



Neutral Citation Number: [2019] EWHC 1552 (Fam)

Case No: ZC18C00132

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 14/06/2019

**Before:**

**THE HONOURABLE MR JUSTICE MACDONALD**  
**(Sitting in Public)**

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**Between :**

**London Borough of Wandsworth**  
**- and -**  
**Neil Lennard**

**Applicant**

**Defendant**

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**Mr Love** (instructed by the **Local Authority Solicitor**) for the **Applicant**  
**Mr Wauchope** (instructed by **A-Z Law**) for the **Defendant**

Hearing dates: 14 June 2019  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**Mr Justice MacDonald:**

**INTRODUCTION**

1. In this matter, I am concerned with an application by the London Borough of Wandsworth for an order committing Mr Neal Leonard to prison for contempt arising out of his alleged breach of the order of Parker J made on 8 July 2018. The terms of that order provided as follows:

“IT IS ORDERED THAT:

1. Mr Neil Lennard is prohibited from behaving in the following ways:

- (a) Using offensive, foul, threatening words or behaviour towards Alana Bobie or Grace Okoro-Anyaechie as employees of the applicant local authority working in the Children Looked After Team 2.

- (b) Sending offensive, foul or threatening communications, emails or messages to Alana Bobie or Grace Okoro-Anyaechie as employees of the application local authority working in the Children Looked After Team No (2) by texting or using the internet or social media to communicate.

2. This order shall remain in force until 5 July 2019 or further order."

2. The process of committal for contempt is a *highly* technical one. It is important, in circumstances where the liberty of the citizen is at stake, to recall the strict procedural requirements of a properly constituted committal hearing that have to be complied with.
3. Having regard to FPR 2010 r 37 and the authorities, and in particular *Re L (A Child)* [2016] EWCA Civ 173, the checklist of cardinal requirements which it will be prudent for the court to remind itself of prior to the commencement of any committal hearing at which it is alleged that the contempt is founded on the breach of a previous order, and which requirements I have today reminded myself of for this hearing, can be expressed as follows:
  - (a) The committal application must be dealt with at a discrete hearing and not alongside other applications.
  - (b) The order, the breach of which the alleged contempt is founded upon, must contain a penal notice in the required form and in the required location on the order.
  - (c) The order, the breach of which the alleged contempt is founded upon, must be proved to have been personally served on the defendant or it must be proved that the defendant has otherwise made fully and properly aware of its terms in accordance with the rules.
  - (d) The alleged contempt must be set out clearly in a notice of application or document that complies with FPR 2010 r 37, FPR r 37.10(3) requiring that the summons or notice identify separately and numerically each alleged act of contempt.

- (e) The application notice or document setting out separately each alleged contempt must be proved to have been served on the defendant in accordance with the rules. FPR 2010 r 37.27 requires a period of 14 clear days after service. Where the committal hearing is adjourned personal service of the adjourned hearing is required unless the respondent was in court at the time of the adjournment.
- (f) The defendant must be given the opportunity to secure legal representation as he or she is entitled to.
- (g) The committal hearing must be listed publicly in accordance with the Lord Chief Justice's Practice Direction: Committal / Contempt of Court – Open Court of 26 March 2015 and should ordinarily be held in open court.
- (h) Consideration must be given to whether the allocated judge should hear the committal or whether the committal application should be allocated to another judge.
- (i) The burden of proving the alleged breaches lies on the person or authority alleging the breach of the order.
- (j) The defendant is entitled to cross examine witnesses, to call evidence and to make a submission of no case to answer.
- (k) The alleged breaches must be proved to the criminal standard of proof, i.e. beyond reasonable doubt. A deliberate act or failure to act (*actus reus*) with knowledge of the terms of the order (*mens rea*) must be proved.
- (l) The defendant must be advised of his or her right to remain silent and informed that he is not obliged to give evidence in his own defence.
- (m) Where a breach or breaches are found proved on the criminal standard the committal order must set out the findings made by the court that establish the contempt.
- (o) Sentencing must proceed as a separate and discrete exercise, with a break between the committal decision and the sentencing of the contemnor. The contemnor must be allowed to address the court by way of mitigation or to purge his or her contempt.
- (p) The court can order imprisonment (immediate or suspended) and / or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
- (q) In sentencing the contemnor the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to secure compliance in the future. Committal to prison is appropriate only where no reasonable alternative exists. Where the sentence is suspended or adjourned the period of suspension or adjournment and the precise terms for activation must be specified.
- (r) The court should briefly explain its reasons for the disposal it decides.

## **BACKGROUND**

4. The background to this matter can be stated shortly. Mr Lennard's son, who I shall call Y, was made the subject of a care order in favour of the London Borough of Wandsworth in 2016. A care order was made in respect of his daughter at the same time. Within the context of the local authority sharing parental responsibility for Y, in early January 2019 an issue is said to have arisen regarding the commencement of ADHD medication for Y. A meeting was held between Mr Lennard, the local authority and a doctor in January to consider the issue of parental consent. Mr Lennard contends that that meeting ended in acrimony. He considered that he had been overloaded with information.
5. On 13 February 2019 Mr Lennard contends that he received a text message from the social worker informing him that "senior management" had given authorisation for Y to commence his ADHD medication. In his first statement, Mr Lennard states that he felt this decision did not sufficiently involve him in circumstances where he continued to share parental responsibility for Y.
6. Within this context, on 13 February 2019 Mr Lennard accepts that he attended Wandsworth Town Hall, whereat he "let his frustration get the better of me and I am truly sorry and remorseful about my behaviour towards the two staff members". The behaviour to which Mr Lennard refers in his first, and in his second statements before this court, is alleged by the two staff members referred to, Gladys Etiobho, in an affidavit dated 28 March 2019, and Nathan Ojiekhuu, in a statement dated 9 May 2019. It can be summarised as follows:
  - i) Mr Lennard barricaded Gladys Etiobho and Nathan Ojiekhuu in a room by using his body and refused to allow them to leave.
  - ii) Mr Lennard became verbally abusive and stated he would not permit Gladys Etiobho and Nathan Ojiekhuu to leave the room until he could see Grace Okoro-Anyaeche.
  - iii) Mr Lennard made threats of harm towards Grace Okoro-Anyaeche stating that he would "wait outside and snatch Grace because I want answers" and that he "would body snatch Grace at the car park and have a body map on the floor and going to burst her head open".
  - iv) Mr Lennard is said to have made similar threats to Gladys Etiobho and Nathan Ojiekhuu.
  - v) When informed that the Police would be called, Mr Lennard himself called the Police and said he had "two hostage workers and if you don't come now I don't know what might happen" and proceeded to give the address of Wandsworth Town Hall.
  - vi) Mr Lennard then allowed Gladys Etiobho and Nathan Ojiekhuu to leave the room but made them wait in the reception area.
7. No criminal proceedings followed the attendance of the Police. For reasons that will become apparent, it is not necessary for the court to make findings in respect of these

matters. In any event, in his second statement, Mr Lennard concedes before this court that, under what he contends was “extreme provocation” comprising the local authority excluding him from decisions concerning Y:

- i) He used foul language towards Gladys Etiobho and Nathan Ojiekhudu.
  - ii) He detained those social workers in the room for ten minutes.
  - iii) He accepts that he acted inappropriately.
  - iv) He is sorry for his conduct on 13 February 2019.
8. Finally, for reasons that will also become apparent, it is important to note in this context that at no point during the alleged incident on 13 February 2019 was Grace Okoro-Anyaeché *present* when Mr Lennard was engaged in the alleged conduct detailed above. It is further important to note that, in its committal application notice the local authority does not rely on the alleged conduct of Mr Lennard towards Gladys Etiobho and Nathan Ojiekhudu, they not being named in the order of Parker J dated 6 July 2018. Whilst a statement before the court from Alana Bobie, who is covered by the terms of that order, alleges certain other conduct by Mr Lennard, that alleged conduct also is not the subject of the committal application notice.

## **COMMITTAL APPLICATION**

9. Turning to the committal application itself and the technical requirements that the court must ensure have been met for this to be a properly constituted committal hearing, as I have noted the application concerns alleged breaches of the order of Parker J dated 6 July 2018, some six months prior to the alleged events of 13 February 2019. That order contains a penal notice in the required terms at the correct location on the front of the order. In his first statement, Mr Leonard denies that he was personally served with the injunctive order of Parker J dated 6 July 2018. However, he today accepts through Mr Wauchope that he was present when the order was made by Parker J and takes no point on service.
10. The local authority’s application for a committal order was made on 23 March 2019. As I have alluded to above, that application contains only *one* allegation of contempt, namely that Mr Lennard:
- “Failed to comply with the order made on 6 July 2018 and are in contempt of court. The London Borough of Wandsworth alleges that on 13 February 2019 you breached the order as follows:
1. In respect of paragraph 1B (*sic*) by that you used offensive, foul, threatening words towards Grace Okoro-Anyaeché”
11. There is no formal evidence before the court that the local authority’s application to commit was served on Mr Leonard, whether in the form of an affidavit of service or otherwise. However, once again, it is accepted on his behalf that he is properly on notice of these proceedings. In any event, I am satisfied he has had notice in circumstances where he has attended the last two the hearings before this court and contacted solicitors, as evidenced by a letter dated 11 April 2019, shortly following

the application being issued. I am satisfied by reference to an affidavit of service dated 17 May 2019 that the evidence on which the local authority relies has been properly served on Mr Lennard.

12. It has taken some time for Mr Leonard to secure representation for this committal hearing for reasons set out in an *ex tempore* judgment delivered at the last adjourned final hearing of this application. He is now however, represented by counsel, Mr Wauchope, pursuant to a grant of legal aid that I made at a prior hearing and who has made considered and cogent legal submissions on his behalf today.
13. Within the foregoing context, it will be seen that the manner in which the local authority has sought to advance its application for committal gives rise to a fundamental issue that has formed, and been dealt with by the court at the request of both parties as a preliminary issue at today's hearing. Namely, whether the injunction has, in fact, been breached on its terms.
14. As I have noted, the terms of the injunction made by Parker J on 6 July 2018 provide as follows:

“IT IS ORDERED THAT:

1. Mr Neil Lennard is prohibited from behaving in the following ways:

- (a) Using offensive, foul, threatening words or behaviour towards Alana Bobie or Grace Okoro-Anyaeché as employees of the applicant local authority working in the Children Looked After Team 2.
- (b) Sending offensive, foul or threatening communications, emails or messages to Alana Bobie or Grace Okoro-Anyaeché as employees of the application local authority working in the Children Looked After Team No (2) by texting or using the internet or social media to communicate.

2. This order shall remain in force until 5 July 2019 or further order.”

15. As I have also noted, the terms of the local authorities notice of application for this committal hearing alleges the following, single, breach, namely that namely Mr Lennard:

“Failed to comply with the order made on 6 July 2018 and are in contempt of court. The London Borough of Wandsworth alleges that on 13 February 2019 you breached the order as follows:

1. In respect of paragraph 1B (*sic*) by that you used offensive, foul, threatening words towards Grace Okoro-Anyaeché”

16. Within this context, and in the circumstances described in the evidence filed and served by the local authority, which evidence makes clear that Grace Okoro-Anyaeché was not present during the incident on 13 February 2019, the single breach alleged by the local authority concerns an incident at which the subject protected by the injunction, Grace Okoro-Anyaeché, and the subject of the alleged breach of that injunction, again Grace Okoro-Anyaeché, was not physically present when the

offensive, foul and threatening words alleged to have been stated were spoken by Mr Lennard.

17. It is within this context that Mr Wauchope contends that the terms of the injunction have not, in the circumstances, been breached as Mr Lennard did not, as a matter of fact and having regard to the plain meaning of the word “towards”, use offensive, foul, threatening words or behaviour *towards* Grace Okoro-Anyaeche. This submission has led directly to the question on the proper interpretation of the word “towards” in the order of Parker J of 6 July 2019.

## SUBMISSIONS

18. On behalf of the local authority, Mr Love submits that, whilst she was not present, it is plain on the evidence that the words used by Mr Lennard were directed at Grace Okoro-Anyaeche in that she was the *subject* of those words and, accordingly, the words were used “towards” her. Further, he submits that in any event, Grace Okoro-Anyaeche came to know of the words used through those who were present at the time. Against this, Mr Love accepts that within the context of the penal consequences of the breach of an injunctive order of type with which this court is concerned, it is likely to be appropriate to construe the proper meaning of the word “towards” in the context of such an injunction in relatively narrow terms.
19. On behalf of Mr Lennard, Mr Wauchope submits that, in the context of the strictures of committal applications and the penal consequences of the breach of the injunction, the word “towards” must be narrowly construed as requiring the presence of the subject of the abusive language spoken if a breach of the injunction is to be established. By analogy, he relies on the interpretation that has been placed by the Division Court on the words “uses towards another person” in section 4 of the Public Order Act 1986, which section provides as follows:

**“4.— Fear or provocation of violence.**

(1) A person is guilty of an offence if he—

(a) uses towards another person threatening, abusive or insulting words or behaviour, or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is distributed or displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

[...]

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale or both.”

20. In support of this submission, Mr Wauchope relies on the case of *Atkin v Director of Public Prosecutions* (1989) 89 Cr App R 199. That case concerned two Customs and Excise officers, accompanied by a bailiff, who attended the defendant's farm to recover outstanding value added tax. Whilst two Customs officers conducted their business inside the farmhouse the bailiff waited outside in the car. The car was parked in the farmyard where the bailiff was unable to hear any of the conversation in the farmhouse. When the Customs officers ascertained from the defendant that he was unable to pay the VAT due they informed him that the bailiff would have to enter the farmhouse to distrain on his goods. The defendant replied that, “If the bailiff gets out of the car he's a dead un.” No threats were made to the two officers. The bailiff did not hear the words spoken by the defendant. The defendant was convicted by the magistrates of using threatening words towards the bailiff and appealed by way of case stated.
21. At p 204 the Divisional Court in *Atkin* recounted the submissions it heard in respect of the meaning of the “used towards another person threatening words”:

“In this Court, Mr. Murray on behalf of the defendant, has highlighted the phrase in section 4(1)(a) ‘used towards another person threatening words.’ He submits that the plain and natural meaning of that phrase is that the threatening words have to be addressed directly to another person who is present and either in earshot or aimed at as being putatively in earshot. The phrase does not equate with ‘used in regard to another person’ or ‘used concerning another person.’ He submits that approached in that way the phrase here clearly related to the use of the words within the house to those who were in earshot.”

Later at p 204 the Divisional Court went on to observe as follows in light of the submissions made on behalf of the defendant:

“We were referred to decisions of different divisions of this Court in previous cases, *Parkin v. Norman* [1983] Q.B. 92 and *Masterson v. Holden* [1986] 1 W.L.R. 1017. We have not found those citations particularly helpful as they were both concerned with an earlier Act, the Public Order Act 1936. The 1986 Act in sections 4 and 5 supersedes section 5 of the 1936 Act. The wording in the new Act is quite different. The phrase ‘uses towards another person’ is entirely new and the construction of section 4 is therefore not assisted, in my judgment, by considering decisions of this Court in regard to the construction of an earlier statute. This statute has, we are told, not been construed by any court and the phrase “uses towards another person” has not been found by counsel in any other statutory provision which would give any helpful indication as to its true meaning in this context. So the exercise is one of purely looking at the wording of the section and deciding what the plain and natural meaning of the words is, bearing in mind that if there were any doubt that doubt would have to be

resolved, since this is a penal provision, in favour of the appellant. In my judgment the submissions made by Mr. Murray are correct. The phrase “uses towards another person” means, in the context of section 4(1)(a) ‘uses in the presence of and in the direction of another person directly.’ I do not think, looking at the section as a whole, the words can bear the meaning ‘concerning another person’ or ‘in regard to another person.’”

22. My attention was drawn to no other authorities or materials on the question of the meaning of “towards” in the context that is before this court.

## DISCUSSION

23. I am of course, I make clear, not engaged in an exercise of statutory construction. My task is to decide whether there has been a breach of the order of 6 July 2018 having regard to the terms of the order and the evidence before the court. Having considered the helpful submissions of counsel and the documentary evidence available to the court, I am satisfied that Mr Wauchope has made good his submission that there has not been a breach in this case having regard to the plain terms of the order.
24. The order prohibits Mr Lennard from using offensive, foul, threatening words or behaviour *towards* Grace Okoro-Anyaeché. It is not disputed that at the time (as he accepts) Mr Lennard used words that were at least “foul”, Grace Okoro-Anyaeché was not present. In those circumstances, was the spoken foul language directed by Mr Lennard “towards” the social worker for the purposes of the protective injunction from which she benefited? I am satisfied that the answer is no.
25. Using the word “towards” in its wider sense, it is possible to construe Mr Lennard’s spoken words as having been directed towards Grace Okoro-Anyaeché in that she was plainly the *subject* of some of those words. However, using the word “towards” in its narrower, and in my judgment, plain sense, the words spoken by Mr Lennard could not have been used towards Grace Okoro-Anyaeché because she was not present at the time and the statements made were verbal in nature. It might, I suppose, be said that the words spoken by Mr Lennard could be taken to have been used towards Grace Okoro-Anyaeché in that, whilst she was not present to hear them, what was said was passed on to her by others.
26. Having given careful consideration to the matter, and in the context of the alleged breach in question being the use by Mr Lennard of *verbal* abuse, I conclude that I favour the narrow interpretation of the word “towards” in this context and take Parker J’s order to mean that Mr Lennard is prohibited from using offensive, foul, threatening words or behaviour *in the presence of and in the direction of* Grace Okoro-Anyaeché. Conduct such as, for example, Mr Lennard publishing his abuse on social media and Grace Okoro-Anyaeché thereafter reading the same, or posting a letter to her with the same result, would be caught in these circumstances. However, verbal abuse by Mr Lennard direct at Grace Okoro-Anyaeché when she is not present will not. On the local authority’s single pleaded allegation, the court here is concerned here with words *spoken* about, but in the absence of, Grace Okoro-Anyaeché.
27. I take the view I do on the proper interpretation of the word “towards” in these circumstances primarily by reason of the fact that a breach of this injunction carries

with it penal consequences. On the one hand, I must, of course, be conscious of the protective function of injunction, and that that protective function argues for a broad, purposive application of its terms. The court grants an injunction to provide protection and relief in circumstances where it is satisfied that such protection and relief is merited. However, against this, the injunction carries with it very serious penal consequences and can, within the current context, result in the imprisonment of the person bound by the injunction for a period of up to two years. The long list of procedural requirements that I set out at the beginning of this judgment further illuminates the strict approach the court takes to the examination of breaches that can result in a term of incarceration.

28. Within this context, and again accepting I am not engaged in an exercise of statutory construction, I bear in mind the words of Lord Justice Taylor in *Atkin* at p 204 that where the exercise is one looking at wording and deciding what the plain and natural meaning of the words is, in circumstances where the provision in question is a penal provision any doubt is to be resolved in favour of the person subject to that penal provision. Once again, it is the meaning of a provision with penal consequences with which the court is here concerned, namely the order of Parker J dated 6 July 2018 with its attached penal notice.
29. Within this context and having regard to the terms of the order made by Parker J, it seems to me that given the type of conduct alleged in the single allegation of contempt, namely *verbal* abuse, in order to find a breach, the conduct in question needs to have occurred in the presence of, and to have been directed at the person protected by the injunction. I accept this is a narrow interpretation rather a broad, purposive interpretation of the word “towards” and that this construction may be said to reduce the protective efficacy of the injunction. However, I am also clear that the penal consequences of the injunction argue against extending the effect of the injunction to words that were not spoken in the presence of the person protected by that order.
30. I am reinforced in this view by examining the nature of the behaviour that caused Parker J to make the injunction of 6 July 2018 in the first place, namely the alleged behaviour of Mr Lennard directed towards those named in the injunction. Whilst it may be the case that spoken words will be passed on, once again given the penal consequences of the order there would be obvious difficulties in committing a person to prison on the basis of words that they had spoken being passed on by a third party to the person protected by the injunction who was not themselves present.

## **CONCLUSION**

31. Having been invited by counsel today to deal with the question of whether there has in fact been a breach as a preliminary point, I am satisfied for the reasons I have given that, in circumstances where Grace Okoro-Anyaechie was not present on the one occasion on which the local authority relies in its application to commit, and where she is the only person named in that application, that it cannot be said that Mr Lennard has breached the terms of the injunction. In circumstances where that is the only breach alleged, I must conclude that the application of the local authority is not proved to the requisite standard and that application must stand dismissed.

32. Given the conduct that has been *admitted* by Mr Lennard in his statements before the court, I will hear submissions on whether the terms of the current injunction should be extended either in their ambit, their duration or both.
33. That is my judgment.