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Case Nos: CO/4209/2013 & CO/1504/2013

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 29/07/2013

Before :
PRESIDENT OF THE QUEEN'S BENCH DIVISION
and
MR JUSTICE SWEENEY

- -

Between :

Her Majesty's Attorney General	**Applicant**
- and -	
Kasim Davey	**Respondent**
Her Majesty's Attorney General	**Applicant**
- and -	
Joseph Beard	**Respondent**

- -

Her Majesty's Attorney General, Dominic Grieve QC, & Louis Mably (instructed by **Treasury Solicitor**) for the **Applicant**
Lord Carlile of Berriew CBE QC & Nicholas Chapman (instructed by **Janes Solicitors**) for the **Respondent Davey**
John Cooper QC & Richard Furlong (instructed by **Ledgisters Solicitors**) for the **Respondent Beard**
Hearing date: 23 July 2013

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Approved Judgment

President of the Queen's Bench Division:

This is the judgment of the court.

Introduction

1. In these two applications Her Majesty's Attorney General seeks an order of committal against each of the respondents (Mr Davey and Mr Beard) for contempt of court in misconducting themselves whilst serving as jurors in the Crown Court. Mr Davey had posted a Facebook message which set out his view about the case he was trying; it was contended that Mr Beard had conducted research on the internet. Both denied they were in contempt of court.

2. The law in relation to proof of contempt at common law is well settled. First the Attorney General must prove to the criminal standard of proof that the respondent had committed an act or omission calculated to interfere with or prejudice the due administration of justice; conduct is calculated to interfere with or prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that interference or prejudice would result: see *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191; *Attorney General v Times Newspapers Ltd* [1974] AC 273.

3. Second an intent to interfere with or prejudice the administration of justice must also be proved. In *AG v Newspaper Publishing Ltd* [1988] Ch 333 Lord Donaldson MR at page 374 said of the requisite intent:

> "... the power of the court to commit for contempt where the conduct complained of is specifically intended to impede or prejudice the administration of justice. Such an intent need not be expressly avowed or admitted, but can be inferred from all the circumstances, including the foreseeability of the consequences of the conduct. Nor need it be the sole intention of the contemnor. An intent is to be distinguished from motive or desire..."

In the same case Lloyd LJ made clear that there was no room for a state of mind which fell short of intention. He continued at page 383 by saying:

> "…that intent may exist, even though there is no desire to interfere with the course of justice. Nor need it be the sole intent. It may be inferred, even though there is no overt proof. The more obvious the interference with the course of justice, the more readily will the requisite intent be inferred."

4. More recently in *Attorney General v Dallas* [2012] 1 WLR 991, a case where a juror had conducted her own research on the internet, Lord Judge CJ set out at paragraph 38 four elements which would ordinarily establish the two elements of contempt in cases where there had been deliberate disobedience to a judge's direction or order.

   i) The juror knew that the judge had directed that the jury should not do a certain act.

   ii) The juror appreciated that that was an order.

iii) The juror deliberately disobeyed the order.

iv) By doing so the juror risked prejudicing the due administration of justice.

I: The case in relation to Mr Davey

(a) The facts

5. Mr Davey who was born on 14 January 1992 was 20 years of age when he was summoned to serve as a juror in the Crown Court at Wood Green, London on 26 November 2012. During his first week he was not called to serve on a jury panel. On Monday 3 December 2013, in his second week, he was empanelled for a trial before HH Judge Browne QC of Adam Kephalas who was charged with an offence of sexual activity with a child aged 14 contrary to s.9 of the Sexual Offences Act 2003.

6. Mr Davey had a Facebook account in the name of Alex BawseBeats Jones. At the end of the first day on his way home in the bus he posted a message to the account, using his smart phone, which stated:

> "Woooow I wasn't expecting to be in a jury Deciding a paedophile's fate, I've always wanted to Fuck up a paedophile & now I'm within the law!"

He had about 400 Facebook friends; two of those friends had approved of his comment by using a smiley – a thumbs up sign.

7. The following day, 4 December 2012, he sat again on the jury. On the night of 4/5 December, a Facebook friend sent an e-mail to the Crown Court at Wood Green which began:

> "I have reason to believe someone who has been selected for jury service at your court has been posting about the case on the social networking site Facebook."

The e-mail then set out what had been posted and gave the name of the person who had posted it as Mr Davey.

8. When the court sat on the morning of 5 December 2012 the judge asked Mr Davey to come into court. Mr Davey denied that the Facebook account was his (indeed that he had a Facebook account at all) and denied that he had posted the message. The judge, after discussing the matter with counsel, discharged him and the case proceeded with 11 jurors.

9. In accordance with the protocol issued to the Crown Court in respect of jury irregularities, the matter was investigated by the police. On 13 January 2013 Mr Davey attended for a police interview with his aunt as the appropriate adult. In the course of that interview he accepted that he had posted the message and that he had understood that he should not discuss the case or go on the internet.

10. On 10 April 2013 the Attorney General sought leave to apply for an order of committal on the grounds that Mr Davey, whilst serving as a juror, in breach of the judge's directions, posted a message on Facebook concerning the case he was trying

and compromised his role as a juror by displaying apparent bias and disregard for his jury oath.

(b) The directions given to Mr Davey about the use of the internet and social media

11. Like every juror, Mr Davey was sent a document entitled, "Your Guide to Jury Service". At page 5 of the booklet the following statement was set out in bold:

> "Important – The judge will tell you that you DO NOT discuss the evidence with anyone outside of your jury either face to face, over the telephone or over the internet via social networking sites such as Facebook, Twitter or Myspace. If you do this, you risk disclosing information, which is confidential to the jury."

12. On his arrival at court Mr Davey, like the other jurors, was shown the jury video. It included statements in the following terms:

> "Please do not discuss the details of the trial with anyone other than your fellow jurors, not even your family."
>
> "Do not speak to anyone at all about the cases you hear."
>
> "Do not use social networking sites to post any aspects of your jury service."

In addition the jury manager at the court in the course of her speech to new jurors told them:

> "You will be informed by every judge whatever court you go into that you DO NOT discuss the evidence with anyone outside of your number either face to face or over the telephone or over the internet via chat lines such as Facebook or Myspace."

13. In the jury lounge and foyer there were six identical notices which were prominently displayed and which warned that contempt of court was punishable with a fine or imprisonment. That meant that certain conduct was prohibited including:

> "You must not use social networking sites to post details about any aspect of your jury service or about the discussion and decisions made by you and your fellow jurors whilst in deliberation.
>
> You may also be in Contempt of Court if you use the internet to research details about any cases you hear along with any other cases listed for trial at the Court."

14. On the first day of the trial of Adam Kephalas, after the jury had been empanelled and sworn, the judge, in accordance with current practice, explained to the jury the responsibilities that they had.

> "One, you do not discuss this case outside your number. That is a major responsibility and one which is easy for me to say

> but harder to put into effect. But it means that if your partner, your work colleague asks you tonight, at perhaps your Christmas party, "What is it all about at Wood Green Crown Court?" you politely, and firmly, say, "The first thing the Judge said to us was that we mustn't discuss this at all until it is all over." I am not going to repeat that. It is obvious. It is a particular responsibility of being a juror.
>
> Next: use of the Internet. There have been problems. Jurors have become detectives in their own court. And here is the sort of problem. Last week, at Kingston Crown Court, a seven-week trial had to be aborted because the jurors started on the Internet and Googling people, and the judge found out because the other jurors reported the errant juror. Seven weeks – I dread to think what it cost, in a country which will ill afford the waste of, say, half-a-million pounds. Now, this case won't cost that money because it is a very short case, but you see the problem we have….
>
> So don't Google me, don't Google the Advocates, don't Google the Defendant, or any witness in the case because that would be wholly improper, because you would be going outside the observations your oath or your affirmation (your solemn affirmation) to try the case according to the evidence.
>
> If you said to me, "What is the biggest threat to trial by jury in this country?" I would say to you, "No question: improper use of the Internet by jurors. No question".
>
> We can all find out vast amounts of very helpful and totally useless information on the Internet. Don't do it. By all means, do your Christmas shopping on the Internet. Book your holiday (if you are lucky enough to be going on one next year), but don't use the Internet improperly. The message is loud. It is clear. I don't propose to repeat it, but I expect you to behave responsibly because you are judges."

(c) Mr Davey's explanation in his evidence to us

15. Mr Davey's explanation, after his denial to the judge, was given initially in his interview on 13 January 2013 to which we have referred at paragraph 9.

16. In his written and oral evidence to us, Mr Davey apologised for what he had done. He explained that he did not intend to cause problems and had not meant anything at all by the posting. He had not considered the implications. At the time he was summoned for jury service he was not working and for personal reasons he felt isolated, bored and unhappy; he had dropped out of school at 17 and his attempts to find a job had not succeeded.

17. He could not remember what the jury manager had said (as summarised at paragraph 12); he did not take that to be a direction or order, but something that was helpful to him. He could not recall the video. Nor could he recall the notices in the jury lounge

or what the judge had said; he did not know whether that was because he had forgotten it or because he did not take it in at the time.

18. He had listened to the prosecution opening and to the evidence of the complainant. Although he did not have an absolutely neutral preconception about sex crimes committed against children, he had taken careful notes on both days and had an open mind as to the guilt of Mr Kephalas.

19. He thought the posting might make him seem interesting and more exciting and would reflect well on him so people who were his Facebook friends might notice him and want to talk to him. He thought that by indicating hostility to paedophiles this would reflect well on him. The words he used were intended to attract attention. He accepted that he was inviting people to respond, but he was not intending to start a discussion.

20. He did not know that he was breaching any order made by the judge. He knew he was not meant to discuss the case, but he did not think that by making the posting he was discussing the case and breaching the order of the judge; he thought the judge had only said they should not use the internet to research the case.

21. He considered that, on reflection, the posting was unbelievably stupid. He had made the posting because he was over-excited about the opportunity of acting as a juror; this had been the time when allegations had been made of sexual misconduct by persons such as Jimmy Savile.

22. He had made the denials to the judge, as he was frightened of the defendant Adam Kephalas who used the same bus as he did and he might be able to find him using his Facebook page. He also did so because he knew that he was in trouble when the judge had questioned him; he had not been cautioned or told he needed legal advice.

(d) The submissions on behalf of Mr Davey

23. It was submitted that Mr Davey was not in breach of his duties as a juror so as to create a real risk of interference or prejudice to the administration of justice. He had remained true to his oath; he was exhibiting a prejudice which many had when required to serve as a juror, but it was clear that like others with similar prejudices he would put those aside and try the case on the evidence. That was evidenced by his taking notes. There was nothing to show that his prejudice would play any part in his determination of the verdict. Moreover, the posting on its face did no more than state that he had a serious dislike for those who committed sexual crimes against children and that if the case was proved the defendant would receive his punishment. He never intended the posting to be taken seriously.

24. Nor was Mr Davey in breach of the directions of the judge, as the judge had not made any direction which prohibited what Mr Davey had done. The booklet sent to jurors, the video, the speech by the jury manager and the warning signs were not judicial directions. Even if there had been a direction, what Mr Davey posted was not any form of discussion, let alone a discussion of the evidence. Even if what was posted was a discussion, it could not give rise to a real risk of interference with the administration of justice. In any event, Mr Davey did not intend to breach any direction or to interfere with the administration of justice.

(e) Our findings

25. We reject Mr Davey's explanation for his lies to the judge when first asked whether he had posted the message. He knew what he had done by posting the message was wrong and in breach of what he had been told not to do. He subsequently invented the explanation for those lies which he gave first to the police in interview and repeated to us.

26. We are sure that on two distinct bases he did an act calculated to interfere with the proper administration of justice and which he intended would interfere with the proper administration of justice.

27. First, we are sure that however immature Mr Davey was at the time, he knew that as a juror he had a duty to act fairly towards the defendant in the trial, Mr Kephalas, and to consider the case on the evidence. Not only had he taken an oath to that effect, but he asserted in his evidence that he understood he had to consider the evidence fairly and give a verdict he honestly believed was right on the evidence. However, after hearing evidence for a day, he posted the message we have set out to be read by his 400 Facebook friends. The message made clear to them that he would use his prejudices in deciding the case; the choice of the term "fuck up" underlined his deliberate disregard of the duties he had undertaken as a juror. We reject as untruthful his assertion that it was not meant seriously. By the deliberate choice of language he was making clear not only his interference with the administration of justice by disregarding his duties to act as a juror, but his plain intention to do so. There can be no doubt that the posting also interfered with the administration of justice in another respect; he had hoped that no one would be able to identify him or the court, but one of those to whom the message was addressed identified the court with the result that he had to be discharged from the jury as his actions had made it impossible for him to continue.

28. Second, it is clear from his interview and his evidence to us that he knew that he was not meant to discuss the case with anyone other than other jurors. He also knew that he was not meant to use the internet in relation to the case, as he told the police this in his interview. He told us that his motive in posting the message was to draw attention to himself and to make his friends think well of him; he was inviting responses. His explanation that he was not discussing the evidence was disingenuous in two respects. First he was inviting comment by the posting. As he knew that he was not meant to discuss the case, by making the posting in terms which invited a response, he was initiating a discussion in breach of the judge's order. Second, having accepted in his interview with the police that he knew he should not discuss the case, he invented the explanation (set out at length in his statement and persisted in in his oral evidence) that in the posting he was not discussing the evidence in contradistinction to the case. He made that distinction, because after being taken through the actual words used in most of the directions (as we have set out at paragraphs 11-14), he was able to advance a case that the prohibitions were against discussing the evidence as opposed to discussing the case. But, as he had said to the police, and as was clear from the notices in the jury foyer and lounge and what the judge said, he knew he should not discuss the case. His attempt to be disingenuous is further support for our finding that he knew he was breaking the directions, that that interfered with the administration of justice and that the overwhelming inference is that he also thereby intended to interfere with the administration of justice.

29. We also reject the contention that the jury booklet, the video, the speech by the jury manager and the warning signs are not directions that a juror must follow. They are

provided to jurors under the authority of the court and are intended to make clear to jurors and to remind jurors during the trial of their obligations and what will constitute an interference with the administration of justice. We also reject the contention that the directions infringed Articles 8 and 10 of the European Convention on Human Rights; the directions were plainly within Articles 8.2 and 10.2.

(g) Our conclusion

30. We therefore are sure that Mr Davey did an act which created a real risk of interference with the administration of justice and it was specifically intended by him to interfere with the administration of justice.

II: The case in relation to Mr Beard

(a) The evidence adduced by the Attorney General

31. On 1 October 2012 Mr Beard (who is aged 29) attended the Crown Court at Kingston-upon-Thames for jury service. On the following day, 2 October 2012, he was empanelled to serve as a juror in a trial before HH Judge Fergus Mitchell of David MacDonald and David Downes who were charged with conspiracy to defraud and money laundering. It was estimated that the trial would last some two months. Before the panel was selected there was some discussion about the trial lasting until after Christmas, but not much beyond that.

32. On 9 November 2012, some 5½ weeks into the trial, one of the jurors, Mr Sewell, reported to the court clerk, Ms Ogle, that on the previous day he had had a conversation with one of the jurors. According to a note that he had made at the time and his evidence to us, he and a number of other members of the jury were chatting. There were various conversations going on, and in the conversation to which he was a party a question was asked as to how many investor witnesses would be heard from. One of the other members of the jury, Mr Beard, stated that the number of investors affected was about 1,800, although Mr Sewell did not recall the precise number. Mr Sewell asked Mr Beard where that figure came from as he was concerned he had missed some evidence. Mr Beard then stated that he had done a search on the internet through Google using the name of the operation and he got the figure that way. Mr Sewell then said "No, No, No, No! Don't tell me about that. You shouldn't have done that. I don't want to hear about it." We were told by Mr Sewell that there was a degree of frustration amongst the jurors about the large amount of time where they had not been required because of legal submissions; there had been days when the jury had not been needed.

33. Ms Ogle reported this to Judge Mitchell; she then went to the jury area and spoke to Mr Beard so that she could separate him from the rest of the jury. She then spoke to the jury usher, Mr Andrew Minney. Mr Minney gave her an account of a conversation that he said had occurred in the jury lift the previous afternoon; he also gave evidence to us. His evidence was that when going up in the lift one of the jurors (whom he identified subsequently as Mr Beard) had said that there were 1,800 investors. One of the lady jurors had been concerned at the figure and asked Mr Minney how long the trial was going to drag on. Another lady asked how many witnesses they had seen so far. Mr Minney had then replied that there had been 18 live witnesses. He tried to reassure them that they would only see a certain number to give examples of the Crown's case.

34. The clerk then informed the judge and obtained a note from Mr Sewell of what had been said as well as a note from Mr Minney. The judge then informed counsel of what had occurred.

35. Research by the prosecution showed that if the name of the operation was searched on Google clicking the third entry on the first page of the search results provided the figure of 1800 investors along with other significant information that the jury were not going to hear about in evidence. In the course of the discussion thereafter between the judge and counsel in the case, Mr Holland QC, counsel for David Downes, told the judge that a source of the figure 1,800 might be a spreadsheet which was in evidence having been recovered from a laptop which was attributed to Downes. He added that the jury would hear as part of the case, and might in fact already have heard, that effectively the police had written to 1,800 people and that was going to be part of the material before the jury. He accepted, however, that other parts of the information found by the prosecution were more difficult.

36. When cross-examined before us Mr Sewell accepted that there was a 27 page spreadsheet document in the jury bundle which dealt with some 1,080 alleged transactions, but pointed out that they were bank transactions - not an indication of the number of investors involved. Although aware that the charges with which the jury were concerned were part of a bigger picture, he had no recollection of counsel mentioning that 1,800 investors had been involved – the figure around that number had come from Mr Beard.

37. After hearing further argument the judge ruled that the jury must be discharged:

> "I have to say it is with the greatest reluctance, but nevertheless I am driven to decide that this material and indeed on the evidence that has already supplied, I take the view that the whole jury must be discharged. This material is highly prejudicial, it has clearly been disseminated, that figure of 1,800 which is taken from – even if it was just the figure itself, that seems to be enough to be of a level of prejudice which would mean these defendants would not receive a fair trial. It is overwhelmingly prejudicial to hear it at this stage. Mr Holland says: "Well, they may hear that anyway." Well, that may be so, but I am deciding it now on the situation and I do so with the greatest reluctance, but I am afraid to say that my view is that the whole jury will have to be discharged and this trial will have to start again. There are various problems about that which I will indicate."

38. On 10 December 2012 Mr Beard was interviewed at the police station at Kingston. He provided a written statement which says:

> "I did not discuss the case for which I sat as a juror for between 1st October 2012 and 9th November 2012 with any individual nor have I researched any information pertaining to the case which was forbidden in the guidelines given to us jurors.
>
> Therefore, I do not believe I have acted in contempt of court on any occasion."

39. The cost of the defence amounted to £119,712 and the prosecution costs had been between £190,000 and £200,000.

40. On 11 February 2013 the Attorney General sought leave to bring proceedings for committal for contempt against Mr Beard on the basis that, in breach of his jury oath or affirmation and the directions given by the trial judge and other warnings, he conducted internet research on the case he was trying and thereby obtained extraneous information about the case and imparted that extraneous information to other members of the jury.

(b) The directions given to Mr Beard

41. As we have set out at paragraphs 11 and 12 Mr Beard, like Mr Davey, was sent the Guide to Jury Service and was shown the video.

42. In addition he was told by the jury officer on the day he attended jury service:

> "Discussing Trials – Judges Directions
>
> Every Judge will tell you whatever court you go to that you do not discuss the evidence with anyone outside of your number either face to face, over the telephone or over the internet via chat lines such as Face book or MySpace. If you do this you risk disclosing information which is confidential to the jury. Each of you owes a duty of confidentiality to the other jurors, to the parties and to the court. The only place you can discuss the evidence is when all 12 of you are in the jury room at the conclusion of the case."

43. Notices similar to that to which we have referred at paragraph 13 were posted in the jury room. Each contained the paragraph we have set out relating to the internet.

44. Before the trial began the Judge Fergus Mitchell told the jury that they must try the case on the evidence and not on any other evidence. He continued:

> "… and it has been known, members of the jury, of people going on the internet and looking things up. Please do not do that in relation to this case, it has led to disasters in the past. I have actually had a case of a juror just trying to help out, who went on the internet to look up something and the whole case had to stop and it was a disaster. That juror was only just trying to help, in fact wrote a note saying: "Oh, I've managed to find out about them." Oh, dear, no, we cannot have that. It has to be just from there, just the evidence that is put before you upon which you make your decisions.
>
> So I am afraid to say by all means, you will be going on the internet some of you I am sure, but do not make any enquiries or seek any other evidence through that source of any other source. Indeed, you may have heard about the juror who went on Twitter or is it Facebook – I am afraid I am on neither – I may be discussed there, but I am not on either – and the whole case – well, I think it undermined the whole case and that juror

> was actually sent to prison for doing that; that is how serious the courts see it. You may remember the case. I am not saying that is going to happen here, but that is how seriously it is now seen, because one can access all sorts of things on the internet and indeed in other ways. But, as I say, do not do anything like that because that would obviously endanger the case and make life very difficult for everybody. It is only the evidence you hear here, or see, or take on board by way of agreement, that is evidence you decide the case upon, and nothing else."

(c) The account of Mr Beard

45. Mr Beard's account in his oral evidence to us was that he had never served on a jury before. Shortly before the trial he had taken on new employment as an assistant site manager for a building company. He also had a child whom he had to pick up from the nursery.

46. As he had taken on his new job he was under pressure from his new employers that he should not sit on a jury for longer than two weeks; that was reinforced by an e-mail from a senior member of the company's staff.

47. He had understood that the case was estimated to last for six weeks, and had understood the judge's direction not to carry out research on the internet. However, after a while it was clear the case was not going fast. He thought he had spent 60% of the time in court and 40% not. They had some days off. He considered that there was frustration in the jury room as the case was dragging on with no end in sight. All the usher would say was that he did not know how long it would last, save it would last a long time. He spoke to his employers during the trial and they were not best pleased. He was very concerned as his earnings were significantly reduced, his girlfriend was on maternity leave and they were planning to get married. He was worried about paying his bills. He wanted his life to return to normality.

48. One night therefore he typed both defendants' names into Google and he got a search page setting out different headings which he described as a menu. He hoped he would find out when the date of the end of trial would be. The Google menu did not set out a date or the number of days the case would take. He did not look any further. He was not trying to research, he just wanted to know what the end was. He did not think he was breaking the judge's directions. He had done this about a month before 9 November 2012.

49. He did not, he said, use the figure of 1,800 either to Mr Minney or Mr Sewell. He recalled a conversation amongst the jurors as to how long the trial would take and how many witnesses there would be. When someone asked if there would be more witnesses he had stepped in and said that there could be loads. Mr Sewell had then said, "No, no, no, no." He thought Mr Sewell was overreacting and asked him why he had said this. He then walked off. He had done nothing intending to prejudice the trial.

(d) The submissions on behalf of Mr Beard

50. It was submitted on behalf of Mr Beard that his account was true and that he had not conducted any research on the internet and had not breached the order of the judge.

The information in relation to 1,800 investors had come either from the evidence or some other source.

51. In any event, there was no real risk of interference with the administration of justice as the judge was wrong to have discharged the jury. Mr Beard had no intention of interfering with the administration of justice.

(e) Our findings

52. We accept the evidence of Mr Sewell and Mr Minney. They were impressive witnesses who gave clear accounts of what had been said by Mr Beard. They had made contemporaneous notes of what had happened. In our judgment they were plainly witnesses of truth. We accept their evidence that Mr Beard mentioned a figure of about 1,800 in relation to the number of investors.

53. We do not accept the evidence of Mr Beard as to what he did on the internet or what he told Mr Sewell and said in the lift in the presence of Mr Minney. We are sure he mentioned to both Mr Sewell and in the lift in the presence of Mr Minney a number of about 1800 in relation to the number of the investors and that this number was found by him through research on the internet. His account of looking at what he described as the Google menu was an invention designed to minimise what he had done; there was no reference to it in the statement he made to the police which we have set out at paragraph 38. We are sure that what he did was to search on the internet to try and find out how many witnesses there might be; he therefore looked through material on the internet to find the number of investors. In that way he found the number of about 1,800.

54. We are sure that he knew that using the internet to find out information about the case was something he should not do; he knew it was prohibited and he knew finding out information in that way interfered with the administration of justice, because he knew that it was his duty as a juror to decide the case on the evidence adduced in court and conducting research on the internet was inconsistent with that duty. When he decided to use the internet to find out information, he knew that he was not only deliberately breaking the direction of the judge but also thereby interfering with the administration of justice.

55. We do not accept the contention that the judge need not have discharged the jury. Although other judges might have come to a different conclusion about the necessity of discharging the jury, the fact that Mr Beard had conducted research on the internet and had communicated some of what he had learnt to other jurors was sufficient to make the decision of the judge one that was open to him. The judge was entitled to take the view that Mr Beard might have found out a great deal more about the case when finding out how many investors there had been. In any event, even if the judge had not discharged the jury, Mr Beard's actions would nonetheless have interfered with the administration of justice for reasons similar to those we have given in relation to Mr Davey.

56. We would add that we have little doubt that the jurors had a feeling of frustration at the amount of time that was being taken with legal argument. We also have little doubt that Mr Beard felt under pressure to return to work. Although this might explain why he deliberately breached the directions of the judge and carried out research into the case on the internet, it does not excuse in any way his conduct as he

knew full well that conducting research on the internet was an interference with the administration of justice and intended by him to be such.

(e) Our conclusion

57. We therefore are sure that Mr Beard did an act which created a real risk of interference with the administration of justice and it was specifically intended by him to interfere with the administration of justice.

Postscript

58. As is clear from what we have set out, every attempt is made to try and warn jurors not to use the internet or social networking sites for any purpose in relation to the case. However, as is also clear, the language used is not consistent giving room for argument of the type advanced before us as to what a juror might understand was prohibited.

59. Many judges have adopted the practice not only of warning the jury in terms similar to what the judges in these two cases did, but also handing the jury a notice setting out what they must and must not do and the penal consequences of any breach. They have done this so that no juror can subsequently claim that he or she did not understand what they should not do and what the consequences might be. It is to be noted that in civil proceedings, committal for contempt for breach of an injunction ordinarily requires not only proof of the breach of the terms of an injunction, but that the injunction contained a penal notice.

60. In the case relating to Mr Davey, after he had been discharged as a juror, the judge told the jury in very sweeping terms that they should not use the internet. We can quite understand why he did this, but as Lord Carlile QC pointed out what he said went beyond what would be permissible under Articles 8 and 10, quite apart from imposing restrictions on jurors properly carrying out day to day tasks which cannot be easily done without use of the internet.

61. We propose to invite the Criminal Procedure Rules Committee in consultation with the Judicial College to review the terminology used in the material given to the jury and to consider whether to recommend that the practice to which we have referred in paragraph 59 should be universally followed.