Neutral Citation Number: [2024] EWHC 348 (KB)

Case No. KB-2023-BHM-000082

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil & Family Justice Centre
Bull Street, Birmingham B4 6DR

Date: 19 February 2024

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- -

Between :

RICHARD ACHILLE

Claimant

- and -

(1) PHILIP CALCUTT
(2) JANE CARRINGTON

Defendants

- -

Richard Achille appeared **in person**
Helen Bell (instructed by **Browne Jacobson LLP**) for the **Defendants**

Hearing dates: 22 & 29 November 2023

- -

Approved Judgment

This judgment was handed down remotely on 19 February 2024

by circulation to the parties and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Richard Achille is a qualified personal trainer, licensed tennis referee, basketball coach, and masseur. In 2014, he was an adult member of the Moseley Tennis Club in Birmingham. Following reports about Mr Achille's conduct at a junior tournament on 23 April 2014, his membership was first suspended and then terminated. By these proceedings, Mr Achille seeks to commit to prison the then club chairman, Philip Calcutt, and the then club secretary, Jane Carrington, for alleged contempt of court arising out of their handling of this issue. Specifically, it is alleged that they "doctored" emails received by the club raising concerns as to Mr Achille's conduct on 23 April and that they falsely asserted that the Lawn Tennis Association ("the LTA") had advised that Mr Achille be reported to the police.

2. By an application dated 25 September 2023, Mr Calcutt and Ms Carrington seek to strike out or stay the contempt proceedings. By his own application dated 8 October 2023, Mr Achille seeks permission to amend his contempt claim. Both applications came before me on 22 November 2023. I then ventured two important preliminary views:

   2.1 First, I indicated that, subject to argument, I considered that Mr Achille required the court's permission to bring these proceedings pursuant to r.81.3(5) of the Civil Procedure Rules 1998 and that it might be more convenient to consider the question of permission before considering the application to strike out or stay proceedings.

   2.2 Secondly, I observed that it was appropriate to consider the amendment application first since the court could not sensibly consider the questions of permission, strike-out or stay before identifying Mr Achille's case.

3. While I heard the parties on amendment and the need for permission on 22 November 2023, they were not then ready to argue the question of whether permission should be granted. I therefore adjourned the matter and heard further argument on 29 November 2023.

THE AMENDMENT APPLICATION

4. Mr Achille initiated these committal proceedings by issuing a Part 8 claim on 20 February 2023. The claim was supported by Particulars of Contempt of Court dated 18 February 2023. On 22 March 2023, Her Honour Judge Emma Kelly expressed concern as to the lack of clarity in Mr Achille's case and ordered that he should file and serve a revised schedule of allegations of contempt clarifying and particularising his case.

5. There are a number of different iterations of Mr Achille's case now before the court. In the course of his submissions, Mr Achille clarified that the final documents upon which he seeks to commit the defendants are the amended claim form at page 562 of the

hearing bundle, the Amended Particulars of Claim dated 30 March 2023 at page 565, and the Amended Scott Schedule wrongly dated but in fact served with a supplementary statement dated 24 April 2023 at page 356.

6. Helen Bell, who appears for the defendants, resists the application to amend. She argues that Particulars of Claim are not known to the Part 8 procedure. Further, she contends that the amended allegations have no real prospect of success, that Mr Achille has failed properly to explain why they were not made from the outset, and that they will cause manifest and obvious prejudice to the defendants in facing these allegations nearly a decade after the events took place. She argues that Judge Kelly's order required proper particularisation of the existing case and was not an invitation to add to the scope of the contempt claim. In any event, she submits that the amended particulars remain difficult to understand and fail properly to plead the basic ingredients of the committal application.

7. I did not call upon Mr Achille on the issue of amendment and I allow his application:

   7.1 It is true that Part 8 claimants are not required to file Particulars of Claim. The point is, however, semantic since the standard form requires them to give "details" of their claims and, in this case, Judge Kelly ordered that Mr Achille should give "particulars" of his case.

   7.2 These are not late amendments made shortly before a final hearing but rather amendments that were first proposed some months ago before the court has even considered the issue of permission. In principle, and subject to ensuring that the defendants are not thereby prejudiced, Mr Achille should be able to seek permission upon the case that he wants to put forward.

   7.3 Ms Bell is right to argue that the court should ordinarily refuse amendments where the new case does not have a real prospect of success or where the proposed amendment is incoherent or insufficiently particularised (as usefully summarised in Kawasaki Kisen Kaisha Ltd v. James Kemball Ltd [2021] EWCA Civ 33, at [17]-[18]). I am not, however, satisfied that the amended case is any less meritorious, coherent or particularised than the original pleading.

   7.4 The prejudice caused by facing this claim a decade after the key events does not arise from the amendments but is inherent in the original claim.

   7.5 Given that, for the reasons I explain below, Mr Achille requires the court's permission to bring this contempt claim, I consider that it is appropriate to allow the amendments and consider the merits of his case, the sufficiency of the particulars given, and the question of delay (not just in making the amended allegations but more broadly) at the permission stage.

   7.6 Furthermore, it is trite that the court does not ordinarily strike out a claim without first considering whether any defect in the case might be cured by amendment. It is therefore appropriate to consider the application to strike out this claim upon Mr Achille's final case. Any other approach would involve undesirable circularity.

8. By his final amended schedule, Mr Achille originally sought to pursue nine allegations of contempt. He now concedes that he cannot establish a strong prima facie case in respect of allegations 1, 4, 5, 7 and 8. Accordingly, Mr Achille only seeks to commit the defendants on four allegations. The remaining allegations are pleaded as follows:

No.	Date	Allegation	References in Particulars of Claim
2	On or around 28.5.14	D1 and D2 doctored alleged email complaints received from Simon Haddleton and Sean Kettle. Actions were contempt in the face of court by illegally interfering with the due administration of justice and violating CPR 32.14.	Paras 3, 7
3	4.6.14	D1 and D2 collected information and delivered the doctored emails from Simon Haddleton and Sean Kettle to C. Contemptuous as in 2 above.	Paras 3, 7
6	5.14	D2 informed D1 that the LTA on or about 29.4.14 & 1.5.14 requested involvement of police. Contempt in the face of court, illegal interference with the due administration of justice and violated CPR 32.14.	Paras 5, 9
9	26.6.17 – 27.11.17	D1 and D2 told their solicitors that the LTA requested police involvement, they used in D90BM137 defence. Triggering E90BM146 claim. Contempt in the face of court violating CPR 32.14.	Paras 5, 9

IS PERMISSION REQUIRED?

9. Rule 81.3(5) of the Civil Procedure Rules 1998 provides:

> "Permission to make a contempt application is required where the application is made in relation to—
>
> (a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;

(b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement."

10. Mr Achille agrees that permission is required. Indeed, his amended claim form and supporting documents expressly seek permission. Against that, Kevin Lawson's witness statement served in support of the defendants' application to strike out or stay these proceedings took no point on permission and argued that these committal applications were made in existing proceedings, namely claims A90BM255, A90BM307 and A90BM308. Such position was not maintained in argument before me, and Ms Bell did not seek to dissuade me from my preliminary view that permission is in fact required upon a proper application of r.81.3(5).

11. In my judgment, the parties are right to recognise that permission is required in respect of each of the allegations now pursued. Given the terms of Mr Lawson's evidence, the fact that the issue was raised by me, and the fact that Mr Achille is a litigant in person, it is appropriate briefly to explain the reasons for this conclusion.

ALLEGATIONS 2, 3 & 6

12. Allegations 2, 3 and 6 are not pleaded on the basis that the defendants made false statements in documents verified by statements of truth. Properly analysed, they are allegations of interference with the due administration of justice. Permission is therefore required pursuant to r.81.3(5)(a) unless the alleged interference was "in relation to existing High Court or county court proceedings."

13. In a number of cases the courts have had to grapple with the proper interpretation of "existing proceedings" in the exception to r.81.3(5)(a). The caselaw is principally concerned with the question of whether an application is in relation to "existing proceedings" once such proceedings have come to an end:

13.1 In Care Surgical Ltd v. Bennetts [2021] EWHC 3031 (Ch), Bacon J observed, at [7], that the rule distinguishes between an alleged contempt that relates to proceedings that have "come into existence" and contempt that relates to "intended proceedings" or does not relate to any proceedings in particular. Accordingly, the exception covers cases where proceedings have come into existence regardless of whether they are still pending or have been finally determined.

13.2 In YSA v. Associated Newspapers Ltd [2023] UKUT 00075 (IAC), Mark Ockleton observed in a judgment (with which Lane J agreed) that while the termination of proceedings may be irrelevant in cases like Care Surgical where the alleged contempt "relates so intimately to the conduct of the trial", it might be relevant in cases where the allegation arises from disobedience with an order made in concluded proceedings and where it could not be said that the alleged contempt had any effect on the proceedings at the time.

13.3 I recently considered the provision in UK Insurance Ltd v. Ali [2024[EWHC 30 (KB). In that case, the alleged contempt spanned a period before and after issue,

but it was not argued that the case thereby fell outside the existing-proceedings exception.

14. I agree with Bacon J that the rule distinguishes between the position where the allegation of contempt is in relation to proceedings that have come into existence and cases where the proceedings remain intended or indeed have never come into existence. Accordingly, the subsequent issue of proceedings does not mean that an earlier contempt was committed in relation to existing proceedings. There is some logic in such approach since otherwise the need for permission might change long after the alleged act or omission and turn upon the vagaries of whether proceedings are subsequently issued.

15. Mr Achille has issued a substantial number of claims in respect of the incident at the tournament and the subsequent conduct of the Moseley Tennis Club, its officials, a deputy head teacher, a school, and the LTA:

Claim number	**Parties**	**Issue date**
A90BM255	Achille v. King Edwards Camp Hill School for Girls	28.10.14
A90BM260	Achille v. Moseley Tennis Club	28.10.14
A90BM307	Achille v. Haddleton	12.12.14
A90BM308	Achille v. Kettle	12.12.14
B90BM167	Achille v. Dent	30.4.15
D90BM137	Achille v. Calcutt, Carrington & others	26.6.17
E90BM146	Achille v. LTA	9.7.18
F90BM036	Achille v. King Edwards Camp Hill School for Girls	20.2.19
KB-2023-BHM-000211	Achille v. Calcutt, Carrington, LTA, Haddleton, Kettle & others	22.8.23

16. Mr Achille contends that the doctoring of the emails interfered with the administration of justice in his defamation proceedings against Mr Haddleton and Mr Kettle (claims A90BM307 and 308). Further, the alleged dishonesty in asserting that the LTA had advised the club to report Mr Achille to the police is said to have interfered with the administration of justice in Mr Achille's claim against the LTA (E90BM146). No such proceedings had, however, been issued at the time of the conduct complained about in allegations 2, 3 and 6. Accordingly:

16.1 The alleged interference with the administration of justice was not in relation to court proceedings which were then existing.

16.2 The allegations are therefore rightly brought by a Part 8 claim rather than by application in some other proceedings: r.81.3(3).

16.3 Mr Achille is right to concede that permission is required pursuant to r.81.3(5)(a).

ALLEGATION 9

17. On its face, allegation 9 complains that the defendants instructed their solicitors that the LTA had requested police involvement. The allegation adds that such matter was then pleaded in the Defence in claim D90BM137. That is a reference to paragraph 42 of the Defence filed by Mr Calcutt, Ms Carrington and others which pleads that:

17.1 Matt Lea, a Safeguarding Officer at the LTA, advised Ms Carrington on or about 29 April 2014 that the club should report Mr Achille's conduct to the police: para. 42(1); and

17.2 Mr Lea repeated such advice on or about 1 May 2014: para. 42(3).

18. I suspect that the formulation of allegation 9 can be explained by the fact that the statement of truth in the Defence was signed by the defendants' solicitor. Where, however, a legal representative signs a statement of truth on behalf of a client, he will be taken as verifying that:

18.1 the client authorised him to do so;

18.2 before signing, he had explained that in doing so he would be confirming the client's belief that the facts stated in the document were true; and

18.3 before signing, he had explained the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts.

[See Practice Direction 22, paras 3.7-3.8.]

19. Indeed, I note that the allegation is dated between 26 June 2017 (being the date when claim DM90BM137 was issued against these defendants and five other people) and 27 November 2017 (being a few days after the date on the Defence in that action).

20. In Verlox International Ltd v. Antoshin [2023] EWHC 86 (Comm), Foxton J considered an allegation of contempt that the defendant had authorised and caused his solicitor to make a false statement. The judge referred to Practice Direction 22 and concluded that the requirement of permission could not depend upon the way in which the allegation was framed. I agree and repeat my observation in UK Insurance, at [27], that the need for permission cannot turn on the skill of the draftsman but must be approached on the basis of the true substance of the allegation.

21. In my judgment, the essence of allegation 9 is that the defendants are said to have made a false statement in their Defence, being a document that was verified by their solicitor.

That allegation is caught by r.81.3(5)(b) and accordingly the court's permission is required.

THE PROPER APPROACH TO PERMISSION APPLICATIONS

22. Permission should only be granted to make a contempt application where:

22.1 there is a strong prima facie case against the defendant;

22.2 the public interest requires the committal proceedings to be brought;

22.3 the proposed committal proceedings are proportionate; and

22.4 the proposed committal proceedings are in accordance with the overriding objective.

See Stobart Group Ltd v. Elliott [2014] EWCA Civ 564, at [44]; Berry Piling Systems Ltd v. Sheer Projects Ltd [2013] EWHC 347 (TCC), at [30].

STRONG PRIMA FACIE CASE

23. In considering the strength of the case, it is necessary to identify what will ultimately need to be proved:

23.1 Allegations 2, 3 & 6: Contempt by interference with the due administration of justice requires proof of an intention to bring about a state of affairs which, objectively construed, amounts to such interference : Connolly v. Dale [1996] Q.B. 20, at pp125H-126B, and Arlidge, Eady & Smith on Contempt, 5th Ed., at para. 11-25.

23.2 Allegation 9:

a) Contempt in respect of making a false statement requires proof of the falsity of the statement in question; that the statement has or would be likely to have interfered with the course of justice; and that, at the time the statement was made, the maker had no honest belief in its truth and knew of its likelihood to interfere with the administration of justice: AXA Insurance UK plc v. Rossiter [2013] EWHC 3806 (QB), at [9].

b) Lack of an honest belief in the truth of the statement can be established either by proof that the contemnor had actual knowledge that the statement was false or by proof of recklessness in the sense of making the statement without any idea as to whether it is true or false: Berry, at [28]. Optimism or mere carelessness is not, however, sufficient: Berry, at [30].

PUBLIC INTEREST

24. Judges have made clear in a number of cases that considerable caution is required in considering whether committal proceedings are in the public interest:

24.1 In KJM Superbikes Ltd v. Hinton [2008] EWCA Civ 1280, [2009] 1 W.L.R. 2406, Moore-Bick LJ observed, at [17]:

> "In my view the wider public interest would not be served if courts were to exercise the discretion too freely in favour of allowing proceedings of this

> kind to be pursued by private persons. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not, and although the rules do not prescribe the class of persons who may bring proceedings of this kind, the court will normally wish to be satisfied that the applicant was liable to be directly affected by the making of the statement in question before granting permission to bring proceedings in respect of it. Usually the applicant will be a party to the proceedings in which the statement was made, but I would not exclude the possibility that permission might be granted to someone other than a party if he was, or was liable to be, directly affected by it. In my view there is also a danger of reducing the usefulness of proceedings for contempt if they are pursued where the case is weak or the contempt, if proved, trivial. I would therefore echo the observation of Pumfrey J in the Kabushiki Kaisha Sony Computer Case [2004] EWHC 1192(Ch) at [16] that the court should exercise great caution before giving permission to bring proceedings. In my view it should not do so unless there is a strong case both that the statement in question was untrue and that the maker knew that it was untrue at the time he made it. All other relevant factors, including those to which I have referred, will then have to be taken into account in making the final decision."

24.2 In Cavendish Square Holdings BV v. Makdessi [2013] EWCA Civ 1540, Christopher Clarke LJ observed, at [79], that permission applications should be approached with "considerable caution" and that it is not in the public interest that such applications should become a regular feature in cases where at or shortly before trial it appears that statements of fact in pleadings may have been untrue.

25. Mr Achille is right to submit that subjective motive is not relevant in private committal applications for breach of orders or undertakings: Navigator Equities Ltd v. Deripaska [2021] EWCA Civ 1799, [2022] 1 W.L.R. 3656. Indeed, as Carr LJ (as she then was) observed at [123], there will nearly always be a degree of animus between parties to a civil committal application. This is, however, an application for permission to bring public law proceedings (defined by Carr LJ as committal proceedings other than for breach of an order or undertaking) and, in accordance with KJM, the court can and should guard against the risk of vindictive litigants using such public proceedings to harass those against whom they have a grievance.

26. In Stobart, Gloster LJ gave the following guidance in respect of false statement cases at [44(vii)]:

> "In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bringing home to the profession and through the profession to witnesses the dangers of knowingly making false statements."

PROPORTIONALITY & THE OVERRIDING OBJECTIVE

27. Gloster LJ added in Stobart, at [44(vi)]:

> "In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective - see Berry Piling, at [30(d)]."

28. In Berry, Akenhead J observed at [37]:

> "Whilst of course there is a public interest in pursuing people who have deliberately or even recklessly misled the court, that must be weighed in what is at best a marginal case by the proportionality of the exercise; proportionality is measured in a case like this largely by reference to the cost and time likely to be involved."

29. Delay in bringing contempt proceedings can be a significant factor: Barnes v, Seabrook [2010] EWHC 1849 (Admin), at [47]. Further, the court must consider the case against each defendant and upon each ground separately: Patel v. Patel [2017] EWHC 1588 (Ch); Attorney General v. Yaxley-Lennon [2019] EWHC 1791 (QB), [2020] 3 All E.R. 477, at [98].

THE APPLICATION FOR PERMISSION

ARGUMENT

30. As to allegations 2-3, Mr Achille points to the fact that Mr Calcutt has admitted altering the emails. He asserts that Mr Calcutt's email of 15 May 2014 showed that he and other committee members expected possible legal action. He points out that the complaints concerned safeguarding issues and that police involvement was requested. He therefore characterises the matter as quasi-criminal and argues that this underlines the importance of not altering the evidence. He contends that Mr Calcutt's actions "took away" the lack of professionalism in the emails and dramatically affected his claim for reputational damage.

31. As to allegations 6 and 9, Mr Achille relies on the fact that the LTA gives a different account in that, at paragraph 33 of its Defence in claim E90BM146, it pleaded:

> "Further or alternatively, if, which is denied, Matthew Lea encouraged [Moseley Tennis Club] to report [Mr Achille] to the police and thereby subjected [him] to a detriment, it is denied that this was because [Mr Achille] had done protected act or because Mr Lea believed [he] had done or may do a protected act."

32. Further, Mr Achille relies on an email from Phil Doorgachurn, the Safeguarding Manager at the LTA, sent on 20 May 2014 in which the Association advised:

> "The club called initially to inform the LTA about your alleged behaviour at the tournament in question. They wanted to know if they should call the police. Mat advised that it may not be something the police investigate."

33. Mr Achille argues that both accounts cannot be right, and the court needs to come to a definitive view.

34. Mr Achille insists that he has acted proportionately and with restraint. He points to the fact that he withdrew two allegations in his skeleton argument filed in advance of the adjourned hearing. Further, in the course of oral argument, Mr Achille accepted that he could not establish a strong prima facie case in respect of three further allegations. Consequently, he only now seeks the court's permission to proceed with four of the nine allegations pleaded in his amended particulars. Mr Achille submits that he has demonstrated a willingness and ability to review his case objectively and to withdraw allegations that were not sustainable. Further, he argues that these proceedings are proportionate in that they are only brought against two committee members.

35. He submits that these proceedings are in the public interest given the great importance of truthfulness in safeguarding issues. He points to the risk of untruths in the sensitive area of safeguarding escalating from rumours to violence and even death. He insists that he can be dispassionate, that he has knowledge of safeguarding issues and that he is willing to act. He argues that it would breach his Article 6 rights not to allow his case to go forward.

36. Ms Bell argues that the allegations fall a very long way short of the strong prima facie case that is required:

    36.1 As to allegations 2 and 3, she submits that there is no evidence that Ms Carrington had any part in the editing of the emails. She asserts, by reference to Mr Calcutt's Defence in the High Court conspiracy claim issued against him and others in 2023, that his intention was to provide Mr Achille with the "essence of the complaints" whilst seeking to avoid his taking offence and protecting the identities of a mother (referred to below as CD) and Tim Linton. Further, she points out that no proceedings had been issued against Mr Haddleton or Mr Kettle at the time of the matters complained of and that there is no evidence that Mr Calcutt had knowledge of Mr Achille's intention to bring defamation proceedings.

    36.2 As to allegations 6 and 9, she argues that there is no inconsistency between the pleaded cases of the club and the LTA.

37. Ms Bell relies on the fact that Mr Achille has been the subject of two civil restraint orders; a limited civil restraint order made in January 2019 and an extended civil restraint order made in March 2022. She submits that Mr Achille is using the repeated issue of proceedings as a means of harassing the defendants because of their involvement in his suspension and expulsion from the club. She submits that he is plainly not a proper person to bring the contempt claim. Further, she argues that the

claim is an abuse of process and should in any event be struck out under all three limbs of r.3.4(2).

38. Ms Bell submits that there has been clear and significant delay since March 2019 when Mr Achille first became aware of the unredacted emails. She points to the likely total costs of these proceedings and submits that they are disproportionate.

39. Mr Achille responds that the contempt application is not abusive and insists that there has been no trial on the merits of these matters. Indeed, he counters that it is an abuse to continue to hold previous civil restraint orders against him.

ANALYSIS

A strong prima facie case: allegations 2-3

40. The alleged amendments to the emails from Sean Kettle and Simon Haddleton are plainly central to these allegations and I must now carefully consider the full unredacted emails and the amendments made. When I do so, and mindful of the sensitivity in this case, I do so without correcting or highlighting any apparent typographical errors.

41. Sean Kettle, the tournament referee, emailed Mr Calcutt on 23 April 2014 raising his concerns about Mr Achille's conduct. His email was copied to the club's head coach, Tim Linton. Mr Kettle wrote:

> "Following our phone conversation earlier I have briefly written down today's events briefly. Of course this is a matter for Moseley TC and the LTA may hold their own investigation.
>
> - I was slightly concerned with the actions of a member, who had no partner to play with and made no intention to phone/practice with anyone.
> - He came as the boys were finishing and the girls tournament having started.
> - I overheard him offering personal gym lessons to a 14 year old girl and lessons, (for which I don't think he is qualified) and certainly not allowed to do regardless.
> - He also took number and email of that parent; Tim and I later spoke to that parent and made her aware of the situation once he had left.
> - It appeared that he had been in effect searching the players of the tournament online and their results and was engaging in conversation with their parents and asking ages etc.
> - I enquired to parents if they had any about idea of him, and none had, yet it appeared he was making it aware that he knew the players.
>
> I consider this is a matter that is now in the hands of Moseley TC and understandably you required an independent onsite witness.
>
> If you require any further information do not hesitate to contact me by phone or email.

Kind Regards

Sean Kettle"

42. On 25 April, the tournament organiser, Simon Haddleton, emailed Mr Linton about the same incident. Save that I have anonymised the details of players who were then children, the email read:

"Hi Tim,

Hope you are well.

This is just a quick e-mail regarding the tournament at Moseley on Wednesday. During the afternoon I received a phone call from my referee Sean Kettle explaining that there was a 'strange' man at the tournament who claimed to know me and was talking to the parents at the event in a derogatory manner about myself. Having met Richard just a couple of times I instructed Sean to completely ignore him and hope that he would go away, it appears that he stayed for some time.

On the evening I received a phone call from [AB]'s mom, [CD], who wanted to know a little but more information about this man and was concerned that he may be dangerous after she had given her contact details to him. He claimed that he had come to watch [AB] as she is a really good player and encountered her at the Warwickshire County Closed last year. I find this slightly bizarre as the match times were not published on the internet so he must have done a fair amount of research to find out where and when she was playing. [AB] claims to have never met him before. He was speaking to [CD] about how he was working with [EF] at The Edgbaston Priory Club and as well as being a hitting partner was also doing some strength and conditioning work with him and he was encouraging [CD] that this would be the right thing for [AB] to do as she is a 'tall, athletic looking girl'. Having subsequently spoken to [EF]'s father it appears that this is a fabrication.

I just wanted to make you and the club aware of this as I have encountered Richard a few times and find him extremely odd and if I am perfectly honest I do not feel comfortable with him hanging around my tournament sites.

If you require any further information please get in touch as otherwise I believe that we have had a fantastic event.

Kind Regards

Simon"

43. The club's committee suspended Mr Achille pending a meeting to discuss these matters on 30 April 2014. His membership was subsequently terminated.

44. On 4 June 2014, the club responded to Mr Achille's subject access request by, among other matters, forwarding him a Word document entitled "tennis emails 28 April." That document started with the following text:

"**Summary and timeline**

> Over the last five months, an ex-member of the Moseley Tennis Club whose membership was removed has made a series of allegations of racial discrimination against the club and committee members which are totally unfounded.
>
> 1. Concern was reported to the club's coach about the behaviour of Richard Achille, an adult member of the club at a junior tournament on 23 April 2014 relating to the safeguarding of juniors.
>
> The tournament referee emailed the club about Mr Achille's behaviour with a junior girl:"

45. Mr Kettle's email of 23 April was then copied and pasted into the document at that point, albeit with four amendments:

    45.1 First, the opening paragraph was amended to delete reference to an earlier telephone conversation.

    45.2 Secondly, the first bullet point was cut a little short by deleting the words "phone/practice with anyone".

    45.3 Thirdly, the words "Tim and I later spoke to that parent and made her aware of the situation once he had left" were deleted.

    45.4 Fourthly, the final sentence offering further assistance was deleted.

46. The email from Mr Haddleton was then copied and pasted but again with a number of amendments:

    46.1 First, the adjective "strange" was deleted so that it simply reported that Mr Kettle had said that there was "a man" at the tournament.

    46.2 Secondly, CD's concern that Mr Achille might be "dangerous" was excised.

    46.3 Thirdly, Mr Haddleton's observation that he had encountered Richard a few times and had found him "extremely odd" was deleted.

    46.4 Fourthly, Mr Haddleton's final paragraph offering further information and observing that this was otherwise a fantastic event was deleted.

47. The narrative then continued:

> "2. After the incident and concerns expressed by external independent visitors about Mr Achille's behaviour, the club initiated a temporary suspension of membership and arranged a meeting on 30 April with Mr Achille and the majority of the Executive Committee and the club's Child Protection Officer."

48. An email inviting Mr Achille to the meeting on 30 April was then copied and pasted into the document. There was finally a stray email header dated 28 April.

49. The metadata indicate that Mr Calcutt created the Word document and suggest that the Word document was created and last saved on 28 May 2014. Against that, I observe that the filename indicates that the document might have been originally created on 28 April. That is at least possible given that it appears to deal with matters up to 28 April and before the committee's meeting with Mr Achille on 30 April. Further, I note that the metadata describe the document as revision 2 and do not record any editing time on 28 May. Against that, Mr Achille only became an "ex-member" subsequently when his membership was terminated. I infer that if the document was originally created on or around 28 April then it was only finalised later.

50. The first three amendments to Mr Haddleton's email were all of a kind. They excised Mr Kettle's observation that Mr Achille was "strange", the mother's concern that he might be "dangerous", and Mr Haddleton's own assessment that he was "extremely odd." Each is a somewhat pejorative comment that risked generating more heat than light and the obvious inference from the evidence before me is that, when summarising the complaints and issues for the committee, these amendments were made in order to focus on the real issue raised by Messrs Kettle and Haddleton. The fourth deletion was not material.

51. The amendments to Mr Kettle's email were less significant. Subject to contrary evidence, I infer that the amendments were broadly intended to remove references to other conversations so that the extracts quoted from the email simply set out Mr Kettle's own concerns and observations.

52. In order to obtain permission to pursue these allegations, Mr Achille must satisfy me that there is a strong prima facie case that Mr Calcutt and Ms Carrington acted in contempt of court in that they interfered with the administration of justice by making such amendments on or about 28 May 2014 and then by providing the Word document to Mr Achille on 4 June 2014. In my judgment, Mr Achille gets nowhere close to making out such a case:

    52.1 I accept that there is a strong prima facie case that Mr Calcutt created the Word document and was responsible for responding to the subject-access request.

    52.2 Mr Achille has wholly failed to prove a strong prima facie case that Ms Carrington had any involvement in the creation or dissemination of the document.

    52.3 It is not accurate to say that Mr Calcutt "doctored" or (to use less pejorative language) amended the emails. The Word document was a narrative document summarising the situation following receipt of the complaints. I infer that it was prepared for the committee. It helpfully and accurately copied the substance of the emails into a single document. One could argue that Mr Calcutt should have made clear that he was quoting selectively from the emails but I consider that the obvious inference is that his purpose was to remove unnecessary pejorative comments and third party discussions and focus the attention of the committee on those matters that Mr Kettle and Mr Haddleton had witnessed.

    52.4 Even if am wrong to draw such benign inferences in the defendants' favour, a person is not in contempt of court simply by amending an email before sending it on to a third party. Indeed, there were no proceedings on foot in May and June

2014 and accordingly the compilation of the Word document and its subsequent provision to Mr Achille following his subject-access request were not acts committed in the course of any court proceedings. In my judgment, Mr Achille has wholly failed to establish a strong prima facie case that these defendants amended the emails and provided them to him with the intention of bringing about a state of affairs which, objectively construed, amounted to an interference with the administration of justice.

52.5 I accept that the club ought to have provided the full unedited emails as well as the Word document when responding to the subject-access request. Any breach of the club's obligations under the then applicable provisions of the Data Protection Act 1998 does not, however, place these defendants in contempt of court.

A strong prima facie case: allegations 6 & 9

53. Whatever might have been intended, I accept that the club and the LTA have pleaded contradictory positions on the question of the LTA's advice. The simple position is that Mr Calcutt and Ms Carrington have asserted that the LTA advised the club to report matters to the police whereas the LTA appears to dispute that account. It is not unusual in litigation to have a difference of recollection or understanding between different parties to a telephone conversation. That of itself does not start to justify contempt proceedings. Mr Achille has placed no evidence before the court that establishes a strong prima facie case that Ms Carrington is not just wrong in her recollection or understanding of the telephone conversation with Mr Lea in late April 2014 but that she intended to bring about a state of affairs which, objectively construed, amounted to an interference with the administration of justice by falsely reporting the position to Mr Calcutt. Equally there is no evidence that she knowingly made a false statement about that conversation in her Defence in claim D90BM137.

54. Further, there is no evidence whatever to establish a strong prima facie case against Mr Calcutt who was not himself party to the telephone conversation and would necessarily have been dependent on what he was told about it by Ms Carrington.

Other factors

55. Accordingly, the applications for permission fall at the first hurdle and it is not strictly necessary to consider public interest, proportionality, or the overriding objective. I am, however, in no doubt whatever that the public interest will not be served by allowing these committal proceedings to be brought:

55.1 Even if I am wrong to conclude that there is no evidence of contempt in respect of allegations 2, 3 and 6, such allegations have, at best, a tenuous connection with the administration of justice.

55.2 Contrary to Mr Achille's view, these matters are not of the highest importance:

a) It is not in the public interest to litigate through contempt proceedings the question of why Mr Calcutt quoted selectively from two emails in a document that was not produced for court proceedings.

b) Likewise it is not in the public interest to litigate through contempt proceedings the question of whether Ms Carrington or the LTA is right about any advice given in a telephone conversation almost ten years ago.

55.3 These contempt proceedings seek to litigate yet again the issues arising from the tennis tournament in April 2014. There have already been no fewer than eight claims in the County Court and one High Court claim arising from these or connected matters. It is not in the public interest that these matters be further litigated through contempt proceedings almost a decade after the key events.

55.4 I accept that Mr Achille has a very strong and genuine sense of grievance about how he was treated by the tennis club. Further, I acknowledge that he has demonstrated the objectivity to analyse his case and withdraw certain allegations which, on reflection, he now accepts cannot be pursued. He has, however, been deeply affected by the fall-out from these matters and a decade of litigation. Indeed, there is medical evidence before the court from Dr Vandenabeele formally diagnosing him with a moderate depressive disorder. He has, regrettably, become somewhat obsessed by these issues. Such obsession endures notwithstanding the passage of time and earlier civil restraint orders. While I do not intend to cast any wider aspersions as to his character, I am satisfied that, notwithstanding the concessions he made in argument, he is not a proper person to litigate these contempt proceedings.

56. Further, I have no doubt that these proceedings are disproportionate and are not brought in accordance with the overriding objective. As already recorded, Mr Achille has brought no fewer than nine other claims in respect of these and connected events. His pursuit of his grievances through the courts has long since ceased to be proportionate. Indeed, I repeat my conclusion that the matters in respect of which he now alleges that the defendants are in contempt of court (being the edited copying and pasting into a Word document of the salient parts of two emails and a dispute as to whether the LTA did or did not advise the club to contact the police) are not matters of the highest importance.

OUTCOME

57. For the reasons explained in this judgment:

57.1 Permission is granted to Mr Achille to amend his contempt claim.

57.2 Each of the allegations now pursued requires permission of the court pursuant to r.81.3(5).

57.3 Permission is refused to bring these proceedings and they are therefore dismissed.

57.4 I certify that these contempt proceedings and the applications for permission pursuant to r.81.3(5) were totally without merit.

57.5 It is not therefore necessary to consider the defendants' application to strike out or stay the proceedings.

58. In view of my conclusion that these proceedings and the applications for permission were totally without merit, I am required by law to consider whether I should make a

civil restraint order pursuant to Practice Direction 3C. Upon handing down this judgment, I shall give appropriate case management directions for the determination of that issue.