Case No:CA-2024-002559; KB-2024-000256
Neutral Citation Number: [2024] EWCH 3320 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

The Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 4 November 2024

BEFORE:

MR JUSTICE LINDEN

BETWEEN:

TIMOTHY JOHN HULL PATTINSON

Claimant

- and -

ROBERT IAN WINSOR

Defendant

MR H SAMUELS appeared on behalf of the Claimant

MR R WINSOR appeared in person

JUDGMENT
(Draft for Approval)

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

MR JUSICE LINDEN:

Introduction

1. This is the adjourned hearing of the question of sentence following my finding, on 12 September 2024, that the defendant was in contempt of court for breaching the injunction ordered by Steyn J on 16 February 2024 ("the Injunction"). I refer to my judgment of 12 September ([2024] EWHC 2563 (KB)) and my Order of the same date for the background.

2. In short:

(a) The hearing of the claimant's application to commit the defendant for contempt of court took place on 12 September. That application was based on 17 alleged breaches of the Injunction which restrained the sending by the defendant of emails or other communications accusing the claimant of fraud, dishonesty, criminality and other conduct which was inconsistent with his holding office as a district judge.

(b) By the time of that hearing, I had permitted the defendant to attend via video link in the light of the medical evidence, such as it was, which he said suggested he would have difficulties in attending in person.

(c) At the beginning of the hearing I heard argument on whether there should be a postponement so as to enable the defendant to take steps to secure legal representation and to obtain further medical evidence. My decision was that I should deal with the question of liability and then review the position.

(d) I then heard argument and evidence on liability and gave an oral judgment. The defendant effectively admitted (and I found in any event) that he had deliberately breached the Injunction by sending the 17 emails relied on by the claimant in his contempt application between 15 March and 20 May 2024. I also noted that Mr Samuels' position was that by the time of the hearing on 12 September 2024, the defendant had sent a further approximately 100 emails which included repetitions of his allegations against the claimant. Moreover, his activities had escalated in the

run-up to the hearing in that the press were now being included in the pool of recipients, or at least the defendant was threatening to do so, and there were also threats to report the claimant's legal representatives to their respective regulatory authorities. At paragraph 38 of my judgment I said:

> "In short, it is quite apparent that the defendant has paid no heed to the Steyn injunction and has deliberately continued the activities which it was intended to restrain, in my judgment, knowing full well that he was breaching an order of the court and that he risked committal for contempt of court. He contends that he was justified in doing so but that is not an answer in relation to the question of liability."

(e) I then heard argument as to whether I should proceed to sentence and, rejecting Mr Samuels' submissions to the contrary, decided that I would postpone consideration of sentence until today so as to give the defendant an opportunity to take steps to secure legal representation and to prepare any evidence which he wished the court to consider in relation to sentence, including any evidence as to his health and his means. In the event, neither party has put before me any evidence as to the defendant's means. It appeared to be common ground that he in receipt of benefits and is of limited means.

(f) I note that one of the factors which led me to my decision to postpone sentencing was the defendant's express assurance that he would not send any further communications which breached the Injunction. At paragraph 49 of my 12 September judgment I noted that this assurance was now clearly on the record and had been given on affirmation, and I indicated the consequences of the defendant not complying with that assurance in terms of the likelihood of this being found in due course to have aggravated his conduct in breach of the Injunction.

(g) I directed that the defendant should attend a hearing today in person but that if he wished to attend by video link he should make an application by 28 October 2024, and this would need to be supported by medical evidence which explained why he was unable to attend in person.

3. In the intervening period between 12 September and today's hearing:

(a) The defendant appealed against my order to the Court of Appeal.

(b) The approved transcript of my judgment was sent to the defendant by email on 9 October 2024.

(c) The defendant has sent numerous lengthy and incoherent emails and attachments to this court and the Court of Appeal concerning his appeal and this hearing. These contain material which is largely irrelevant for present purposes, but he has produced some additional medical evidence comprising GP notes which appear to have been printed on 15 October 2024, and a letter from his GP which is dated 21 October 2024. There is also evidence of an appointment tomorrow for a thoracic and abdominal scan, and on 23 November 2024 for an echocardiogram, in each case at the Hereford County Hospital.

(d) It appeared from the defendant's emails that he wished to postpone today's hearing or alternatively to attend by phone, albeit he did not make an application before the deadline of 28 October 2024. In the light of his GP's letter of 21 October 2024, which said that the defendant would have difficulties in attending a hearing in London in person, but would be able to attend remotely, I permitted the defendant to attend by video link. In an email dated 1 November 2024 I also stated clearly that today's hearing would be going ahead, although I indicated that any application to postpone should be made at the hearing but that I was unlikely to grant such an application absent compelling evidence.

(e) On 1 November 2024 the defendant's application for permission to appeal was refused on the papers by Bean LJ, as were his application for a stay and three other applications which he had made to the Court of Appeal. Bean LJ certified that all of the defendant's applications were totally without merit.

(f) This morning an application notice dated 3 November 2024 was put before me by the defendant. This seeks a postponement of today's hearing although the defendant told me that it also sought what he described as “a strike out”. The application is not supported by any relevant information or evidence which is

additional to the materials which were before me when I wrote to the parties on 1 November.

The positions of the parties at today's hearing

4. At the beginning of today's hearing I gave the defendant an opportunity to make submissions in support of his application to postpone today's hearing and/or for a strike out, as he put it. In his submissions he rehearsed the history as he saw it and his conviction that there has been fraud, and he said that the Injunction was an abuse of power because it prevented him from repeating his allegations to the police, other authorities and his MP. This constituted the bulk of what he said and wanted to say.

5. However, he did touch briefly on matters which were of relevance to the question of whether the hearing should go ahead today. The defendant told me that he had not been able to secure legal representation. He said that he had been in contact with a Mr Adam Tear but unfortunately Mr Tear was not prepared to look at the underlying issues, as the defendant described them, although Mr Tear was, I was told, willing to ask for a postponement of this hearing.

6. As far as the defendant's health is concerned, he said that he was dying and that I should postpone the hearing until he had attended his forthcoming appointments and examinations. He referred to the evidence about his various medical conditions (to which I will refer in more detail in due course) and he said that he had cerebral atrophy and brain fog.

7. On behalf of the claimant Mr Samuels submitted that the defendant's application to postpone should be rejected, as should his application to strike out. I rejected the application to strike out. It was not clear what the defendant wanted to strike out, but in so far as it was the Injunction ordered by Steyn J and/or DHCJ Eardley, I could see no basis on which I could or should do so. On the contrary, as I noted in my previous judgment in this matter, a final order in essentially the same terms as the Steyn injunction was made by DHCJ Eardley on 19 July 2024. The latter order has not, so far as I am aware, been appealed.

8. I also decided to proceed with the hearing. There has already been delay in this matter and a number of hearings. In my view, it is important to make progress, particularly given that the defendant continues to send communications which are prohibited by the Injunction, despite his assurance on the previous occasion that he would not do so, and given that he maintains that he has a right to do so. The defendant's appeal against my 12 September 2024 Order has been dismissed and in any event his appeal was not a reason to postpone the completion of my task of determining the claimant's application to commit him for contempt.

9. As far as the defendant's health is concerned, I gave an account of the medical evidence as it stood at the time of the 12 September hearing in my judgment, including at paragraphs 3 and 6-9. The evidence of his future medical appointments which the defendant has since produced does not add anything to this account. His GP letter and notes do, but his GP says that although he would struggle to attend court in London, given that he would potentially be required to walk a significant distance, the defendant would be able to manage a remote hearing. There was no sign that I could see in the defendant's robust submissions that this assessment was incorrect.

10. The defendant still does not have legal representation, but as I noted in my previous judgment he has repeatedly been told that he should seek legal advice and representation and that he may be eligible for legal aid, and he had ample opportunity to instruct a representative before the last hearing. Since then he has had a further nearly eight weeks to do so. It appears he would have been able to secure representation were it not for his insistence that any legal representative deals with the background or, as he describes them, the underlying issues, rather than focus on the issues in the contempt application. There is no reason, in my judgment, to think that the position would change in terms of legal representation for the defendant if I were to postpone this hearing.

11. For all of these reasons I decided to reject the defendant's application and proceed with the hearing. I also accept Mr Samuels' submission that the defendant's application of 3 November 2024 was totally without merit.

The Submissions on Sentence

12. Mr Samuels submitted that this was a case of sufficient seriousness to warrant an immediate committal of the defendant to prison:

(a) The defendant's breaches of the Injunction which formed the basis of the finding that he was liable for contempt of court were serious, deliberate and persistent.

(b) Although there had been no further application to commit since 20 May 2024, the defendant had also breached the Injunction on multiple occasions after that date. By the time of the hearing on 12 September there had been approximately a further 100 communications, which included repetitions of the relevant allegations against the claimant. As I noted at paragraph 30 of my judgment, his behaviour had escalated as the hearing approached, at least in terms of the circulation of his allegations and the making of threats to circulate them more widely.

(c) Since the hearing on 12 September, and despite his assurances on affirmation that he would not do so, the defendant had continued to send communications which breach the Injunction, and Mr Samuels produced these communications as evidence. In summary:

(i) The defendant has sent several emails of complaint to Mr Samuels' chambers, and it appears the Bar Standards Board, in some of which he repeats his allegations against the claimant.

(ii) The defendant has reported the claimant's solicitors to the Solicitors Regulation Authority, or at least so it appears, copying the report to KB Listings, the Supreme Court, the Court of Appeal and the Senior Courts Costs Office. The report repeats the allegations against the claimant.

(iii) The defendant has sent emails to KB Listings, the Court of Appeal and the Supreme Court, the Ministry of Justice fraud department and the HMRC fraud department, repeating his untrue allegations that the claimant has committed fraud, money laundering and other misconduct.

13. At the hearing today Mr Samuels accepted that whilst the tranche of emails between 20 May and 12 September was essentially a continuation of the conduct which was the subject of the Injunction, the emails since 12 September were of a different nature. A number of them were in the context of the defendant's appeal to the Court of Appeal, and Mr Samuels accepted that he could not place a great deal of weight on these given that the defendant was exercising his Article 6 ECHR rights. I agree.

14. Mr Samuels made the same concession, and again I agree, in relation to the emails to the Solicitors Regulation Authority and the Bar Standards Board, given that these are regulatory bodies. But Mr Samuels said that there are also more general emails rehearsing the history as the defendant sees it, and there were new recipients, being the fraud departments of HMRC and HMCTS.

15. Mr Samuels submitted that it was quite apparent that at all material times the defendant was well aware that what he was doing was in breach of the Injunction. This was a case of serious and contumacious flouting of the Injunction by the defendant. Moreover, the defendant's conduct had caused distress to the claimant. He submitted that a suspension of a committal order would be pointless as the defendant would inevitably breach the Injunction and inevitably, therefore, be committed to prison in due course, and that I should therefore impose an order for immediate committal to prison.

16. The defendant made lengthy and robust submissions. He referred to the situation with his health, which I have very much taken into account. Much of his argument was, however, bound up with the past. He insisted on rehearsing the circumstances in which, as he sees it, he was the victim of fraud. He also submitted, not for the first time in these proceedings, that Steyn J's order was an abuse of power. He maintained that it was right for him to continue to raise the allegations that he makes against the claimant, that it was in the public interest, that it was important that he should be in a position to draw these allegations to the attention of the police, to various other bodies which are responsible for enforcement, to HMRC, to the Ministry of Justice and so on. His objection to the Injunction was that its effect was to seek to prevent him from doing so, and his strong and repeated argument was that he should not be committed to

prison for doing so; he was acting entirely in the public interest in exposing what he alleges is fraudulent conduct.

The Applicable Principles

17. As far as the applicable principles at this stage of the proceedings are concerned, they were helpfully summarised by Morris J in the *All England Lawn Tennis Club (Championships) Ltd & Anor v Hardiman* [2024] EWHC 787 (KB) at paragraph 54:

> "From these cases (and the authorities there cited) I derive the following principles relevant to the present case.
>
> (1) The object of the penalty is both to punish the contemnor and deter others and to serve a coercive function by providing an incentive for future compliance as the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt.
>
> (2) In all cases it is necessary to consider (a) whether the conduct is so serious that a sentence of imprisonment is necessary; (b) what is the shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.
>
> …
>
> (5) The court should be in mind the desirability of keeping offenders and in particular first-time offenders out of prison.
>
> (6) Imprisonment is only appropriate where there is 'serious, contumacious flouting of orders of the court'.
>
> (7) Consideration of the seriousness of the contempt involves consideration of both the degree of culpability on the part of the contemnor and the degree of harm caused; that is, principally, harm to the administration of justice.
>
> (8) A breach of a court order is always serious because it undermines the administration of justice and usually merits an immediate sentence of imprisonment of a not insubstantial amount.

(9) It is good practice for the court's sentence to include elements of both purposes (punishment and compliance as in (1) above) to make clear what period of committal is regarded as appropriate for punishment alone, ie what period would be regarded as just if the contemnor were promptly to comply with the order in question.

(10) Factors which may make the contempt more or less serious include the following:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order be reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has cooperated;

(g) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.

(11) Committal may be suspended: see CPR Part 81.9(2). Suspension may be appropriate (a) as a first step with a view to securing compliance with the court's orders and/or (b) in view of cogent persona mitigation. In the latter case, a serious effect on others may justify suspension.

(12) The court may impose a fine. If a fine is appropriate punishment it is wrong to impose a custodial sentence because the contemnor could not pay the fine.

(13) The court will also take into account the contemnor's character and antecedence and personal circumstances.

> (14) Where there are multiple acts of contempt the court may pass a single sentence for the totality of the contempt or impose separate sentences for each which may then be fixed to run concurrently or consecutively up to a total of two years. On either approach, the total sentence should reflect all the offending behaviour and be just and proportionate."

Discussion and Conclusion

18. In relation to culpability, I accept that the conduct which formed the basis of the application to commit the defendant amounted to serious contumacious flouting of the Injunction. The culpability of the defendant is in my view compounded by the fact that the nature of the breaches which formed the basis of the contempt application was the continuation of conduct which had been held by Steyn J to be likely to amount to harassment of the claimant and was subsequently held by DHCJ Eardley to amount to harassment. The circulation of the allegations was also found by them to be with a view to harming the claimant in his professional life and causing him embarrassment and distress. Moreover, the allegations against the claimant which he continues to repeat are baseless and incoherent, as he has been told repeatedly and knows or ought to know in any event. As has been pointed out repeatedly by the claimant and accepted by the courts, the defendant's bankruptcy, the associated litigation and the £130,000 payment made to his deceased mother had nothing to do with the claimant. The claimant simply was not involved in these matters.

19. As far as harm is concerned, the claimant did not give evidence of harm which he has suffered by reason of the defendant's breach of the Injunction, but I read his witness statement for the purposes of the proceedings for injunctive relief. I accept that the defendant's behaviour has caused distress to the claimant. It is distressing for anyone to be the subject of allegations of fraud and dishonesty and to have their integrity questioned, but this is particularly so given that the claimant holds judicial office. It is also embarrassing for a wide range of colleagues to be sent such communications in whatever walk of life one works. At the time of his application for an injunction, the claimant was naturally concerned about the possibility of it being thought that there is no smoke without fire, and he felt obliged to convince recipients of the communications that the defendant's allegations are unfounded.

20. However, in this connection, and without wishing to appear unsympathetic, I also take into account the incoherent nature of the communications which recycle previous material, which range over a number of topics and which in most cases do not make any real sense. It seems unlikely that any of the recipients will read them or fully understand them and, even if they did, it seems unlikely that they would take what is said by the defendant seriously. Whilst the claimant's distress no doubt justified his application for an injunction, in that context, and in the context of the contempt application, judgments of the High Court have repeatedly said that the defendant's allegations are baseless and irrational. This must afford considerable comfort to the claimant given that it seems vanishingly unlikely that the defendant's allegations against him would cause anyone who matters to question his integrity or probity in any way.

21. I agree with Mr Samuels that the defendant's conduct is aggravated by the fact that he continued to send emails, which included repetitions of his allegations about the claimant, on multiple occasions between 20 May 2024 and the hearing on 12 September 2024. His behaviour continued even after DHCJ Eardley had held that it amounted to harassment and had made a final injunctive order against him. He also threatened to expand the circle of recipients, as I have noted. However, again, I note that the communications are rambling and incoherent and they contain a good deal of material other than specific allegations against the claimant. Again it seems very unlikely that they will in practice cause any significant harm to the claimant's reputation.

22. Secondly, at the hearing on 12 September 2024 the defendant clearly stated on affirmation that he would not send any further prohibited communications and that he understood the potential consequences if he did. This was a factor in my decision to postpone the determination of his sentence. Since then, he has continued to send emails, which include repetitions of his allegations against the claimant, albeit a good number of these were in the context of his appeal against my order, and I therefore agree with Mr Samuels that I should not treat these as a significant aggravating factor. The defendant has also sent emails to Mr Samuels' chambers and, it appears, the BSB and the SRA, which he is entitled to do, albeit these included prohibited allegations against the claimant, and it is not clear why it was necessary to include them if the

concern was about the conduct of the claimant's legal representatives. I therefore do not attach weight to these communications either.

23. As far as mitigation is concerned, the defendant is aged 60 and of previous good character in the sense that he does not have previous criminal convictions. He also has significant health conditions. There is no medical evidence that these materially affect his culpability but they are relevant to the effect on him of an immediate custodial sentence. Contrary to his protestations, he does not appear to be dying, but the medical evidence which he has submitted shows that he his conditions include Crohn's disease, type 2 diabetes, ankylosing spondylitis and coronary artery disease. He had a myocardial infarction and the insertion of a stent in November 2021 and he has impaired functioning of the left ventricle. He suffers from breathlessness and his ejection fraction was just 24 per cent at the time of his last echocardiogram. It is likely that he also has a degree of chronic obstructive pulmonary disorder and possible that he has interstitial lung disease. This is currently being investigated.

24. The defendant's GP says that his mental health is currently suffering and it is clear that there is a history of his abusing alcohol, which his GP says has worsened recently because of his current stress. He also has memory impairment and poor balance and depression and there are entries in his GP notes referring to depression in 2018 and suicidal thoughts in December 2022.

25. However, I note that the defendant has expressed no remorse for his actions nor any recognition of the seriousness of breaching an order of the court. On the contrary, he has persisted in breaching the Injunction and, as Mr Samuels pointed out, he appears to maintain that he is entitled to repeat his allegations against the claimant because he considers that it is in the public interest for him to do so.

26. I do not accept that there is any public interest in the defendant being permitted to breach the Injunctions ordered by Steyn J and then DHCJ Eardley or in the court failing to take action on his contempt of court. On the contrary, those judges took the public interest into account when they made their orders. The evidence is that the defendant has had every opportunity to state or report his concerns about the claimant to a range of public authorities who have an interest in preventing fraud and other

criminal activity, and indeed that the defendant has done so repeatedly over the course of a number of years. He has also placed his concerns before the courts on a number of occasions over the years. Those concerns have been considered and rejected, including by the courts which have found his allegations against the claimant to be baseless and/or irrational. The fact that the defendant is unable to accept this and move on does not provide a basis for concluding that he should not be sanctioned for contempt of court. On the contrary, the public interest is in orders of the court being obeyed.

27. In my judgment, the defendant's conduct is so serious that it is necessary to make an order committing him to prison for contempt of court. The shortest time necessary to reflect the seriousness of his conduct is four months on each of the 17 breaches to run concurrently. Mr Samuels argued with considerable force that there is no point in suspending the order for committal: the defendant's lack of remorse and his insistence that he should be entitled to pursue and repeat his allegations increase his culpability but they also demonstrate that he will inevitably continue to breach the Injunction, whereupon it will be necessary to activate the custodial term.

28. I accept that there is much to be said for imposing an immediate custodial term and I also accept that there is at least a strong likelihood that the defendant will simply breach the conditions which I will in a moment impose on him. I have, however, concluded that the defendant should be given a final chance. I do so bearing in mind the possibility that he will finally see sense now that he is under imminent threat of an immediate custodial sentence, and taking into account, of course, the issues in relation to his health.

29. In my view, the execution of the order for the defendant's committal should therefore be suspended for two years. The suspension will be on the condition that there are no further breaches by the defendant of the final injunction ordered by DHCJ Eardley during the period of two years from today's date. However, my order will also be without prejudice to the defendant's right to appeal my order, to correspond with the SRA and the BSB in connection with his complaints about the claimant's legal representatives or to respond to any request for information from a regulatory or other public authority arising out of his correspondence thus far, in other words correspondence prior to today's date. For the avoidance of doubt, this does not permit

him to initiate further correspondence: merely to respond to a specific request for further information from a specific public or enforcement authority.

30. I am also satisfied that the defendant has persistently issued applications which are totally without merit, including his applications in the context of his appeal from my decision of 12 September and the application which I determined today, and that a civil restraint order is appropriate to require him to seek the permission of the court if he is to make further claims or applications. This will apply to any further claims or applications which arise out of the subject matter of his dispute with the claimant and the claimant's wife, save that he will not be required to obtain permission to appeal my decision relating to the contempt application or relating to the civil restraint order.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC2A 1JE
Email: civil@epiqglobal.co.uk