Neutral Citation Number: [2026] EWCA Civ 573

Case No: CA-2026-000767

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
LORD JUSTICE EDIS

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2026

Before:

LORD JUSTICE BEAN (Vice President, Court of Appeal, Civil Division)
LORD JUSTICE DINGEMANS (Senior President of Tribunals)
and
LORD JUSTICE STUART-SMITH

- -

IN THE MATTER OF CONTEMPT PROCEEDINGS
AGAINST RAJIV MENON KC

- -

Adrian Waterman KC and **Anthony Hudson KC** (instructed by **Hickman and Rose**) for the **Appellant** Rajiv Menon KC
Tom Little KC and **Victoria Ailes** (instructed by the **Crown Prosecution Service**) for the **Director of Public Prosecutions**

Hearing date: 30 April 2026

- -

Judgment Approved by the court

Lord Justice Bean (Vice President, Court of Appeal, Civil Division), Lord Justice Dingemans (Senior President of Tribunals) and Lord Justice Stuart-Smith:

This is the judgment of the court.

1. The central issue before us is whether the High Court has jurisdiction to deal with an alleged contempt in the face of the Crown Court referred to the High Court by the trial judge without the intervention of the Attorney General or Solicitor General.

2. In December 2025 a trial was taking place in the Crown Court at Woolwich before Johnson J ("the trial judge"). Six defendants were charged with offences arising out of an incident on 6 August 2024 at a factory in Filton, Bristol, occupied and operated by Elbit Systems Ltd. Rajiv Menon KC was leading counsel representing Charlotte Head, the first defendant named on the indictment.

3. There were rulings of law before and during the trial, including in relation to what is sometimes called jury equity; to the defence of lawful excuse to a count of criminal damage; and to the relevance and admissibility of certain evidence.

4. Following submissions as to the legal directions to be given to the jury, the trial judge gave a ruling on 22 December 2025 in which he said at [36]:-

> "No counsel is permitted in their closing speeches to invite the jury to disregard the court's rulings of law or to disregard their juror oaths or to apply what has been described as the principle of jury equity or to inform them of it."

5. On 8 January 2026 Mr Menon made his closing speech to the jury on behalf of Ms Head. The trial judge considered that in some passages in that address Mr Menon may have contravened the ruling to which we have just referred.

6. Following discussion in the absence of the jury, the trial judge handed down a written ruling on 12 January 2026. He found that Mr Menon had done a number of things prohibited by the directions ruling. He expressly stated that it was not necessary to make any finding as to whether this had been deliberate and he did not do so.

7. The trial concluded on 4 February 2026 with the discharge of the jury following a mixture of acquittals and failures to agree on verdicts. A hearing was listed for 18 February 2026, principally for the prosecution to indicate its position in respect of retrials. On 16 February 2026 prosecution counsel (Deanna Heer KC and Emma Gargitter) served written submissions for that hearing. They indicated that the prosecution would seek a retrial of Ms Head and her five co-defendants on all those counts upon which the jury had failed to reach a verdict. They also made the following submission.

> "As to the matters set out in the Court's ruling of the 12th January 2026: All parties to any criminal proceedings and their legal representatives are under an obligation to obey the Court's orders. Deliberately to do otherwise is capable of amounting to a contempt in the face of the Court (see Archbold 28-61) and, in

> the case of counsel, a potential breach of the Code of Conduct (see *Farooqui* [2013] EWCA Crim 1649 at [109]).
>
> By its ruling of the 12th January 2026 the Court held that the closing speech made on behalf of Charlotte Head disobeyed its directions, while expressly making no finding about whether that conduct was deliberate. In order to deter a repetition of the same behaviour in any outstanding trial, the Court may now wish to consider whether steps should be taken to sanction counsel's conduct, in particular:
>
> (i) Whether the conduct is capable of amounting to a contempt or a breach of the Code of Conduct.
>
> (ii) If so, whether further action should be initiated by the Court (in respect of contempt, see Crim PR rule 48.9 or Civil PR part 81).
>
> (iii) If so, whether to do so at this stage or postpone the matter.
>
> (iv) In respect of a potential contempt, whether it should initiate summary proceedings or refer the matter to the Attorney General. Given that the conduct is on the record and that there are outstanding trials listed before the same trial judge, the Court may consider it prudent to refer any potential inquiry to the Attorney General."

8. Mr Menon was unable to attend the hearing on 18 February as he was on holiday abroad. At that hearing the trial judge indicated that he had "referred the matter to a Divisional Court". The next day, he issued an order in the following terms:-

> "**ORDER: Directions for consideration of what, if any, further steps should be taken following the court's ruling of 12 January 2026**
>
> UPON the judge's written rulings as to the matters which could (and could not) be put before the jury by way of evidence and submissions.
>
> AND UPON the closing speech made by Rajiv Menon KC on behalf of the defendant Charlotte Head on 8 January 2026
>
> AND UPON the prosecution submission, immediately following that speech, that leading counsel's conduct in making the speech amounted to a contempt of court and a breach of the Bar Code of Conduct
>
> AND UPON the judge's written ruling dated 12 January 2026 that the said speech of Mr Menon KC breached the said earlier written rulings given by the court in the respects set out in that ruling

> AND UPON the jury returning partial verdicts on 4 February 2026
>
> AND UPON the judge's directions order of 9 February 2026 setting out the matters to be addressed at a directions hearing on 18 February 2026, including what steps should be taken in respect of the speech of Mr Menon KC.
>
> AND UPON the prosecution's submission, in a written note dated 16 February 2026, that the Court may wish to consider what steps should be taken to sanction leading counsel's conduct, including whether contempt proceedings should be initiated
>
> AND UPON the court having considered the aforesaid at the hearing on 18 February 2026 and the written representations from Kate O'Raghallaigh of counsel dated 19 February 2026
>
> AND UPON the judge of his own motion referring this matter to the Administrative Court of the High Court of Justice, King's Bench Division for further consideration of what if any further steps should be taken
>
> IT IS ORDERED AND DIRECTED THAT: An expedited transcript shall be prepared at public expense of the closing speech given by Mr Menon KC on 8 January 2026 to be provided to the Administrative Court."

9. The retrial of Ms Head and her co-defendants was fixed to start on 7 April 2026. Mr Menon wrote to Chamberlain J, Judge in Charge of the Administrative Court, on 4 March 2026 to seek information on what possible steps would follow, since these might impact on his possible participation in the retrial. The clerk to Chamberlain J responded the next day stating that a file had been opened under the case name AC-2026-LON-001208, and that the papers had been sent to Edis LJ sitting as a judge of the Administrative Court.

10. On 5 March 2026, Edis LJ issued the following order of the Administrative Court:-

> "UPON READING THE ORDER made in the Crown Court at Woolwich by The Hon Mr Justice Johnson ("the judge") on 19 February 2026 in R v Charlotte Head and others, T20257010
>
> AND UPON READING the documents contained in a Bundle of 168 pages prepared by the judge, in particular the judge's ruling of 12 January 2026
>
> AND UPON READING a transcript of the closing speech to the jury made by Mr Rajiv Menon KC ("Mr Menon") on behalf of Charlotte Head on 8 January 2026

> AND UPON READING a letter from Mr Menon requesting expedited clarification of the consequences of the judge's order of 19 February 2026
>
> AND UPON THIS COURT deciding to explore the matter at a directions hearing, including
>
> 1. whether any proceedings should take place in the Divisional Court or the Crown Court (Lord Justice Edis is able to sit as a Judge of the Crown Court); and
>
> 2. what procedure should be adopted for determining whether Mr Menon was in contempt of court in making the closing speech and dealing with any findings of contempt which may be made
>
> IT IS ORDERED THAT:-
>
> 1. The matter having been referred to the Administrative Court by the judge's order of 19 February 2026 shall be listed for directions only on 11 March 2026 at the Royal Courts of Justice.
>
> 2. The Court requires the attendance of Mr Menon and invites the Director of Public Prosecutions to provide assistance to the court by appearing by counsel.
>
> NOTICE TO MR MENON
>
> 1. The allegations under consideration are those identified by the judge in his ruling of 12 January 2026.
>
> 2. You have the right to be legally represented and to apply for legal aid which may be available without any means test.
>
> 3. You will not be required to answer the allegations at the directions hearing and will be afforded a reasonable time to prepare for any substantive hearing."

11. Submissions were served on behalf of Mr Menon contending that Edis LJ and the Administrative Court had no jurisdiction (and that the DPP had no standing in the matter). A short note by Mr Little KC on behalf of the DPP was served contending that Edis LJ and the Administrative Court did have jurisdiction.

12. On 11 March 2026 Edis LJ heard oral submissions on jurisdiction. At the end of the hearing he gave an extempore judgment as follows:-

> "1. I intend to give a short extempore ruling in relation to the submissions that have been made to me by Mr Adrian Waterman KC on behalf of Mr Rajiv Menon KC.
>
> 2. The position procedurally in this case is unusual. What has occurred is that on 19 February 2026, Jeremy Johnson J made an

order in the Crown Court, which, in form, simply directed an expedited transcript of Mr Menon's closing speech to the jury, which had been made in the course of the Crown Court proceedings on 8 January 2026. This was so that the transcript of that closing speech could be provided to the Administrative Court.

3. That order has been complied with. There is a transcript of that closing speech, which the Court has. The purpose of directing it is recorded in the recitals, as they appear to be, prior to the terms of the order itself.

4. Those recitals seek to set out a number of events which have happened and which caused the judge to rule that the Administrative Court should have a transcript of the closing speech as a matter of urgency. They are set out in the order. The order concerns, obviously, from what I have already said, the content of closing submissions to the jury made by Mr Menon.

5. It records that, immediately following that closing speech, the prosecution had made a submission that the making of the speech, in the terms of the recital, "amounted to a contempt of court and a breach of the Bar Code of Conduct".

6. The next recital refers to a ruling, given in writing by the judge on 12 January 2026, which is described in the recital in these terms: ... that the said speech of Mr Menon KC breached the said earlier written rulings given by the Court in the respects set out in that ruling".

7. A subsequent recital refers to a directions order made in the Crown Court on 9 February 2026, which identifies matters to be addressed at a directions hearing, which took place on 18 February 2026, "including what steps should be taken in respect of the speech of Mr Menon KC".

8. I pause to interject that the word, "matters", in that recital is used in an entirely non technical sense to mean something to which the Court was required to give its attention. This is relevant to one of the submissions made by Mr Waterman. He submitted that where in a later recital the judge referred to having referred “this matter” to the Administrative Court he could not have done so because there was no “matter” as defined in section 151(1) of the Senior Courts Act 1981 in existence.

9. The next recital records a prosecution submission, in a written note dated 16 February 2026, "that the Court may wish to consider what steps should be taken to sanction leading counsel's conduct, including whether contempt proceedings should be initiated".

10. There then followed a hearing, about which Mr Waterman, on behalf of Mr Menon, has been critical in relation to certain aspects of the fairness of what took place, and, at which, according to the recital which followed, the judge thereafter, "of his own motion, [referred] this matter to the Administrative Court of the High Court of Justice, King's Bench Division, for further consideration of what, if any, further steps should be taken".

11. Mr Waterman submits that, as a recital, that paragraph cannot stand as an order in itself and merely records something which has already happened. The thing which it records as having happened is that the matter was referred to the Administrative Court for further consideration.

12. The judge, in the order that he made, did not give any further explanation of what he intended to achieve or why he was proceeding in the way in which he did. Nevertheless, it is clear that "the matter" was brought to the attention of the Administrative Court of the High Court of Justice. That caused the judge in charge of the Administrative Court, Chamberlain J, to open a file under case number "AC 026-LON-001028".

13. It caused a number of documents which had emanated from the Crown Court proceedings to be drawn to the attention of Chamberlain J and in due course to my attention, so that I could consider what, if any, steps the Administrative Court ought to take, given that the judge, by acting in the way in which I have described, had placed an allegation made by the prosecution of contempt of court, together with the evidence and his judgment that the closing speech did transgress against some of the rulings that he had earlier made in the proceedings. The action that I took was to cause an order made – on the papers without a hearing – to be distributed to Mr Menon and to the other interested party, namely the Director of Public Prosecutions, who has responsibility for the conduct of the proceedings on behalf of the prosecution in the Crown Court. Counsel instructed, in that context, had taken a part in the proceedings in the Crown Court to the extent, at least, that I have already identified.

14. That order simply caused what I shall describe as "the case" to be listed for directions this morning. It required Mr Menon to attend and invited the Director of Public Prosecutions to instruct counsel to assist the Court. Both of those things have happened.

15. The order stated that the Court would consider procedural aspects in broad terms. It seemed that there were three possible immediate outcomes: either, one, I could refuse to take any action at all or, two, I could initiate proceedings of the Court's own motion in order to give effect to what appeared to be prima facie evidence of contempt. Whether that prima facie evidence

proves contempt or not is something that I am in no position to consider and have not done so. All I have considered is whether there is a serious issue to be considered by a court. The third option, given that the Crown Court judge had decided not to proceed himself, under his powers set out in the Criminal Procedure Rules, in dealing with this alleged contempt in the face of the Court, was either myself or, through some other judge sitting as a judge of the Crown Court, deal with it under those provisions.

16. If I had taken the first of those options and done nothing, it would, of course, not have precluded the Attorney General, or anyone else who wished to make an application for permission to bring contempt proceedings, to make such an application. In the event, the order that I made was intended to set in motion a process whereby the Court decided whether the Divisional Court had jurisdiction to entertain a case of this kind in which the matter to be considered is whether counsel committed a contempt of the Crown Court in the face of that court. If the Court does have such a jurisdiction, then I considered that it would be appropriate that the substantive issue should be considered, subject, of course, to hearing submissions to the contrary, which have now been placed before me, both in writing and orally by Mr Waterman.

17. The reason for referring to the potential option of proceedings continuing or starting under the Criminal Procedure Rules was as an option, if it were decided that the Administrative Court, acting as the Divisional Court, has no jurisdiction in the matter.

18. That is the sequence of events, in summary, which brings the matter before me today, listed as it is for directions. My intention is that the case should be fixed for hearing before a Divisional Court. The Divisional Court, which is the Court which historically has the concurrent jurisdiction, formerly with Assizes and now with the Crown Court, is the right forum for issues of this kind to be resolved. A Divisional Court, under section 66 of the Senior Courts Act 1981, must be constituted of at least two judges. I am not, therefore, sitting this morning as a Divisional Court. I am sitting as a judge of the Administrative Court, intending to make arrangements for a hearing at which all procedural and substantive matters can be decided. I have been invited to rule, in that context, that the Court is so clearly without jurisdiction that I should not even make arrangements for that question to be resolved by the Court, the Divisional Court, which is the most appropriate forum to resolve it. I decline so to rule.

19. The ambit of that decision is narrow. I am only deciding that I decline to terminate these proceedings on jurisdictional grounds this morning. I am not taking any substantive decision

about the procedural submissions which Mr Waterman has made to me today. They remain open for resolution in the Divisional Court proceedings, which I intend to arrange. No substantive decision, therefore, has been made about any of that. All I have decided is that today is not the right point at which decisions should be made.

20. Given the procedural circumstances and the nature of the objections which have been advanced to this Court proceeding at all, it seems to me that I should set in train certain additional procedural steps which I intend as procedural safeguards for Mr Menon.

21. I acknowledge Mr Waterman's submission that Part 81.6 of the Civil Procedure Rules does not squarely address the historic concurrent jurisdiction, which has always existed between the Divisional Court and the Crown Court, formerly Assizes. Nevertheless, in exercising that historic jurisdiction, the Court clearly has an important obligation to ensure procedural fairness.

22. That is what Part 81.6 is intended to achieve in a case where the Court proceeds of its own motion, which is what is happening here. The procedural fairness is ensured in such cases by two particular provisions: one is by Part 81.6(2) that the Court may direct "any other party in the proceedings" to give such assistance to the Court as is proportionate and reasonable, having regard to the resources available to that party.

23. That power does not directly transpose into the present situation, but it is not necessary to exercise it because the person who might be directed to assist is the Director of Public Prosecutions, who is willing to provide such assistance by instructing counsel, as he has this morning. That counsel has indicated in his written submissions that, on the instructions of the Director, he is willing to assist during future hearings, including by asking questions of witnesses, where that is necessary and appropriate, subject, of course, to the superintendence of the Court. The second power in Part 81.6, which is material, is that, in subparagraph (3), which provides that, if the Court is proceeding of its own initiative, it shall issue a summons to Mr Menon, which should include the matter set out in Rule 81.4(2)(a) to (s), insofar as applicable, and which requires the defendant to attend Court for directions to be given.

24. It is unnecessary to require Mr Menon to attend Court for any further directions hearings because this directions hearing has taken place. However, it seems to me that, in the interests of procedural fairness, Mr Menon should be in the position that he would be in if somebody had made an application for committal for contempt, and that is the function of the summons which is required by Part 81.6(3). Therefore, such a summons should be

drawn up and served personally on Mr Menon in accordance with the rules. That document will summarise the concerns expressed by the judge, which he has referred to this Court, which were fully set out in his ruling of 12 January 2026. It will not include any new or different allegations. It follows from that that Mr Menon has been aware of the nature of the criticisms which this Court will in due course have to evaluate, if it decides it has jurisdiction to do so. That document, the judgment of 12 January, was included in the bundle of documents, which was sent to Mr Menon with my order of 5 March. In fact, he already had it. It is a bundle of documents which the judge created and which he supplied to the parties and to the Administrative Court. For the avoidance of doubt, apart from supplying the documents, the judge has made no comments to the Administrative Court about the substance of any matters. The knowledge of the Court, therefore, is confined to the documents in that bundle and such further documents as have been supplied to the Court since 5 March. Therefore, I should also direct, for the purposes of CPR 81.4(1) or for the purposes of fairly exercising the inherent jurisdiction of the Court, that no further evidence in support of any complaint of contempt shall be served on Mr Menon.

25. There is no need, and I so direct, for any affidavit or anything of that kind. The matters complained of in this case relate entirely to rulings which the judge gave and which all parties have in their bundle and to the speech, which Mr Menon made, and all parties have a transcript of that. The Court will have to decide, if it has jurisdiction, whether that material generates a case to answer. If so, it will be a matter for Mr Menon to answer it by giving evidence himself, by calling evidence, by supplying documents, and by doing any other thing which he may be advised to do. But what I might, for colloquial purposes only, describe as “the prosecution case” which he faces, that is to say the basis on which allegations of potential contempt fall to be considered, is confined to the documents he already has, and has had for some time, and cannot range beyond that without the leave of the Court. So he can be confident that he knows now what it is that the Court intends to consider.

26. I shall give some directions about timing by which certain things will need to be done. I believe that this matter should be dealt with without avoidable delay, in the interests of everybody involved with it, but I accept that it is not so urgent that it should be expedited so that it is decided before Easter. Therefore, the timescale will depend on a number of things, including, quite significantly, when a Divisional Court of at least two judges can be convened. The Court will continue to invite counsel instructed by the Director of Public Prosecutions to assist during the course of the hearing, and will consider at the hearing, if the hearing progresses to that stage, whether he should be invited to question

any witnesses who give evidence, and, if so, what the ambit of any questioning should be.

27. That, therefore, in outline, is the directions order which I shall make. I consider that it is appropriate that we should find a time slot of two days for this. That is not an invitation to the parties to advance a legal argument or evidence which takes the entirety of the two days. What I hope may be achieved is that the Court will be able to deal with the hearing in not much more than one day, and will then be able to spend a day/the rest of the second day, reflecting on its decision, with a view to producing a written judgment much more quickly than would be possible were any other arrangement made. So we will be looking for two days when a court, probably of three judges, can be put together, and we will seek to arrange that hearing as soon as we possibly can.

28. I ought to make two things absolutely clear before I go on to deal with the press reporting, which I shall at the end of this ruling. The first of those is that I have not decided Mr Waterman's principal submission, which is that the existence of the Divisional Court's jurisdiction to deal with contempt in circumstances of this kind is contingent upon an application having been made under Part 8. He submits that such an application must be made by the Attorney General, whose role as a law officer is very significant in assessing the public interest in circumstances of this kind.

29. I pressed Mr Waterman during the course of this hearing, when he was helpfully advancing this submission by reference to authority, for the clear, definitive statement of the law, which I would need to see in order to accede to that submission at this threshold moment: in effect, giving a form of summary judgment about it, I did not see clear-binding authority driving me to that conclusion. This does not mean that, on greater reflection, I may not myself come, or other judges may come, to accede to that submission having regard to the interpretation of a significant number of cases wherein the existence of the jurisdiction of the Divisional Court has fallen for consideration. My own consideration of that question began in chronological terms, at any rate, with the decision of the then Chief Justice in *Ex parte Pater* (1864), 5(b) and (s) 299, referred to in Arlidge, Eady and Smith on Contempt, 5th edition, paragraph 10-158.

30. The second thing I need to make clear to everyone, and to Mr Menon in particular, is that all that I have decided is that there is a case or matter which requires investigation.

31. I have referred in the course of argument to the important public interest considerations which affect limits on counsel's freedom to address juries in criminal trials. There are matters of

> proof and evidence to be considered. The question of intention is important. None of those matters have I even considered, save to the extent that I have identified, still less decided."

13. Edis LJ went on to issue a restricted reporting order preventing publication of anything relating to these contempt proceedings pending the conclusion of the retrial of Ms Head and her fellow defendants for further order pursuant to s 4(2) of the Contempt of Court Act 1981.

14. On 13 March 2026 an order of the Administrative Court was sealed and sent to the solicitors for the Appellant giving effect to Edis LJ's ruling. It provided as follows:-

> "Before: LORD JUSTICE EDIS
>
> **In the matter of Rajiv Menon KC**
>
> **NOTICE: This matter arises out of proceedings at the Crown Court (R v Charlotte Head and others, Crown Court at Woolwich, re-trial due to start on 7 April 2026). There shall be no reporting of these proceedings pending the outcome of that re-trial or further order in the meantime. This order is made under section 4(2) of the Contempt of Court Act 1981 because it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings.**
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> UPON HEARING counsel for Rajiv Menon KC ("Mr Menon")
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> AND UPON HEARING counsel for the Director of Prosecutions, appearing at the request of the court to assist the court
>
> AND UPON THE COURT considering that a contempt in the face of the court may have been committed on the grounds explained in the ruling of Johnson J ("the judge") given in the Crown Court on 12 January 2026 in which he identified the respects in which he considered that Mr Menon had breached rulings he had made in the course of his closing speech on 8 January 2026
>
> AND UPON THE COURT deciding of its own motion to proceed against Mr Menon in contempt proceedings
>
> AND UPON THE COURT declining to rule that there is no jurisdiction to entertain this case in the Divisional Court for the reasons given in an extempore ruling today.
>
> IS ORDERED THAT:-
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> 1. The court directs that a summons shall be drawn up, issued and served personally on Mr Menon in the form contemplated by CPR 81.6(3), save that it will not be a summons to attend a

directions hearing but to attend the substantive hearing on 15 and 16 June 2026.

2. The court directs under CPR 81.4(1) that no further evidence shall be served on Mr Menon, since the matters in issue solely concern the rulings made by the judge and the speech made to the jury by Mr Menon. Those documents were supplied to him - on 5 March 2026 in a bundle ("the Bundle") and separate transcript. The ruling of 12 January 2026 contains particulars of the allegations of contempt which are to be determined. Those allegations will be further summarised in the summons and set out as allegations of contempt of court.

3. All issues will be determined by a Divisional Court of the Kings Bench Division constituted of not less than 2 judges.

4. Mr Menon shall file and serve his grounds of defence, skeleton argument and written evidence on which he relies, if so advised, by 24 April 2026. Mr Menon is entitled but not obliged to give evidence orally or in writing. If he chooses to lodge a witness statement by him he should do by this date. The statements of any other witnesses he seeks to rely on must be served by this date.

5. The Director of Public Prosecutions may respond in writing by 8 May 2026 if so advised, and must indicate by then whether he wishes to dispute any witness evidence which has been served.

6. The substantive hearing, at which Mr Menon will be entitled to give evidence, if so advised, and to call witnesses will be fixed for 15 and 16 June 2026 ("the hearing") with an estimate of two days. The court will determine objections to its jurisdiction and any other procedural questions and, if appropriate, the substantive questions raised in these proceedings at the hearing.

7. At the hearing, the court will have read the documents in the Bundle and the transcript and will not receive any further evidence in support of the allegations identified at 2 above. That Bundle and transcript will be supplied to the Press in advance of the hearing, subject to the postponement of reporting order set out above.

8. The court invites counsel instructed by the Director of Public Prosecutions to assist during the course of the hearing and, if necessary, to ask questions of any witnesses.

9. There is liberty to the Press and any other interested person to apply to vary or lift the order under section 4(2) of the 1981 Act on two days' written notice to the court, Mr Menon and the Director of Public Prosecutions."

15. Mr Menon applied to this court for permission to appeal. The grounds of appeal were as follows:-

> "Ground 1 – The Court erred in law and was wrong, and engaged in a serious procedural irregularity, in failing to determine as an essential preliminary issue Mr Menon's submissions that the Court lacked jurisdiction, before making the Order
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> Ground 2 – The Court erred in law and was wrong, and engaged in a serious procedural irregularity, in assuming it had jurisdiction, and purporting to exercise such jurisdiction, to hear and consider an allegation of contempt in the face of the court before Mr Justice Johnson (sitting in the Crown Court).
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> Ground 3 – The Court erred in law and was wrong, and engaged in a serious procedural irregularity, in deciding of its own motion to proceed against Mr Menon in contempt proceedings (without the jurisdiction / power to do so).
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> Ground 4 – the Court erred in law and was wrong, and engaged in a serious procedural irregularity, in directing (without the jurisdiction / power to do so) that a summons be drawn up, issued and served personally on Mr Menon.
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> Ground 5 – the Court erred in law and was wrong, and engaged in a serious procedural irregularity, in ordering (without the jurisdiction / power to do so) that the contempt proceedings (which the Court had decided of its own motion should be proceeded with against Mr Menon) should be heard and determined by a Divisional Court of the Kings Bench Division.
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> Ground 6 - the Court erred in law and was wrong, and engaged in a serious procedural irregularity, in making the orders and directions (without the jurisdiction / power to do so) it made at paragraphs 2, 4, 5, 6, 7, and 8 of the Order of 11 March 2026."

16. On 10 April 2026 Bean LJ made an order which included these provisions:-

> "Mr Menon's application for permission to appeal against the order of Lord Justice Edis sitting in the Administrative Court on 11 March 2026 (sealed on 13 March 2026) in so far as he:
>
> > (a) decided of the court's own motion to proceed against Mr Menon for contempt and to direct the issue and service on him of a summons (thereby impliedly holding that the Administrative Court had jurisdiction to do these things); and
> >
> > (b) declined to rule on the submission of counsel for Mr Menon that the Divisional Court has no jurisdiction to hear the contempt allegation against him on a reference by the Administrative Court;
>
> is adjourned to an oral hearing before three Lord or Lady Justices, with the appeal to follow immediately if permission is granted."

He ordered that the DPP was to be joined as Respondent to the application or appeal. Counsel for Mr Menon did not raise any objection to the participation of counsel for the DPP, whose submissions to assist the court were measured and of great assistance to us.

17. The "reasons" section of the 10 April 2026 order stated:

> "The general rule is that a defendant in or respondent to court proceedings, who raises an arguable challenge to the jurisdiction of the court which is to try the case, is entitled to have that jurisdictional challenge determined before he is required to engage with the merits. It is at least arguable that Mr Menon should have been afforded that entitlement in these contempt proceedings.
>
> The jurisdictional points raised by Mr Menon may seem technical, but it is well established that contempt proceedings require strict adherence to procedural requirements. Although the Grounds of Appeal are somewhat repetitive, the point of principle which they raise may well have a real prospect of success, and the full court may take the view that in any event the importance of the point is a compelling reason for this court to grant permission to appeal.
>
> I have fixed the hearing for 30 April so that, if the jurisdictional challenge fails, there should still be time (even if judgment is reserved for a short period) for the necessary steps to be taken before the proposed hearing date in the Divisional Court of 15-16 June 2026. If, however, the jurisdictional challenge succeeds, that hearing can be vacated.
>
> The substantive merits of the allegation of contempt are, as I see it, irrelevant to the jurisdictional challenge and do not arise for discussion on this appeal."

18. Bean LJ also made a restricted reporting order in identical terms to that made by Lord Justice Edis, to continue until the conclusion of the retrial in *R v Charlotte Head and others*. The retrial was concluded on 6 May and the restricted reporting orders have thus ceased to have effect.

19. At the outset of the hearing before us we indicated our view that the issue of jurisdiction needed to be decided at this stage without being remitted to Edis LJ or to the Divisional Court. We reached this view not only on the basis of the general principles referred to in the order granting permission to appeal but also because, as noted in the skeleton argument of the DPP, the effect of s 13 of the Administration of Justice Act 1960 is that the only route of appeal from a decision of a Divisional Court in contempt proceedings is to the Supreme Court. The possible sequence of events in which the Divisional Court (a) held that it had jurisdiction and (b) found the contempt allegation proved, only for the Supreme Court some time later to decide that the Divisional Court had lacked jurisdiction would be a very undesirable way for matters to proceed.

Submissions for the Appellant

20. Mr Waterman KC and Mr Hudson KC for the Appellant submit that the central question is whether the High Court (whether the Administrative Court or the Divisional Court) had jurisdiction to hear the matter at all, and whether Edis LJ therefore had any jurisdiction to make the orders that he did.

21. The Appellant submits that there are only two ways in which the trial judge could have set in train contempt proceedings:

    i) First, he could have instigated summary contempt proceedings – either dealing with it immediately or at a later point in the trial process, or at a later date. Only the trial judge could have instigated this summary procedure (though it would be open to him to ask another judge in Woolwich Crown Court to deal with it).

    ii) Second, the trial judge could have referred the matter to the Attorney General, as the prosecution had invited him to do.

22. The Appellant submits that the procedure adopted by Edis LJ does not fall within either category; and the jurisdiction is not known to law. The Appellant submits that the procedure adopted is fundamentally flawed for six reasons:

    i) First, the Appellant notes that the Order of 11 March 2026 by Edis LJ sets out that the allegation is that the speech of Mr Menon KC "deliberately breached the terms of judicial rulings". This is very significantly beyond what the trial judge found in his ruling on 12 January 2026. Johnson J expressly disavowed any such finding of deliberate breach.

    ii) Second, there had been no ruling that there was a prima facie case. Edis LJ has not clearly ruled on this issue.

    iii) Third, there had been no ruling that it was in the public interest for contempt proceedings for committal to take place. That neither this nor the ruling above occurred indicates that Edis LJ must have been purporting to act summarily.

    iv) Fourth, the constitutional role of the Attorney General has been completely bypassed. He has not had an opportunity to consider where the public interest lies. The Attorney General may well have decided that it was not in the public interest that any application be made in the circumstances.

    v) Fifth, should Edis LJ intend to sit on the Divisional Court on 15 and 16 June 2026 (as seemingly contemplated in the hearing on 11 March 2026) he would be falling foul of the warning in *Balogh* that the judge should not appear as both prosecutor and judge.

    vi) Sixth, the order of Edis LJ that the DPP should instruct counsel in the role of quasi-prosecutor, able to cross-examine Mr Menon and witnesses, is novel and procedurally improper.

23. It is not necessary for us to consider each of these complaints. The central submission, as it is put in the skeleton argument, is that the procedure adopted by Edis LJ "is neither

one thing nor the other and is the product of this unique, and unwarranted arrogation of jurisdiction."

Respondent's submissions

24. The skeleton argument of Mr Little KC and Ms Ailes states that as the Director has been requested to assist the court on a pure point of law, and "[o]n the basis that the Applicant submits that the High Court has exceeded its jurisdiction", the Director has "focused on arguments which might be said to support the contrary view in the hope that this best assists the Court to resolve the issues."

25. The Director accepts, indeed submits, that the courts have strongly encouraged the practice of making references to the Attorney General. A judge of the Crown Court is (as is acknowledged by the Applicant) entitled to deal with a contempt of the Crown Court of his or her own motion in the exercise of an inherent jurisdiction, and may in principle do so whether the contempt arises in connection with proceedings over which that judge presides, or not. The procedure dealing with a contempt of court in this way is set out in Part 48 of the Criminal Procedure Rules. Much of the recent case law treats the position on the basis that the only two alternatives are, either for the judge of the Crown Court to proceed in this way, or to write to the Attorney General to invite his consideration of bringing proceedings in the Divisional Court. The latter approach has been endorsed as the appropriate route in most cases.

26. The only enactment that gives an exclusive role to the Attorney General is in the context of publishers contravening the strict liability rule under s 7 of the Contempt of Court Act 1981. This excluded the rights of private litigants to bring contempt proceedings without oversight, but preserved the possibility of a court proceeding of its own motion.

27. Mr Little and Ms Ailes wrote that "the Court of Appeal may wish to consider:

    i) The extent to which the 'practice', apparently instituted in 1953, that the Attorney General would take responsibility for bringing contempt proceedings in the Divisional Court, now amounts – even in cases not arising from the strict liability rule under the Contempt of Court Act 1981 – to a rule of law that only the Attorney General may institute such proceedings; or at least (since it is clear that private litigants may continue to enforce by contempt proceedings the orders made in the course in civil proceedings), the extent to which only the Attorney General may lawfully institute proceedings for contempt of court in the present circumstances.

    ii) The extent to which observations about when a judge of the High Court 'should' act of his own motion or 'should' refer matters to the Attorney General represents a denial of jurisdiction to proceed of its own motion, or merely an observation about the way in which a discretion should be exercised or about what fairness may require in particular circumstances.

    iii) In particular, the extent to which there existed – and in light of the Attorney General's functions, the extent to which there still exists – any inherent jurisdiction for the High Court to institute proceedings for a contempt not committed in the face of the High Court itself.

iv) The court may also wish to consider whether, even if the institution of proceedings by the Court of its own motion is within its jurisdiction, it was appropriate to proceed without involving the Attorney General in all the circumstances of this case. Relevant considerations include on the one hand the Attorney General's constitutional role as guardian of the public interest and the role which he might have played in proceedings, and on the other hand the practical position, including the fact that the allegation falls to be considered entirely on the basis of written judgments and transcripts which are already before the High Court, and the other reasons given by Edis LJ in his extempore ruling of 11 March 2026 for proceeding in the way that he did."

The cases cited to us

28. The Appellant's skeleton traces the legal history of the development of the common law powers of the courts to deal with contempt. The Appellant begins with *The King v Almon* [1765] 97 ER 94 (*Almon*). At this time the standard procedure followed was that the Attorney General sought an attachment by motion. Wilmott J rejected the argument that this was impermissible as the correct process was that the matter should be proceeded by indictment or information. He held there was no distinction between attachments and information. He also set out the justification for the summary process: the interference with justice required a rapid and immediate redress. After *Almon* the use of indictment appears to fall away.

29. The DPP interprets *Almon's case* differently from the Appellant. *Almon's case* concerned whether the issue of contempt should be "in a summary manner by [writ of] attachment" or by means of a trial on information or indictment. The two processes were different, and Wilmot J was observing that the evidence required was the same. The case is a decision that an alleged contemnor is not entitled to trial by jury or by ordinary criminal processes.

30. The DPP disputes that *Almon's case* stands as authority for the proposition that the Attorney General is the only permissible applicant in commencing contempt of court proceedings. Indeed, the role of the Attorney General at that time reflected different constitutional arrangements to the present.

31. Soon after the decision in *Almon*, the 1769 edition of William Blackstone's *Commentaries on the Laws of England* provided, in Chapter 20 of Volume 4, a section, "Of summary convictions", which included the following:-

> "To this head of summary proceedings may also be properly referred the method, immemorially used by the superior courts of justice, of punishing contempts by attachment and the subsequent proceedings thereon…
>
> If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges without any farther proof or examination. But in matters that arise at a distance and of which the court cannot have so perfect a knowledge, unless by the confession of the party or the testimony of others, if the judges upon affidavit see sufficient ground to suspect that a contempt

> has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him. Or, in very flagrant instances of contempt, the attachment issues in the first instance. …"

32. There was also reference to *Ex parte Pater* (1864), 5 B&S 299, referred to in the last sentence of paragraph 29 of Edis LJ's judgment set out under paragraph 12 above. In that case trial counsel commented in his closing speech in adverse terms about the foreman of the jury (who had himself earlier commented adversely on submissions made by the counsel to the judge). The judge directed counsel to withdraw the comment, but counsel refused to do so. The trial continued but after it had concluded, counsel was fined £20 for contempt. The matter was brought before the Court of Queen's Bench. The Court confirmed that it had jurisdiction over the inferior court to ensure that the inferior trial court had not acted in excess of jurisdiction, and held that there had been no excess of jurisdiction. Both Mr Waterman and Mr Little submitted that not much was to be gained from an examination of *Ex parte Pater*, and we agree that it does not assist in determining the issue before us.

33. Mr Waterman cited *In the matter of an application for an attachment for contempt of court* (1886) 2 TLR 351. The applicant was a prospective defendant to a charge of using seditious language and inciting people to riot. He had been summoned to appear before the Chief Magistrate at Bow Street. The printer and publisher of *Punch* had published an illustration which was alleged to amount to a contempt of court. Lord Coleridge LCJ asked counsel whether there was any precedent for the King's Bench Division exercising its prerogative in respect of a contempt of another court. He said that he had never even heard it suggested that this court could imprison a man for contempt of court committed in another place. Hawkins J said that the application must be refused as the court could only punish for contempt of itself.

34. In *R v Gray* [1900] 2 QB the Attorney General brought a contempt matter before the Queen's Bench Division. Lord Russell CJ relied on *Almon* in exercising what was effectively the summary jurisdiction of the court. He said it was to be exercised with scrupulous care and only in cases which are clear beyond reasonable doubt. Otherwise, the correct approach is to leave matters to the Attorney General to proceed by way of criminal information.

35. In *R v Parke* [1903] 2 QB 432 the Kings Bench Division said:-

> "It may be conceded that the jurisdiction to commit for contempt of Court is confined to contempt of the Court exercising the jurisdiction.."

36. The court held that since the case would have been committed to the Assizes, and the assize court was a branch of the High Court (which was always sitting), the High Court could deal with the matter itself.

37. Less than three years after *R v Parke* came *R v Davies* [1906] 1 KB 32. A woman was charged with abandoning a child (triable at Quarter Sessions), and then later with attempted murder (triable at the Assizes). An article was published which could prejudice the forthcoming trial. At p.134 the Kings Bench Division said:-

> "We cannot see that the additional element of uncertainty that the case could be tried at quarter sessions makes any difference in principle, or prevents the interference with the due course of justice in a case which may come to the assizes from being a contempt of that Court, and we are of opinion that upon these grounds alone the present application ought to be granted.
>
> But, inasmuch as a further question of great and growing importance, namely the jurisdiction of this Court to treat attacks of this kind upon the independence and usefulness of inferior tribunals as offences to be dealt with *brevi manu* by this Court in its summary jurisdiction, has been argued, we think it desirable to deliver our judgment upon this point also, and to treat the case as if a committal had actually taken place to quarter sessions."

38. Mr Waterman relied on a passage in *Davies* in which the court said:-

> "There is no doubt that almost all the cases of contempt of Court to be found in the books are cases in which the act so called and so dealt with has been some act in defiance of one of the Superior Courts, in which case, of course, no one of those Courts interfered with the other."

39. The court went on to emphasise the "great principle" that for the benefit of the people the independence of the courts must be protected from unauthorised interference, and that the law provides effective means by which this end can be secured. The judgment continues:

> "If it is to be secured at all in the case of the inferior Courts it can only be secured by the action of this Court, for they have not the power to protect themselves; and if it be true that the King's Bench is in any sense the custos morum of the kingdom, it must be its function to apply with the necessary adaptations to the altered circumstances of the present day the same great principles which it has always upheld."

40. Finally, the court said:-

> "The mischief to be stopped is in the case of the inferior Courts identical with that which exists when the due administration of justice in the Superior Courts is improperly interfered with. The reason why the Court of King's Bench did not concern itself with contempts of the other Superior Courts was that they possessed ample means and occasions for protecting themselves. Inferior Courts do not have such powers, […]"

41. In *AG v Times Newspapers* [1974] AC 273 Lord Diplock referred to *R v Hargreaves, ex parte Dill* The Times, November 4, 1953 (in which he had been counsel for the respondent). In *Hargreaves* Lord Goddard CJ had welcomed the emerging practice of the Attorney General accepting responsibility for receiving complaints of alleged contempt of court from parties to litigation, and making an application if "he thinks this

course to be justified in the public interest". Lord Diplock described the role of the Attorney General in contempt of court complaints as follows:

> "the practice… whereby the Attorney-General accepts the responsibility of receiving complaints of alleged contempt of court from parties to litigation and of making an application in his official capacity for committal of the offender if he thinks this course to be justified in the public interest. He is the appropriate public officer to represent the public interest in the administration of justice, In doing so he acts in constitutional theory on behalf of the Crown, as do Her Majesty's judges themselves; but he acts on behalf of the Crown as " the fountain of justice" "and not in the exercise of its executive functions. It is in a similar capacity that he is available to assist the court as amicus curiae and is a nominal party to relator actions. Where it becomes manifest, as it had by 1954, that there is a need that the public interest should be represented in a class of proceedings before courts of justice which have hitherto been conducted by those representing private interests only, we are fortunate in having a constitution flexible enough to permit of this extension of the historic role of the Attorney-General……But the Attorney-General is not obliged to bring before the court every prima facie case of contempt reported to him. It is entirely for him to judge whether it is in the public interest."

42. The leading modern case on contempt in the face of the court *is Balogh v St Albans Crown Court* [1975] 1 QB 73. Mr Balogh had carried out acts preparatory to releasing nitrous oxide into the Crown Court building's ventilation system. Lord Denning MR considered only two powers: the power of the Divisional Court upon an application to it; and the summary power to commit for contempt in the face of the court. He said:-

> [83E]"In what circumstances can the High Court make an order "of its own motion?" In the ordinary way the High Court does not act of its own motion. An application to commit for contempt is usually made by motion either by the Attorney-General or by the party aggrieved… All the cases cited in the notes to Ord. 52, r. 5, are of motions by some one ex parte. None of them tells us when the High Court can make an order of its own motion. All I find in the books is that the court can act upon its own motion when the contempt is committed "of the court"…
>
> [84B] "Gathering together the experience of the past, then, whatever expression is used, a judge of one of the superior courts or a judge of Assize could always punish summarily of his own motion for contempt of court whenever there was a gross interference with the course of justice in a case that was being tried, or about to be tried, or just over—no matter whether the judge saw it with his own eyes or it was reported to him by the officers of the court, or by others— whenever it was urgent and imperative to act at once…

> [85D] "Over 100 years ago Erle C.J. said that "…these powers, … as far as my experience goes, have always been exercised for the advancement of justice and the good of the public": see *Ex parte Fernandez* (1861) 10C.B.N.S. 3, 38. I would say the same today. From time to time anxieties have been expressed lest these powers might be abused. But these have been set at rest by section 13 of the Administration of Justice Act 1960, which gives a right to appeal to a higher court. As I have said, a judge should act of his own motion only when it is urgent and imperative to act immediately. In all other cases he should not take it upon himself to move. He should leave it to the Attorney-General or to the party aggrieved to make a motion in accordance with the rules in R.S.C., Ord. 52. The reason is so that he should not appear to be both prosecutor and judge: for that is a role which does not become him well."

43. *Attorney General v Dallas* [2012] 1 WLR 991 was a case of contempt by a juror. Ms Dallas had conducted internet research on the defendant and discovered that he had previous convictions. This resulted in the discharge of the jury. The trial judge referred the matter to the Attorney General, who applied to the Divisional Court to commit Ms Dallas for contempt. She was imprisoned for six months. Lord Judge CJ held that:-

> "unless it is appropriate for the Crown Court to deal immediately with the contempt of its own motion (which in the light of many judicial warnings inherent in a rushed process would be very exceptional), such cases of contempt should continue to be left to proceedings by the Attorney General…."

44. The two routes were more recently emphasised in *Re Yaxley-Lennon* [2018] 1 WLR 5400. Lord Burnett of Maldon CJ at [26] held that:

> "Courts may themselves initiate proceedings for contempt in some circumstances when it is necessary to do so to protect the interests of justice in extant proceedings before that court. But the more general practice is for the Attorney General to be invited to initiate proceedings to safeguard the public course of justice."

45. Similarly, in *Solicitor General v Holmes* [2019] EWHC 1483 (Admin), the Divisional Court characterised the power as being in two jurisdictions: the supervisory jurisdiction of the Divisional Court upon application by the Attorney General; and the summary jurisdiction. Coulson LJ held at [22] that CPR Part 81.16 (now CPR Part 81.6) was designed to preserve the discretionary power of the original court in whose face the contempt occurred to commit for contempt of its own initiative.

46. There appears to be at least one instance of the Director of Public Prosecutions acting 'for' the Attorney General. *DPP v Channel Four Television Co Ltd* [1993] 2 All ER 517 was an application made on motion to a Divisional Court by the DPP. The application is stated in the report (at 519C), though not in the body of the judgment, to have been made by the DPP "on behalf of the Attorney General". It also appears that a separate application, heard at the same time but not reported, was actually made by the

Attorney General. It was common ground that the DPP, like any party before the court, could make an application to commit for contempt of court.

47. There appears to have been only one case in modern times (at any rate the only one cited to us) in which the High Court gave consideration to proceeding of its own motion (using the procedure at CPR 81.6) where the contempt was of an inferior tribunal, namely the Parole Board. In *R (Bailey and Morris) v Secretary of State for Justice; Parole Board for England and Wales, Interested Party* [2023] EWHC 821 (Admin) the Divisional Court was asked to consider whether and how contempt of the Parole Board could be punished, a matter which the parties were not agreed on. The court (Macur LJ and Chamberlain J) concluded that the Board had no power to punish for contempt but that a party to proceedings or a Law Officer could bring proceedings by application pursuant to CPR r 81.3(3). The Court continued:

> "However, the Board could also refer a case of alleged contempt to the High Court, which could then consider the matter on its own initiative under CPR r 81.6. Even if such a case is not referred, the High Court is obliged by CPR r 81.6, in any case where it considers that a contempt may have been committed, to consider on its own initiative whether to initiate contempt proceedings."

48. In a further judgment in the same case ([2023] EWHC 1438 (KB)) the Divisional Court decided, on consideration of the evidence, that it would not be in the public interest to initiate proceedings for contempt of court.

The status of the Crown Court

49. In considering any cases about contempt of the criminal courts prior to 1972 it is important to note the major structural changes brought about by the Courts Act 1971 (following the report of the Royal Commission on Assizes and Quarter Sessions chaired by Lord Beeching). Previously there had been three levels of criminal court: magistrates' courts (sometimes known as petty sessions); quarter sessions; and assizes. The assizes were staffed by High Court judges and commissioners of assize and were regarded, after the Judicature Act 1873, as a branch of the High Court. Petty sessions and quarter sessions were described as inferior courts; each of the divisions of the High Court (five till 1880, three thereafter) was described as a superior court of record.

50. The 1971 Act abolished assizes and quarter sessions and replaced them with the Crown Court. Section 4(1) of the Act provided that the Crown Court was to be a superior court of record, and s 4(5) that it was to have the same contempt powers as the High Court. It is common ground that when a High Court judge sits in the Crown Court, as Melford Stevenson J did in *Balogh* and Johnson J did in the present case, he or she is exercising the powers of the Crown Court as a judge of the Crown Court, see section 8(1) of the Senior Courts Act 1981: the judge's personal status is immaterial.

Civil and Criminal Procedure Rules

51. In 2020 the Civil Procedure Rule Committee made substantial changes to Part 81 governing proceedings in relation to contempt of court. The new CPR 81 so far as material, provided:-

"Scope—

81.1 (1) This Part sets out the procedure to be followed in proceedings for contempt of court ("contempt proceedings").

(2) This Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law.

(3) This Part has effect subject to and to the extent that it is consistent with the substantive law of contempt of court"

…

How to make a contempt application

..

81.3(3) A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or county court proceedings, is made by an application to the High Court under Part 8.

…

(5) Permission to make a contempt application is required where the application is made in relation to—

(a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;

…

(6) If permission to make the application is needed, the application for permission shall be included in the contempt application, which will proceed to a full hearing only if permission is granted.

…

(8) If permission is needed and the application does not relate to existing court proceedings or relates to criminal or county court proceedings or to proceedings in the Civil Division of the Court of Appeal, the question of permission shall be determined by a single judge of the King's Bench Division. If permission is granted, the contempt application shall be determined by a single judge of the King's Bench Division or a Divisional Court.

…

"Cases where no application is made

> 81.6—(1) If the court considers that a contempt of court (including a contempt in the face of the court) may have been committed, the court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings.
>
> (2) Where the court does so, any other party in the proceedings may be required by the court to give such assistance to the court as is proportionate and reasonable, having regard to the resources available to that party.
>
> (3) If the court proceeds of its own initiative, it shall issue a summons to the defendant which includes the matters set out in rule 81.4(2)(a)–(s) (in so far as applicable) and requires the defendant to attend court for directions to be given.

52. In the Crown Court the Criminal Procedure Rules 2025 make provision relating to contempt of court in Part 48. Rule 48.5, headed "Initial procedure on obstruction, disruption etc", applies where the court observes or someone reports to the court (among other things) any conduct with which the court can deal as (or as if it were) a criminal contempt of court. Subparagraphs (2) to (4) provide:-

> "(2) If it is necessary in the interests of justice to deal there and then with conduct to which this rule applies, the court must— "
>
> (a) unless the respondent's behaviour makes it impracticable to do so, explain, in terms the respondent can understand (with help, if necessary)—
>
> (i) the conduct that is in question,
>
> (ii) that the court can impose imprisonment, or a fine, or both, for such conduct,
>
> (iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,
>
> (iv) that the respondent may explain the conduct,
>
> (v) that the respondent may apologise, if the respondent so wishes, which may persuade the court to take no further action, and
>
> (vi) that the respondent may take legal advice; and
>
> (b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if the respondent so wishes, apologise.
>
> (3) After allowing that opportunity—
>
> (a) the court may enquire into the conduct at once; (b) the court may postpone the enquiry

> (i) if a magistrates' court, only until later the same day, or
>
> (ii) if the Court of Appeal or the Crown Court, until a date and time fixed by the court for the respondent to surrender to the court's custody; [or] …
>
> (d) the court may take no further action in respect of the conduct.
>
> (4) In the Crown Court, if it is not necessary in the interests of justice to deal there and then with the conduct the court must instead—
>
> (a) direct the court officer to report the incident to a Presiding Judge; and
>
> (b) unless the respondent's behaviour makes it impracticable to do so, explain in terms the respondent can understand (with help, if necessary), that—
>
> (i) the incident will be considered by a Presiding Judge,
>
> (ii) the outcome may be prosecution or proceedings for contempt of court, which may lead to imprisonment, or to a fine, or both,
>
> (iii) the respondent may explain the conduct and may apologise, if the respondent so wishes, which may affect the outcome, and
>
> (iv) the respondent may take legal advice."

The Judicial Office Advisory Note

53. The Criminal Practice Directions 2025 do not have a section devoted to contempt of court. They do, however, have paragraphs dealing with jury irregularities. One of these, paragraph 8.7, has a footnote with a link to a document issued by the Judicial Office headed: "Advisory Note: Contempt in the face of the court". Paragraphs 15-20 of the note provide as follows [emphasis in paragraph 19(3) added]:-

> "Referring cases of contempt in the face of the Court
>
> 15. If a serious incident of contempt in the face of the court occurs which you consider requires further action, even if you have the power to do so (see paragraph 20(2) below), you should not generally seek to deal with the matter yourself unless you have the agreement of the PJ, FDLJ or relevant President ("P") or Chamber President ("CP") (as applicable). Instead, you should refer the incident promptly as follows:

Court/Tribunal	Referral Judge
Crown Court	
County Court	PJ

Magistrates' Court	
Family Court	FDLJ
Tribunal	P or CP

16. In an appropriate case, before referring the matter, you may consider giving the person a warning that his/her behaviour may be investigated, and potentially punished as a contempt of court, and provide an opportunity for the person to apologise.

17. When referring the incident, the material gathered under paragraph 14 should be sent to the Referral Judge and, where appropriate, made available to the police. It is NOT a breach of any data protection legislation to make disclosure to the police for the purposes of the prevention and/or detection of crime.

18. You should not transfer the proceedings themselves or, unless justified, recuse yourself from having further conduct of the case.

19. The relevant PJ/FDLJ/CP/P will then decide whether:

(1) to await the outcome of any police investigation/action;

(2) to refer the matter to the Attorney General for further consideration/action;

(3) to order the transfer of the contempt issue to a High Court Judge of the relevant Division to deal with it as a contempt in the face of the court and to give directions under the FPR/Civil PR/Criminal PR as necessary;

(4) (where applicable) to deal with the contempt issue in the Upper Tribunal; or

(5) to take no further action.

Dealing with a contempt summarily

20. After taking such immediate steps as may be required as set out in paragraph 7 above, before dealing summarily with an incident as a contempt in the face of the court, the court must be satisfied that:

(1) the nature of the contempt means that it is imperative to deal with the matter summarily rather than to refer the matter under paragraphs 15 to 19 above and it is not reasonably practicable seek the advice of the relevant PJ/FDLJ/CP/P;

(2) the court has a power to deal summarily with contempt in the face of the court and any limits on that power; and

(3) any applicable procedure is followed."

Discussion and decision

54. We have already indicated in paragraph 19 that we decided that it was necessary to decide the issue of jurisdiction at this stage. We should add that although Edis LJ did identify that it was possible that he could sit as a judge of the Crown Court in paragraph 1 of the recital to his order dated 5 March 2026, the order that he made was of the Administrative Court and not of Edis LJ sitting as a judge of the Crown Court. If there was no jurisdiction in the Administrative Court to issue the summons, then the fact that Edis LJ might be able to sit on other occasions as a judge of the Crown Court cannot save the procedure that was used.

55. We start with what is common ground. First, a superior court of record has power at common law to deal summarily with contempt in the face of the court. Secondly any court, whether "superior" or "inferior", may refer a case of contempt in the face of the court to the Attorney General. We do not find, however, that there is a third way open to a judge in the Crown Court whereby he or she refers an incident of alleged contempt in the face of the court directly to the High Court. This is because although the point has never been expressly decided, the overwhelming weight of authority indicates that no such direct route exists.

56. We do not think that much assistance can be derived from cases prior to the creation of the High Court by the 1873 Act. In the next period (1873-1971) we find that in the unnamed 1886 case cited above, Lord Coleridge CJ was emphatically of the view that the King's Bench Division had no power to commit for contempts of any other court. In *Gray* in 1900 Lord Russell CJ set out the two alternatives as being the exercise of summary jurisdiction or proceedings brought by the Attorney General. In 1903 in *Parke* it was held that the power of committal is confined to cases of contempt of the court against whom the contempt was committed. In *Davies* in 1906 it was said that the King's Bench Division did not concern itself with contempts of the other superior courts, since the latter possessed ample powers of their own. These cases are of less significance than the post-1971 authorities but they at least indicate the well-established view either that the King's Bench Division should not be involved in allegations of contempt against other courts at all, or that if it does it should be in proceedings brought by the Attorney General.

57. *Balogh* may be regarded as the foundation of the modern law relating to contempt in the face of the court. The clear message from that case is where the need to act is not urgent and imperative, the judge in the Crown Court, whatever his personal rank, should leave the matter to the Attorney General. The same conclusion was reached by Lord Burnett CJ in 2018 in *Yaxley-Lennon* and by Lord Judge CJ in *Dallas* in 2012. We regard it as striking that in *Dallas,* even though the trial had been brought to an end by the discharge of the jury following one juror's contempt and it was unlikely that proceeding summarily against the juror would have caused any procedural complications, the Lord Chief Justice considered that the Attorney General should make the decision as to what steps to take next.

58. It is right to acknowledge that, as Mr Little submitted, the effect of the Criminal Procedure Rules (set out in paragraph 52 above) is to make summary proceedings for contempt of court more procedurally fair for the alleged contemnor than they were shown to have been by the law reports from the past. This means that where it is necessary to act, judges of the Crown Court (which include High Court judges sitting

in the Crown Court) may make proper use of the summary procedure for contempt of court in accordance with the Criminal Procedure Rules where it is necessary to deal with the matter summarily. As appears from the decision in *Balogh* the summary procedure for contempt of court can be exercised by a judge of the Crown Court in an adjacent court room. In that case the trial judge had referred the contempt to Melford Stevenson J sitting in an adjacent court room. It was common ground in submissions that the judge of the Crown Court exercising summary jurisdiction might be a High Court judge sitting in another Crown Court building.

59. This does not, however, answer the question identified in paragraph 1 of the judgment namely whether the High Court has jurisdiction to deal with an alleged contempt in the face of the Crown Court referred to the High Court by the trial judge without the intervention of the Attorney General or Solicitor General.

60. As against the collection of cases in paragraphs 56 and 57 above, the only decided case to the contrary is *Bailey,* a judgment of the Divisional Court. It is not apparent from the text of the judgment what cases (if any) were cited to the Divisional Court or indeed whether it heard substantial argument on the jurisdiction conferred by CPR 81.6. For our part we regard the analysis of Coulson LJ in *Solicitor General v Holmes* as clearly correct. CPR 81.3 gives the court power to act on an application under Part 8, with permission being required where the application is made in relation to interference with the due administration of justice except in relation to existing High Court or county court proceedings. But where CPR 81.6(1) states that "if the court considers that a contempt of court (including a contempt in the face of the court) may have been committed, the court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings,", it is plain to us, as it was to the Divisional Court in *Holmes,* that this refers to the High Court considering that a contempt *of itself* may have been committed, not that a contempt of some other court may have been committed.

61. This leaves then the Judicial Office Advisory Note. This does not have the force of law, as Mr Little accepted. It follows from what we have said that we do not agree with the inclusion in the list of options available to the "referring judge" (being the judge in whose court the contempt in the face of the court was alleged to have occurred), the one in paragraph 19(3) of that Advisory Note, namely to order the transfer of the contempt issue to a High Court judge of the relevant Division to deal with it as a contempt in the face of the court, where the alleged contempt has occurred in the Crown Court. As already indicated we accept that the referring judge may refer a contempt in the face of the court to a High Court judge sitting as a judge of the Crown Court, but this did not occur in this instance. We accept that the distinction between a reference to the Administrative Court of the King's Bench Division of the High Court, and a fellow High Court judge sitting as a judge of the Crown Court may be technical and narrow, but the procedure adopted to deal with a person alleged to have committed a contempt in the face of the court must comply with the law.

62. We do not underestimate the difficulties with which the trial judge was faced in the course of the trial. There was no ideal solution. No criticism could possibly be made of his decision not to attempt to take summary action during the trial. It would have been open to him to refer the alleged contempt to the Attorney General, or to the Bar Standards Board as an alleged breach of the Code of Conduct. Both processes are likely to lead to delay where there was a need to ensure that there was compliance with orders

of the court, particularly in the light of the imminent retrial. He would have had jurisdiction to refer the alleged contempt to another High Court judge sitting as a judge of the Crown Court if a summary process was thought to be required. But in our view he had no jurisdiction to make a direct reference to the High Court; nor would the Divisional Court have jurisdiction to deal with the case following the direct reference.

63. Because of our decision on the issue of jurisdiction it has been unnecessary to address the other complaints raised by the Grounds of Appeal, and we express no view about them.

64. Accordingly we will:-

a) Grant permission to appeal;

b) Set aside the directions of Edis LJ;

c) Grant a declaration that the Administrative Court and/or the Divisional Court have no jurisdiction, in the absence of an application by the Attorney General, to consider the allegation of contempt against Mr Menon.

65. This leaves the matter back with the trial judge who may, subject to any further points made on behalf of the Appellant, take any of the steps indicated in paragraph 62 above.