly offensive to or about any such representative or person.
>
> 2. Paragraph 1 does not apply to:
>
> a. the formal filing of any document in any legal proceedings, or
>
> b. the use in any such proceedings of any document formally filed in those (or any other) legal proceedings.
>
> 3. The prohibition in paragraph 1 (as qualified by paragraph 2) applies until further order in relation to the present proceedings or proceedings arising out of them.

16. The operative language at [1] of the newly proposed injunction is taken from section 1(1)(a)(i) of the Malicious Communications Act 1988 which makes it an offence to send a "message which is indecent or grossly offensive".

An outline of Titan's main submissions

17. Titan submitted that the judge was wrong to think that the "cause of action rule" had survived *Convoy Collateral*. Accordingly, Titan argued that the judge had the power to grant an injunction primarily under the inherent jurisdiction of the court to protect its own process in the interests of justice, but also in equity. As Lords Reed, Briggs and Kitchin said in *Wolverhampton County Council v. London Gypsies and Travellers* [2023] UKSC 47, [2024] AC 983 (*Wolverhampton*) at [43]: "It is now well established

that the grant of injunctive relief is not always conditional on the existence of a cause of action".

18. Titan also argued that the exercise of the power to grant an injunction in this case was not inhibited by the absolute immunity from defamation and other proceedings that attaches to statements made in the course of litigation, because that immunity did not extend to "irrelevant and gratuitous libels" (see *Iqbal 2* per Rix LJ at [42]). The immunity did not prevent an injunction being granted to restrain future contempts of court and Fry LJ had made clear in *Munster v. Lamb* (1883) 11 QBD 588 at 608 (*Munster v. Lamb*) that the "Court can always check improper conduct". In essence, Titan submitted that the immunity had no impact on the court's ability to protect the integrity of its proceedings in the interests of justice.

19. Titan contended that the defendant's conduct fell outside the ambit of article 10 because her communications amounted to "no more than vulgar abuse" (see [37] and [48] of the judgment delivered by the Lady Chief Justice in *Rex v. Casserly* [2024] EWCA Crim 25, [2024] 1 WLR 2760 (*Casserly*)).

20. Finally, Titan suggested a four-stage test for judges to adopt when an injunction of this kind was sought, namely to: (i) ask whether the applicant has established a material risk of interference with the course of justice, (ii) ask whether that interference was sufficiently serious for the court's intervention to be deemed necessary, (iii) ask whether the relief sought would address the interference so identified, and (iv) balance the seriousness of the interference against any countervailing interests, and to ask whether the relief is necessary in the interests of justice. Each of these tests had been satisfied at the time the judge heard the application and was satisfied now.

An outline of the submissions of the Advocate

21. The Advocate supported much of Titan's argument. He differed in the following respects.

22. First, the Advocate submitted that neither article 10 nor the defendant's immunity from suit was centrally relevant to the court's determination of whether an injunction should be granted, because (i) the inherent jurisdiction to restrain the kind of conduct complained of in this case could only be engaged if the conduct to be restrained would amount to a criminal contempt of court, and (ii) neither article 10 nor the immunity operated so as to prevent the grant of an injunction to restrain a threatened contempt of court.

23. Secondly, the Advocate submitted his own 3-stage threshold test for judges in this kind of case to adopt, namely to ask whether: (i) the conduct in question could found a contempt of court if it were repeated, so as to justify an injunction on the basis of the inherent jurisdiction, (ii) there was a substantial risk of such conduct in the future; (iii) the court was satisfied it was just and convenient to grant the injunction.

24. Thirdly, the Advocate suggested the following non-exhaustive list of factors to be considered in exercising the court's discretion: (i) the degree of severity of the conduct above the threshold, (ii) whether the injunction was workable or was restricting legitimate behaviour, (iii) whether the injunction served a useful purpose, (iv) whether the injunction was being used strategically, (v) whether there were other means to assert

the court's authority and deal with the issue, and (vi) all relevant contextual factors including any mental health problems of the defendant.

25. Fourthly, the Advocate submitted that the court did not need to decide whether the judge ought to have granted the injunction sought before her. The injunction now sought on appeal ought not to be granted because there were no ongoing proceedings for the inherent jurisdiction to protect and the defendant's conduct had not been repeated since she left prison.

Our decision in outline

26. We have decided that the judge was wrong in law to conclude that she lacked any jurisdictional basis to grant the injunction. The judge was wrong to think that *The Siskina* and the cause of action rule had survived *Convoy Collateral* and *Wolverhampton*. The judge had the power to grant an injunction of the kind sought under the inherent common law jurisdiction of the court to protect the integrity of its proceedings in the interests of justice (see [103] of *PMC v. Cwm Taf Morgannwg University Health Board* [2025] EWCA Civ 1126, [2025] 3 WLR 887 (*PMC*)).

27. The power to grant an injunction of the kind sought is not limited, as the Advocate submitted, to cases where the conduct restrained would, absent the injunction, be a criminal contempt of court. The court can, in theory, act in the interests of justice to restrain any conduct that is serious enough to threaten the integrity of its own process. In many cases, however, conduct of the kind that would be serious enough to threaten the integrity of its process and its proceedings would also be regarded as conduct of sufficient seriousness to found an allegation of contempt (as to the need for a "serious interference with the administration of justice" see *Rex v. Jordan* [2024] EWCA Crim 229, [2024] 4 WLR 30 at [38] (*Jordan*)).

28. Titan did not allege that the defendant's conduct in this case crossed the threshold of sufficient seriousness to found an allegation of contempt. But if contempt had been alleged and proved, neither article 10 nor the immunity from proceedings that attaches to statements made in the course of litigation would have prevented the court exercising the power to grant an injunction to protect the integrity of its process (see *Casserly* at [37] and [48] as to article 10, and *Iqbal 2* at [42] as to the immunity). In cases where contempt is not established, the court will have to consider carefully (i) whether an injunction to restrain similar future conduct will impinge on article 10 rights (and if so, whether that interference can be justified under article 10(2)), and (ii) whether the order proposed respects the immunity from proceedings that attaches to statements made in the course of litigation.

29. Accordingly, article 10, the immunity from proceedings that attaches to statements made in the course of litigation, and the fact that the affected lawyers at Quinn Emanuel could have brought their own claims against the defendant under the PfHA are all **relevant** to the court's consideration of the grant of an injunction of the type sought.

30. We have considered how we can best give guidance to hard-pressed first instance judges faced with this kind of application. Unfortunately, though, one size never really fits all. In a case where an injunction is sought to restrain specific misconduct within the proceedings, the applicant needs to show a threat or at least a real prospect that the defendant will engage in serious misconduct that will create a material risk of

interference with the integrity of the court's process or proceedings (see *Jordan* at [38]). If the misconduct would not amount to a contempt, the court needs to consider article 10 and section 12 of the Human Rights Act 1998 (section 12) on the one hand and the immunity from proceedings that attaches to statements made in the course of litigation on the other hand.

31. The court must then exercise its discretion as to whether an injunction should be granted in all the circumstances. If it is to be granted, the relief must be tailored so as to restrain such threatened misconduct as creates a material risk of interference with the integrity of the proceedings, but not in wider terms than are necessary to do justice nor to interfere with the defendant's right freely to conduct the litigation as they see fit (see Leggatt LJ in *Cuadrilla Bowland Ltd v. Persons Unknown* [2020] EWCA Civ 9 at [50] (*Cuadrilla*)).

32. We have decided that the judge was right not to have granted the injunction sought by Titan at the trial, and that we will not grant the injunction that Titan now seeks. We do not, however, say that an injunction in narrower terms could not properly have been granted at the trial.

The shape of this judgment

33. With that rather lengthy introduction, we shall deal with the issues raised by this appeal in the following order: (i) further essential factual background, (ii) the power to grant an injunction, (iii) the relevance of contempt of court, (iv) the relevance of article 10 and section 12, (v) the relevance of the immunity from proceedings that attaches to statements made in the course of litigation, (vi) the relevance of the potential availability of a claim by Quinn Emanuel under the PfHA, (vii) the appropriate procedure for obtaining an injunction of the kind sought, (viii) whether the judge ought to have granted the injunction sought or any injunction, (ix) whether this court ought now to grant the injunction sought or any injunction, and (x) conclusions.

Section B: Further essential factual background

34. We have set out the basic facts at [2]-[16] above. This section includes some other materials that were before the judge and that we think are relevant to the decisions we have to take.

35. First, the judge made findings at [8]-[12] of her judgment on the further injunction application as to relevant features of the defendant's conduct as follows:

> 8. … One of the grounds for seeking activation of the suspended sentence [was] that the Defendant has continued to indirectly harass the Third and Fourth Claimants through a series of emails sent to their solicitors, their counsel, counsel's clerks and the court office which are abusive, and often sexually explicit; and which involve the making of unparticularised and unsubstantiated allegations of professional misconduct and in some cases criminal conduct.
>
> 9. … Having reviewed [Mr Gailani's evidence and 103 pages of correspondence], I accept that since June 2024 the Defendant has subjected the Claimants' lawyers to communication which is repetitive, at times pointless, and which includes gratuitously distressing and demeaning content. The correspondence has included

> threatening and/or sexually abusive content aimed at the Third and Fourth Claimants, their lawyers and others linked with them, such as Mr Gailani's mother. The style of some of the emails (in all bold capitals, large text and with repeated exclamation marks) has added to their threatening nature.
>
> 10. On 13 August 2024 Mr Gailani informed that Defendant that (i) he would not be responding to the egregious and highly abusive e-mails she had sent; (ii) the sending of the messages may constitute an offence under the Communications Act 2003, s.127 and (iii) a complaint was going to be made to the police. The following day the Defendant made a police complaint against Mr Gailani alleging that he had lied, perverted the course of justice and engaged in witness intimidation.
>
> 11. The communications have been distressing for the Claimants' legal team. It has been necessary for the Claimants' solicitors' firm to divert time and resources to ensuring the protection of their staff. For example, the firm has had to put in place measures preventing the Defendant from emailing any individual solicitor and set up a generic email address for her to use.
>
> 12. The Defendant engaged in similar conduct during the trial. For example, shortly after I rose on 9 October 2024, in front of court staff, the Defendant repeatedly shouted "scum" at junior counsel and the rest of the Claimants' legal team, ending her outburst with "injunct that".

36. The 103 pages to which the judge referred at [9] of her judgment were not all communications to or from the defendant. But pages 3-45 and 49-92 were mostly such communications. Many of those communications emanating from the defendant (which are those on which reliance was and is placed in support of the further injunction application) are gratuitously abusive, obscene and insulting. It is not necessary to give examples in the light of the judge's findings (recorded at [10] and [35] above). It is, however, important to note that these communications are not wholly unrelated to the proceedings in which the defendant was engaged. Two relatively mild examples are (i) the defendant's email of 27 June 2024 at 8.05am saying: "… Unless it is mandated by the court you won't get a witness statement from me. That is a lot of work and I would like to be paid for it. You know you and your clients are bastards! …" and (ii) the defendant's email of 3 July 2024 at 7.38pm about the trial date saying "I do not accept the Claimants offer of October!! Chamberlain J ordered Expedited Trial in July on 23 May 2024!! The Claimants are lying that they have no availability for the WHOLE OF JULY!!!". A less mild example is the defendant's email of 12 July 2024 at 8.58pm saying: "Fuck you [name]! You are a pathetic, insolent prick. These emails do not constitute a breach of the Order. I was forwarding an email about Titan's … "inappropriate performance" which proves my case that blow-jobs and pussy cannot create good performance. It is not contempt. That is their reputation. These emails are included in my bundle for strike out/summary judgment". Suffice it to say that there are also several emails in those pages that are gratuitously abusive, obscene and insulting without any clear connection to an issue in the proceedings.

Section C: The power to grant an injunction

37. The common law, equitable and statutory powers to grant injunctions have been discussed in some depth in a number of recent cases including *Convoy Collateral* (decided on 4 October 2021), *Wolverhampton* (decided on 29 November 2023), *Abbasi*

v. Newcastle upon Tyne Hospitals NHS Foundation Trust [2025] UKSC 15, [2025] 2 WLR 815 (*Abbasi*) (decided on 16 April 2025) and *PMC* (decided on 28 August 2025). The latter two decisions came after the judge's judgment. The law's development in this area has been little short of fast and furious. We have great sympathy for the judge's handling of this case in difficult circumstances.

38. We do not intend to repeat much of what has been said in those cases, save insofar as it is directly relevant to what we have to decide. In summary: (i) the majority of the Judicial Committee of the Privy Council departed from *The Siskina* and the cause of action rule in relation to equitable injunctions in *Convoy Collateral*, (ii) the UK Supreme Court (UKSC) in *Wolverhampton* confirmed at [17] and [43] that it was English law that the grant of injunctive relief was not always conditional on the existence of a cause of action, (iii) the UKSC in *Abbasi* reviewed from first principles the practice relating to injunctions granted to protect children and their treating clinicians (see [7] and [58]-[61]), and endorsed the Court of Appeal's conclusion that the High Court had an inherent jurisdiction to grant the injunctions before the death of the child under its *parens patriae* powers, and also had power to make such orders as it considered necessary to protect the integrity of the proceedings themselves (see [165]), but departed from the Court of Appeal in relation to the proper approach to articles 8 and 10 of the Convention, and (iv) in *PMC*, the Court of Appeal held at [83] and [103] that anonymity orders and reporting restriction orders were made under the court's common law inherent power to derogate from the principle of open justice in court proceedings, where such an order was strictly necessary in the interests of justice.

39. In justifying the power to grant the injunction it seeks, Titan placed its greatest reliance on the *dictum* of Lord Morris in *Connelly v. Director of Public Prosecutions* [1964] AC 1254 at 1301 in a completely different criminal context:

> There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.

40. It is, we think, perfectly clear that the court has an inherent common law power to protect the integrity of its process and its proceedings in the interests of justice (see, for example, *PMC* at [103] and the cases cited in the Master of the Rolls's judgment in that case). We did not hear much argument on whether the equitable jurisdiction of the court and section 37 of the Senior Courts Act 1981 added anything to that common law power. We would be inclined to leave that question open until a case arises in which it matters. So far as this case is concerned, we think that it is sufficient for Titan to rely, so far as the power of the court is concerned, on the court's inherent common law power to protect the integrity of its process and its proceedings in the interests of justice (by way of orders against the parties to litigation before the court).

Section D: The relevance of contempt of court

41. We deal with contempt of court first, because it is clear that, had a contempt been alleged and proved, it would have avoided the complexities of article 10 and the

immunity from proceedings that attaches to statements made in the course of litigation (see [53] and [61] below).

42. In *Jordan*, Sharp P described at [38]-[39] the seriousness of the conduct necessary to establish a criminal contempt as follows:

> We agree that the law of contempt incorporates a threshold of gravity. In two cases cited to us on this appeal the Supreme Court has described criminal contempt as "conduct which goes beyond mere non-compliance with a court order or undertaking and involves a serious interference with the administration of justice": see *Director of the Serious Fraud Office v O'Brien* [2014] AC 1246 [39] (Lord Toulson JSC) applied in *Attorney General v Crosland (No 1)* [2021] UKSC 15, [2021] 4 WLR 103 [23]. In neither case was this passage part of the essential reasoning of the court but we accept Mr Waterman's submission that it accurately states the law. …
>
> A similar threshold test is set by statute for the imposition of strict liability for contempt by publication, namely "a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced" (Contempt of Court Act 1981, section 2(2)). The application of that test was considered by the House of Lords in *Attorney General v English* [1983] AC 116. At 141 Lord Diplock observed that "serious" is "an ordinary English word" and that he did not consider that "any attempt to paraphrase it is necessary or would be helpful." We respectfully agree. We would however make two observations. First, we do not consider that in *O'Brien* or *Crosland* the Supreme Court was using the word "serious" as synonymous with "grave". Secondly, we note that significant disruption of proceedings by in-court activity is a well-recognised category of contempt in the face of the court (see the cases cited at [23] above). The same principle must apply where equivalent disruption is caused by similar behaviour outside court.

43. Accordingly, the defendant's conduct (leaving aside the question of *mens rea*) would have been a contempt if it was, according to ordinary notions of the meaning of the words, a "serious interference with the administration of justice" or created a "substantial risk that the course of justice in the proceedings" would be "seriously impeded or prejudiced".

44. At least three aspects of the judge's findings are relevant here. These matters, even if not all the others alleged, might have been relied upon had contempt been alleged. The three relevant aspects of the judge's findings (see [10] above) are that the defendant's conduct was: (a) impinging upon Titan's legal team's ability to fulfil its duties to their clients, (b) adversely affecting Titan's ability to conduct these proceedings properly, and (c) having the effect of preventing a witness from giving his best evidence. These matters, even if not all the others alleged, might have amounted, in our view, to a serious interference with the administration of justice, and might, therefore also, have created a substantial risk that justice would be seriously impeded or prejudiced.

45. The problem with our **deciding** that the defendant's conduct was a contempt is threefold. First, we were not asked to do so. Secondly, the defendant has not had any opportunity to answer such a case. Thirdly, we have not undertaken and have not been asked to undertake the detailed evidential analysis of the material relied upon and the

evidence of its effect within Quinn Emanuel that we would have to have undertaken so as to have been sure (on the correct standard of proof as to which see [73] below) that it had created a **serious interference** with the administration of justice and a **substantial risk** that justice would be seriously impeded or prejudiced.

Section E: The relevance of article 10 and section 12

46. Article 10 provides as follows:

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. …
>
> 2 The exercise of these freedoms … may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, … for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others … or for maintaining the authority … of the judiciary.

47. Section 12 provides as follows:

> (1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression. …
>
> (3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

48. It is axiomatic that the grant of the relief sought by Titan "might affect the exercise of the Convention right to freedom of expression" within section 12(1). Titan claims that the further injunction application sought final, as opposed to interim, relief (so as to exclude the need to satisfy section 12(3)). But that is itself unclear when the further injunction application was made under CPR Part 23 (general rules about applications) rather than by any originating process. There was certainly never a trial of the further injunction application. We will return to the procedural issues under section G below.

49. Lords Reed and Briggs explained at [126]-[130] in *Abbasi* both the relationship between the common law and Convention rights and how the Convention was to be applied in such situations. These passages are important for us to bear in mind. At [126], Lords Reed and Briggs pointed out that freedom of speech had also been afforded strong protection under the common law for centuries, referring to *R v. Central Independent Television plc* [1994] Fam 192 at pages 202-3, and the statutory protection in section 12. They said at [127] that the courts are also required by section 6(1) of the Human Rights Act 1998 to act compatibly with article 10:

> … the principles established in the case law under the Convention are often expressed at a higher level of generality than those of our domestic law, and their application to particular facts generally calls for a broader exercise of judgement by the court. **However, it is important to bear in mind that the starting point is our domestic law**. The case law interpreting the Convention is important as setting

> limits to what is permissible under the Human Rights Act, but it is not an exhaustive guide to how our law should protect either privacy or freedom of expression, or should strike a balance between them [emphasis added].

50. Lords Reed and Briggs explained the new structured approach at [128] in *Abbasi* as follows:

> In assessing whether there has been a breach of article 10 …, the court begins by asking whether there was an interference prescribed by the law. The next question is whether it pursued a legitimate aim, i.e. an aim which can be justified with reference to one or more of the matters mentioned in article 10(2) … The remaining question is whether the interference was necessary in a democratic society. It is at that stage that the court may be required to strike a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other …

51. It is clear from the Lady Chief Justice's judgment in *Casserly* at [19] and [37] that some forms of self-expression fall outside the protection of article 10. She said this:

> 19. … the well-known dicta of Sedley LJ in *Redmond-Bate v Director of Public Prosecutions* [2000] HRLR 249 (Redmond-Bate) (at [20]) that "freedom only to speak inoffensively is not worth having", and those of Beatson J in *R (Calver) v The Adjudication Panel for Wales* [2012] EWHC 1172 (Admin); [2013] PTSR 378 (Calver) (at [55] and [58]) that "freedom of expression includes the right to say things which 'right thinking people' consider dangerous or irresponsible or which shock or disturb"; and that politicians acting in their public capacity should "possess a thicker skin and greater tolerance than ordinary members of the public". …
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> 37. Some forms of self-expression will fall outside the scope of the free speech right, because they amount to no more than vulgar abuse and convey no ideas and no meaningful information, or for other reasons. At the other extreme, information and ideas which aim at the destruction of democracy, or its fundamental freedoms are not protected: see Article 17 of the Convention. But the law does not require courtesy. It is trite law that speech does not lose protection just because the information or ideas that it conveys are offensive, disturbing or even shocking. Communications of that kind are within the scope of the right. The passages from the *Redmond-Bate* and *Calver* cases referred to in [19] above are well-known statements of the position. They reflect both the common law (see for instance *R v Central Independent Television plc* … (at 203) and the Strasbourg jurisprudence (see for instance *Jerusalem v Austria* (2003) 37 EHRR 567 (at [32] and [38])).

52. At first sight, some of the defendant's communications in this case look to have been in the category of pure vulgar abuse. Some undoubtedly combined vulgar abuse with meaningful information (see [36] above), but some did not. The problem once again is that we cannot reach any final conclusion on whether the communications amounted to a contempt without undertaking the exercise mentioned above at [45]. Moreover, the "mixed" nature of some of the communications adds to the complexity, since, if they are not properly regarded as a contempt, they would probably be protected by the immunity (see section F below).

53. It is also clear from [72]-[73] in *Jordan* that communications amounting to a criminal contempt of court would not be protected by article 10, because article 10(2) would undoubtedly be engaged. Sharp P said this:

> 72. If, however, the proceedings did interfere with, restrict, or penalise the exercise of the appellant's rights under article 11 and/or 10 we are satisfied that this was amply justified under the second paragraph of each article. The immediate aims of the contempt proceedings were to protect the administration of justice in the case that was then being heard by the court and to safeguard the rights of the defendants in that case. There was a broader aim of protecting other legal proceedings. These aims are not only legitimate they are of high importance. **Orderly legal proceedings are one of the foundations of a democratic society**. The importance of this consideration is all the greater when it comes to proceedings before a jury in which the liberty of the subject is at stake. On the judge's findings the noise generated by the appellant caused serious disruption to the proceedings. **That in itself is enough to make it a contempt. It is also sufficient to make it necessary to interfere with the appellant's Convention Rights under articles 11 and/or 10 , assuming those rights are indeed affected**. We would adopt what Lord Reid said in *Attorney General v Times Newspapers Ltd* [1974] AC 273, 294E: "**Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice**". Put another way, in a context such as the present "**there is no such thing as a justifiable contempt of court**": [*Attorney General v. Crosland [2021] UKSC 15; [2021] 4 WLR 103 at [33]*].
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> 73. In our judgment it is clear that contempt in the face of the court is an offence within the second of the three categories identified by the Supreme Court in *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill [2022] UKSC 32; [2023] AC 505 at [55]* : proof of the ingredients of the offence will, without more, be sufficient to render a "conviction" proportionate. It was therefore not incumbent on the judge to conduct any fact-specific proportionality assessment before concluding that contempt had been committed. [E*mphasis added*]

54. In these circumstances, in our judgment, article 10 would probably (but not certainly) **not** have been an impediment to the grant of an injunction to restrain the defendant from seriously interfering with the administration of justice in the proceedings by continuing to send messages that: (i) contained pure vulgar abuse to Quinn Emanuel, or (ii) might amount to contempt of court. We say "probably" because we have neither undertaken the exercise mentioned at [45] above, nor have we heard detailed argument on article 10(2).

55. It should be clear, therefore, that a court faced with an application for this type of injunction should always be aware of article 10 and section 12(3) and their potential impact.

<u>Section F: The relevance of the immunity from proceedings that attaches to statements made in the course of litigation</u>

56. Much of what we have said in section E above (in relation to article 10) applies to the question of whether the immunity from proceedings that attaches to statements made in the course of litigation was engaged in this case.

57. Warby J explained in *Iqbal 3* how the immunity operated and the legal basis for it. He was concerned with a civil claim for an injunction and damages brought under the PfHA by a lawyer against his former firm. The claim was based on three letters sent to the claimant shortly before the proceedings were issued. Before the appeal came on before Warby J, the claimant had also brought unsuccessful libel proceedings against his former firm (see *Iqbal 1* and *Iqbal 2*).

58. At [26] in *Iqbal 3*, Warby J referred to the Court of Appeal's decision in *Lincoln v. Daniels* [1962] QB 237, in which Devlin LJ had referred at pages 257-8 to the first category of absolute privilege or immunity as covering all matters that are done *coram judice* (before the judge), which extended to "everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence". Then, at [27], Warby J explained the *Smeaton v. Butcher* [2000] EMLR 985 (Court of Appeal) test as being: (1) that the contents of an affidavit (and a proof of evidence and witness statement) will be absolutely privileged unless they have "no reference at all to the subject matter of the proceedings", and (2) that any doubt should be resolved in favour of the witness.

59. At [59]-[76] in *Iqbal 3*, Warby J explained the law in some detail, starting with *Munster v. Lamb*. He concluded that the immunity and the *Smeaton v. Butcher* test applied to litigation correspondence as much as to pleadings and affidavits or statements in court. He said at [59] that "[w]here it applies, absolute privilege or absolute immunity from suit protects a person from legal proceedings even if it is alleged or is the fact that what they have said was false and malicious". At [60], Warby J cited Lord Hoffmann in *Arthur JS Hall & Co v. Simons* [2002] 1 AC 615 at 697 (*Hall v. Simons*), where he said that: "[t]he policy of this rule is to encourage persons who take part in court proceedings to express themselves freely. The interests of justice require that they should not feel inhibited by the thought that they might be sued for something they say". At [61], Warby J cited Lord Hobhouse in *Hall v. Simons* where he said that: "in the public interest all those directly taking part are given civil immunity for their participation. The relevant sanction is either being held in contempt of court or being prosecuted under the criminal law. Thus the court, judge and jury, and the witnesses including expert witnesses are granted civil immunity. This is not just privilege for the purposes of the law of defamation but is a true immunity" (see *Roy v. Prior* [1971] AC 470 per Lord Morris at pages 477-8).

60. Warby J considered the outer limits of the privilege at [63]-[64] in *Iqbal 3*, citing Rix LJ at [32] in *Iqbal 2* to the effect that "it is not enough for the defamatory language to be *irrelevant* to the matter in hand for it to fall outside the privilege, it must have *no reference at all* to the subject-matter of the proceedings" (see also [70] in *Iqbal 3*). At [72], Warby J said that it was hard to see a principled basis for distinguishing between correspondence and other communications. He expressed the view that the rule applies to both and we would be inclined to agree. That proposition was anyway not challenged before us.

61. Finally in this connection, it is worth mentioning that, in *Iqbal 2*, Rix LJ (with whom Morritt C and Lewison LJ agreed) held at [42] that "the privilege does not apply to a prosecution for perjury or to contempt of court proceedings, or to malicious prosecution", and that "statements which are wholly extraneous to the investigation – irrelevant and gratuitous libels" are excluded from the immunity (see *Taylor v. Director of the Serious Fraud Office* [1999] 2 AC 177 at 215B).

62. We think, therefore, that for the same reasons as we gave in relation to article 10 in section E, the immunity from proceedings that attaches to statements made in the course of litigation would not have been engaged had an injunction been granted to restrain the defendant from seriously interfering with the administration of justice in the proceedings (i.e. committing a criminal contempt) by sending messages containing only extraneous, irrelevant and gratuitous abuse to Quinn Emanuel.

63. Had the defendant's conduct not been pure and extraneous vulgar abuse, the judge would have had to decide whether the past conduct attracted the immunity from proceedings that attaches to statements made in the course of litigation. If that conduct were immune, an application for an injunction under the court's inherent common law power would have failed, because the immunity has to be respected for the future and immune communications cannot be said to interfere with the administration of justice.

Section G: The relevance of the potential availability of a claim by Quinn Emanuel under the PfHA

64. The judge thought that it was relevant to the decision that she had to make that the further injunction application was made, in effect, for the benefit of Quinn Emanuel.

65. At [31]-[34], the judge said that the difficulty with the application was that, although brought in the name of Titan, it related to the conduct of the defendant towards Quinn Emanuel. She did not agree with the characterisation of the injunction as seeking to ensure that Titan's claims could be properly disposed of. Rather, the judge thought that it was, in substance, an application for an injunction to prevent the claimants' lawyers from being harassed, albeit that Titan might also be secondary beneficiaries of it. Both Titan and the Advocate argued that it was irrelevant to the application that Quinn Emanuel might themselves have brought harassment proceedings against the defendant under the PfHA. We do not agree.

66. First, whilst we accept that the judge was wrong to recharacterize the injunction she was being asked to make as an injunction in favour of Quinn Emanuel, when it was not, we do think that, when exercising her discretion under the court's inherent power, she was entitled to take into account that Quinn Emanuel and its employees would be the real beneficiaries of the order sought. It was, therefore, open to the judge to refuse to exercise her discretion on the basis that Quinn Emanuel had an alternative and more convenient remedy open to it under the PfHA. This was not a case like *Abbasi*, where an injunction was granted which benefited third party clinicians. Here the fact that others would have benefited from the injunction was not a knock-out blow but it was relevant to the exercise of the judge's discretion.

67. Had Quinn Emanuel brought its own proceedings under the PfHA to protect itself from the defendant's abuse, many of the complexities explained in this judgment would have been avoided (see [74]-[75] below).

68. As we shall explain in sections H, I and J below, many factors will need to be considered by any court considering an injunction of this kind. One of those factors will be whether an injunction, in the particular case, might more conveniently be granted after a trial of proceedings begun by the affected parties for the purpose of restraining the conduct in question. That will depend on the evidence. In saying this, we are not detracting from what we have already said, namely that it is, in theory, possible for the court to exercise

its inherent common law power (at the behest of the claimants in proceedings) to protect the integrity of its process and its proceedings in the interests of justice to restrain threatened serious misconduct (even falling short of a contempt) that will create a material risk of interference with the integrity of the court's process or proceedings (see *Jordan* at [38]).

Section H: The appropriate procedure for obtaining an injunction of the kind sought

69. As we have said at [48] above, Titan sought and seeks a final, not an interim, injunction. Orders made upon applications within the course of proceedings made under CPR Part 23 do not normally continue to have effect after the conclusion of the proceedings. There are, however, cases where this may happen, such as a freezing order made in aid of the enforcement of a judgment, and an anonymity order made to protect a child or a protected party.

70. Ultimately, we see no reason why an injunction should not be granted on an application under CPR Part 23 under the court's inherent common law power to protect the integrity of its process and its proceedings in the interests of justice. The court should, however, be astute to ensure that such an injunction does not, save perhaps in exceptional circumstances, outlast the protection of the interests in the proceedings for which it has been granted. In addition, the court should be careful to understand whether the order sought is interim or final in effect.

71. The injunction sought here was in a final form, but was in fact brought under a jurisdiction that only allowed the court to protect the integrity of the proceedings themselves. Titan sought an injunction to stop the defendant abusing Quinn Emanuel on the basis that such abuse was having a seriously deleterious effect on the conduct of the proceedings, the witnesses' evidence and on Quinn Emanuel's ability properly to represent its clients. It is hard to see how such an injunction, granted under the power we have mentioned, could properly continue after the proceedings had ended, save perhaps in support of the enforcement of the final orders made. We have not been asked seriously to consider whether the position would have been different if Titan had relied on the equitable jurisdiction of the court rather than the inherent common law jurisdiction we have discussed. But it seems to us, at first sight, that the injunction would still have been sought to protect the integrity of the court's process and, therefore, could not really have been granted for a different or longer period.

72. In short, we reject Titan's submission that it was truly seeking a final injunction. We think it was seeking an interim order. It is true that no trial was expected or required, since the materials relied upon were the communications already sent by the defendant, but the interim nature of the relief (intended to protect the proceedings themselves in the interests of justice) means that section 12(3) would be engaged, at least unless the conduct being restrained was shown to be a contempt of court. If Titan had claimed that the conduct was a contempt of court, it would have to have been proved to the criminal standard of proof (see the judgment of Collins-Rice J in *WFZ v. BBC* [2023] EWHC 1618 (KB) at [24]-[27] and [68]-[70] (*WFZ*) and the cases there cited). Section 12(3) provides, of course, that, where the court is considering whether to grant relief which might affect the exercise of the article 10 right to freedom of expression, it cannot do so before trial unless "the court is satisfied that the applicant is likely to establish that publication should not be allowed".

73. In some cases, and even in this one, section 12(3) might have been overcome by showing that the conduct to be restrained was an obvious contempt. But if such conduct is not alleged to be a contempt, the court cannot avoid considering whether article 10 is engaged or excluded on the grounds we have mentioned.

74. It can be seen from what we have said that two factors may be important: (i) the question of whether the injunction is sought by an interim application rather than by originating process, and (ii) whether the person seeking the injunction is bringing a claim, such as under the PfHA, to which the injunction application is attached, or simply seeking to protect the integrity of the existing proceedings themselves.

75. Here, it seems to us that the judge's instincts were right. She thought, and we agree, that the further injunction application was put forward as being an application to protect Titan's court process, when realistically it was to protect Quinn Emanuel's lawyers from continuing abuse and harassment. As we have explained, however, the judge was wrong to think that there was no **power** to grant an injunction under the common law inherent jurisdiction at the behest of Titan to protect the integrity of their own proceedings in the interest of justice (even in the absence of a contempt). If the substance of what was sought was to protect Quinn Emanuel lawyers, we think it would have been easier and more appropriate for them to have brought their own proceedings under the PfHA, which provides an express statutory power for that very purpose.

76. We do not think that Titan's reliance on CPR Part 3.1(2)(p) which includes a case management power to "take any other step or make any other order for the purpose of managing the case and furthering the overriding objective" adds anything to what we have said.

Section I: Ought the judge to have granted the injunction sought or any injunction?

77. Against that background, we turn to consider whether the injunction that Titan sought ought to have been granted by the judge.

78. As we have said, the judge had power to grant an injunction of the kind sought. Moreover, in a case where an injunction is sought to restrain specific misconduct within the proceedings, the applicant needed to show a threat or real prospect of serious misconduct that would create a material risk of interference with the integrity of the court's process or proceedings. If the misconduct alleged or threatened did not or would not amount to a contempt, the court needed to consider article 10 and section 12 on the one hand and the immunity from proceedings that attaches to statements made in the course of litigation on the other hand. We shall assume, for the purposes of this section, that the threshold for the grant of an injunction was reached (on the basis mentioned at [44], [54] and [62]-[63]), subject only to the question of discretion.

79. There are essentially four reasons why we do not think that, as a matter of discretion, the injunction ought to have been granted. But we emphasise that this is not a decision we need to reach, since the only live question before the court is whether the revised injunction sought should **now** be granted (see section J below).

80. The four reasons why we do not think that the judge ought to have granted the injunction Titan sought are as follows: (i) the injunction was far too broad and went beyond the protection of Titan's existing proceedings, (ii) without a detailed examination of the

correspondence complained of, it was not easy to say either whether there had been a contempt or whether article 10 and/or the immunity were engaged or excluded, and no such detailed examination was requested or undertaken, (iii) a far more straightforward remedy was probably available to Quinn Emanuel under the PfHA, and (iv) as a matter of discretion, no such injunction was appropriate when the proceedings were nearing their conclusion and other mechanisms to curtail the abuse might have been equally effective.

81. We will take each reason briefly in turn. First, the unreasonable breadth of the injunction sought is now acknowledged by Titan who have restricted it considerably before this court (see [7] and [15] above). Any relief of this kind must be tailored so as to restrain such misconduct as threatens to create a material risk of interference with the integrity of the proceedings, but not in wider terms than are necessary to do justice nor to interfere with the defendant's right freely to conduct the litigation as they see fit (see Leggatt LJ at [50] *Cuadrilla* and Asplin LJ in *Smith v. Backhouse* [2023] EWCA Civ 874, [2024] 1 WLR 794, at [34]-[38]).

82. Secondly, as we have already mentioned at [45] above, the court cannot **decide** whether the defendant's conduct amounted to a contempt, without a fair process and a detailed examination of the evidence. Since contempt was not alleged, the court was placed in a difficult position. Without contempt, both article 10, section 12(3) and the immunity needed to be considered as we have explained. This means that, in anything but the clearest of cases, an injunction of the kind sought will need careful consideration.

83. Thirdly, we think as we have already said more than once that it was relevant that Quinn Emanuel or its partners and staff could have brought their own straightforward proceedings to restrain the defendant from harassment. This does not indicate that an injunction of the type sought will never be appropriate where alternative, more straightforward, remedies are available. But it is a factor that the court can take into account in regulating its own process and procedure.

84. Fourthly, there were numerous factors that the court would have had to consider as a matter of discretion. The proceedings were nearly concluded, so the injunction sought might have looked to be quite a blunt instrument. The defendant was in court for the trial and could perhaps have just had the situation explained to her by the judge. She might, for example, have been told that her continuing conduct was not helping her case and was interfering with the court's ability to make a fair and just decision. That might not have worked, but it could have been tried first. We think that many of the matters mentioned in our introduction might have been relevant to the court's discretion. Whilst not in any way condoning the defendant's abusive communications, Quinn Emanuel had devised mechanisms to segregate them, so their impact was thereby reduced. An injunction had seemingly not had the desired effect the previous time it had been tried. It was relevant that the victims of these communications were legal professionals employed by Quinn Emanuel and led by Mr Gailani who is an experienced litigation partner at the firm. Unpleasant though these communications were, the affected individuals would not have been without support from the firm. It was also relevant that the injunction appears to have been used strategically. We do not say that the further injunction application was used to put improper pressure on the defendant, but it does appear to have been part of a litigation strategy against her, since the further injunction application was made just before the trial, which could have been expected to mark an end to the litigation.

85. We do not, therefore, say that no injunction could properly have been granted at the trial. It plainly could, had the exercise we have explained been undertaken. We do not, however, think that the broad injunction sought could or should have been granted.

86. For the avoidance of doubt, we do not think that this case is as serious as the threat to kill that Sweeting J injuncted in *Linemile Properties Limited v. Plater* [2023] EWHC 810 (Ch), [2023] PNLR 22.

Section J: Ought this court now to grant the injunction sought or any injunction?

87. Titan now seeks an injunction framed in the language of the Malicious Communications Act 1988 which makes it an offence to send a message which is indecent or grossly offensive. Only messages to Titan's lawyers would be enjoined. It is not suggested that any abusive communications have been sent by the defendant since the trial in 2024. Indeed, the only messages relied upon are those sent in the middle of 2024 (see [34]-[35] above). We have heard no argument on the relevance or applicability of the Malicious Communications Act 1988.

88. It seems to us, for all the reasons given in Section I above, and because the conduct sought to be restrained is not, on the evidence, continuing, the injunction sought should be refused. The defendant is not currently threatening serious or other misconduct that will create a material risk of interference with the integrity of the court's current process or proceedings. In this connection, it is perhaps worth mentioning that the defendant attended twice before us (though not throughout the hearings). She behaved properly on both occasions.

Section K: Conclusions

89. For the reasons given above and summarised at [26]-[32], the appeal will be dismissed on the basis that, although the judge was wrong as to the power to grant an injunction of the kind sought, no injunction was, as a matter of discretion, appropriate. Titan's amended further injunction application before us will also be dismissed.

90. As we have explained, the judge had the power to grant an injunction of the kind sought under the inherent common law jurisdiction of the court to protect the integrity of its proceedings in the interests of justice. That power can, in theory, be exercised whether or not a criminal contempt of court is alleged, threatened or proved. But the misconduct alleged must be serious enough to constitute a material threat to the integrity of the court's process and its proceedings. Misconduct of that kind is likely also to be regarded as conduct of sufficient seriousness to found a contempt.

91. It has not been alleged that the defendant's conduct in this case crossed the threshold of sufficient seriousness to found an allegation of contempt. If that had been alleged and proved, neither article 10 and section 12 nor the immunity from proceedings that attaches to statements made in the course of litigation would have been engaged. The court would, however, have had to consider article 10, section 12 and the immunity questions in a case in which no contempt was established.

92. To conclude, this court has decided that, had the judge recognised her power to grant the injunction sought, she would have been right to refuse to exercise her discretion to grant that injunction, and the revised injunction sought should not now be granted.