Neutral Citation Number: [2022] EWHC 1123 (QB)

Case No: QB-2021-003094

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2022

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

(1) MBR Acres Limited
(2) Demetris Markou
(for and on behalf of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited pursuant to CPR 19.6)
(3) B&K Universal Limited
(4) Susan Pressick
(for and on behalf of the officers and employees of B&K Universal Limited, and the officers and employees of third party suppliers and service providers to B&K Universal Limited pursuant to CPR 19.6)

Claimants/ Applicants

- and -

(12) Michael Maher (aka John Thibeault)
(13) Sammi Laidlaw

Defendants/ Respondents

- -

Caroline Bolton and **Natalie Pratt** (instructed by **Mills & Reeve LLP**) for the **Applicants**
Ashley Underwood QC (instructed by **Scott-Moncrieff & Associates Ltd**) for the **Respondents**

Hearing dates: 6-7 April 2022

- -

Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by e-mail and release to The National Archives. The date and time for hand-down is deemed to be 10.30am on 16 May 2022.

The Honourable Mr Justice Nicklin :

1. This is the judgment following a contempt application made against the two Respondents for alleged breaches of an injunction order that was granted on 10 November 2021 ("the Injunction"). The judgment handed down on that date ([2021] EWHC 2996 (QB)) explains the terms in which the Injunction was granted. It also sets out the background and circumstances in which the Injunction was sought and imposed.

2. The hearing that led to the grant of the Injunction took place on 4 October 2021. That hearing was attended by the Thirteenth Defendant ("Ms Laidlaw"), she was also represented by solicitors, Cohen Cramer. The Fourteenth Defendant ("Mr Maher"), at that stage identified as "John Thibeault", did not attend the hearing, and, at that stage, he was not represented. Judgment was reserved and handed down on 10 November 2021. Neither Ms Laidlaw nor Mr Maher attended the hearing on 10 November 2021. That is a point potentially of some significance as regards Ms Laidlaw. There was some discussion, at the hearing on 4 October 2021, of a possible exclusion zone being imposed, to a width 10 metres either side of the entrance to the Wyton Site and up to the mid-point of the carriageway. It was not until judgment was handed down on 10 November 2021 that the final dimensions of the exclusion zone were finalised. The width was extended to 20 metres either side of the gate.

3. The principal issue of contention between the parties is, after the introduction of the new CPR Part 81 in October 2020, whether (unless the Court permits alternative service or dispenses with service) an injunction order is required to be served personally on a defendant who is represented by solicitors before s/he can be found to be in contempt of court for alleged breach of the order or whether the effect of the CPR is to require that the injunction order be served on his/her solicitors.

A: Terms of the Injunction Order of 10 November 2021

4. The Injunction restrained both named Defendants to the proceedings – including these two Respondents – and certain categories of "Persons Unknown" as then defined.

5. So far as concerned the named Defendants, Paragraph 1 of the Injunction provided (so far as material):

> "The [named] Defendants **MUST NOT**:
>
> (1) enter into or remain upon the following land:
>
> i. the First Claimant's premises known as MBR Acres Limited, Wyton, Huntingdon PE28 2DT as set out in Annex 1 (the 'Wyton Site'); …
>
> (2) enter into or remain upon the area marked with black hatching on the plans at Annex 1 … (the 'Exclusion Zone'), save where … accessing the highway whilst in a vehicle, for the purpose of passing along the highway only and without stopping in the Exclusion Zone, save for when stopped by traffic congestion, or any traffic management arranged by or on behalf of the Highways Authority, or to prevent a collision, or at the direction of a Police Officer.

(3) park any vehicle, or place or leave any other item (including, but not limited to, banners) anywhere in the Exclusion Zone;

(4) approach and/or obstruct the path of any vehicle directly entering or exiting the Exclusion Zone (save that for the avoidance of doubt it will not be a breach of this Injunction Order where any obstruction occurs as a result of an emergency).

6. Definitions, set out in Schedule A to the Injunction, provided:

> "The 'Exclusion Zone' is… for the purpose of the Wyton site, the area with black hatching at Annex 1 of this Order measuring 20 meters in length either side of the midpoint of the gate to the entrance of the Wyton site and extending out to the midpoint of the carriageway…"

7. Annex 1 to the Injunction was a plan of the Wyton Site marked with the Exclusion Zone around the entrance to the First Claimant's premises. Annex 1 included boxes containing annotations. One of those provided:

> "Exclusion zone in black crosshatched area is 20 metres either side of the centre of the Gate to the Wyton Site marked by posts on the grass verge up to the centre of the carriageway."

8. The Claimants did not have an address for service for Mr Maher. The Injunction also granted the Claimants permission, under CPR 6.15 and 6.27, to serve the Order on Mr Maher via his Facebook account. Apart from further orders granting permission for alternative service on the Fourth, Eleventh and Fourteenth Defendants, the Claimants sought and obtained no other orders regarding service of the Injunction and did not mention, at the hearing, how they were proposing to serve the other named Defendants. I will return to this point below.

B: Service of the Injunction on the Respondents

(1) Mr Maher

9. Mr Maher was served by the alternative method permitted under the Injunction Order. The following Facebook message was sent to Mr Maher (albeit addressed to John Thibeault) at 17.27 on 15 November 2021 ("the Facebook Message"):

> "1. By way of service, we have arranged for the Order of Mr Justice Nicklin dated 10 November 2021 ('the Injunction Order') to be uploaded to the shared file website we have notified you of previously (set out below at paragraph 6 for convenience). The Injunction Order has been uploaded under the title of '2021.11.10 Injunction Order of Mr Justice Nicklin'.
>
> 2. We are permitted to serve the Injunction order on you by Facebook message pursuant to paragraph 17(c) of the Injunction Order. Please consider the contents of the Injunction Order carefully including the Penal Notice set out at the top of the Injunction Order.
>
> 3. As we have set out in our communications to date, we recommend that you seek independent legal advice. If you wish for this firm to communicate with

you by email or at a physical address, we would be grateful if you could provide contact details.

4. Please note that the Injunction Order contains a Penal Notice which means that:

(a) you are bound by the terms of the Injunction Order; and

(b) if you disobey or instruct or encourage others to breach the Injunction Order, you may be held to be in contempt of Court and may be imprisoned, fined or have your assets seized.

5. Pursuant to paragraph 1 of the Injunction Order, no Defendant including you or those that fall within the definitions or the Tenth and Fifteenth to Seventeenth Defendants is permitted to either by themselves or by instructing or encouraging others to:

(a) enter;

(b) park any vehicle, or place or leave any other item (including, but not limited to banners) anywhere;

(c) approach and/or obstruct the path of any vehicle directly entering or exiting

the Exclusion Zone marked in [Annex 1] of the Injunction Order save for the exceptions set out in paragraph 1 of the Injunction Order. The Exclusion Zone comprising the verge to the highway at the Wyton Site will be clearly marked with posts and/or a line and will extend to the middle of the carriageway.

6. Documents which have been served by the Claimants in the proceedings are available on the shared file website we have notified you of previously, namely [Dropbox address given]."

10. The message was read by Mr Maher at 22:20 that same day. Mr Maher simply responded with an emoji with a tear.

(2) Ms Laidlaw

11. Ms Laidlaw instructed solicitors, Cohen Cramer, to act on her behalf in the proceedings. Cohen Cramer filed an Acknowledgement of Service indicating that they were acting on Ms Laidlaw's behalf on 30 September 2021.

12. The Claimants' solicitors did not serve the Injunction on Ms Laidlaw personally. Instead, they served it only on her solicitors, Cohen Cramer, by sending it by recorded delivery on 15 November 2021. It was received by Cohen Cramer on 17 November 2021. The letter serving the Injunction simply stated: "*We enclose by way of service on your respective clients the Order of Mr Justice Nicklin dated 10 November 2021*". Service of the Injunction only on Cohen Cramer, and not personally on Ms Laidlaw, was not an oversight by the Claimants' solicitors, but a conscious decision. In a witness statement provided during the hearing of the contempt application, the Claimants' solicitor, Simon Pedley explained:

> "… I can confirm that I was aware of the long-standing practice that if one wanted to enforce an order by contempt proceedings, that order would ordinarily be personally served. However, we considered the issue carefully and the application of the new CPR 81 and interaction between CPR Part 6 and we concluded that in order to effect proper service of the injunction order on Ms Laidlaw we had to serve it on her solicitors, Cohen Cramer, as they had gone on the record for her and thereby provided their address as the correct address for service."

13. There was no mention, at the hearing on 10 November 2021, that this was the Claimants' lawyers' understanding of how the Injunction was now to be served upon the named Defendants who were represented by solicitors. As will become apparent from the rest of this judgment, had I been alerted to this point on 10 November 2021 and for the avoidance of any doubt, I would have included in the Injunction a specific requirement that the order be personally served on all named Defendants unless, exceptionally, there were grounds upon which an order for alternative service could be justified.

14. Mr Pedley's witness statement does not disclose whether the Claimants' lawyers had reached their novel interpretation of the requirements for service of the Injunction order before the hearing on 10 November 2021 or after. It is clear, however, that in the letter of 15 November 2021, the Claimants' solicitors did not advise Cohen Cramer that they were not intending personally to serve the Injunction upon the Defendants represented by Cohen Cramer. Nor did the letter state that, in Mills & Reeve's view, the changes to the procedural rules meant that service upon Cohen Cramer of the Injunction was a sufficient (and indeed, only permitted) method of service by the CPR.

15. One thing is clear. Some of the issues that have arisen in this contempt application could have been avoided if the Claimants' solicitors had been a little more candid about their interpretation of what was required by the procedural rules.

16. There is no dispute that, subsequently, Ms Laidlaw was personally served with the Injunction when it was included as one of the supporting documents accompanying the First Contempt Application that was served personally upon Ms Laidlaw on 27 December 2021. In respect of the Second Contempt Application, therefore, there is no dispute that Ms Laidlaw had been personally served with the Injunction.

C: The Contempt Applications in this case

17. The Claimants have issued two Contempt Applications. The first, dated 17 December 2021, alleges that both Respondents have breached the Injunction ("the First Contempt Application"). The second, dated 16 February 2022, alleges that Ms Laidlaw has committed further breaches of the Injunction ("the Second Contempt Application"). Full particulars of the alleged breaches of the Injunction by the Respondents were given in the grounds to both Contempt Applications. In summary:

    i) Mr Maher is alleged, by the First Contempt Application:

        a) to have approached and/or obstructed the path of two vehicles directly exiting the Exclusion Zone on 20 November 2021; and

        b) to have entered the Exclusion Zone on 20, 22, 24 and 29 November 2021.

ii) Ms Laidlaw is alleged, by the First Contempt Application:

a) to have approached and/or obstructed the path of two vehicles directly exiting the Exclusion Zone on 20 November 2021;

b) to have entered the Exclusion Zone on 21 and 24 November 2021; and

iii) Ms Laidlaw is alleged, by the Second Contempt Application, to have approached and/or obstructed the path of three vehicles directly exiting the Exclusion Zone on two occasions on 6 January 2022.

18. Both Contempt Applications are supported by evidence given by affidavit, which includes video evidence in respect of each alleged breach.

19. Neither Contempt Application was issued using the prescribed form N600. Beyond being told that this was deliberate, I have not received a satisfactory explanation why the Claimants chose to use a standard N244 Application Notice. Although it appears that use of the N600 form is not mandatory when making a contempt application, in my judgment, the N600 form ought to be used unless there are compelling reasons justifying not doing so. The form is standardised and has been framed, deliberately, to set out the information that is required to be provided under CPR 81.4(2) to ensure procedural fairness (see further [59] below). The N600 also contains important information to the respondent about his/her rights.

20. One consequence of the failure to use the N600 form is that neither Application Notice contains confirmation of the date on which the order alleged to have been breached was personally served on the defendant. This may explain why the Claimants did not use the N600 form. The Application Notices used by the Claimants also failed to include a statement that the order alleged to have been breached contained a penal notice (although this information was provided in the separate "Grounds of Application" that accompanied the Application Notice).

D: The position of the Respondents

21. By Order dated 19 January 2022, the Respondents were given an opportunity to set out any grounds of resistance to the Contempt Applications made against them. The purpose of this was – rather like a Defence Statement in criminal proceedings – to identify and narrow the issues in dispute between the parties.

22. Pursuant to that Order, each Respondent filed a "Defence Statement" on 9 March 2022.

23. Mr Maher:

i) required the Claimants to prove, beyond reasonable doubt, that following service of the Injunction he "*knew exactly what conduct would amount to breach of [the] order*";

ii) contended that he had not been able to access the Injunction via the Dropbox link provided by in the Facebook Message and the message itself gave a misleading description of the terms of the Injunction, particularly the width of the Exclusion Zone; and

iii) denied that he had breached the Injunction as alleged or at all and put the Claimants to proof that he had:

> "… of free will, without reasonable excuse, entered the Exclusion Zone [and/or obstructed the path of the vehicles], to what extent the reasonable bystander, with my personal attributes, who had been provided the information I had been provided, without legal training or advice, would understand that zone to be [and that the vehicles were directly exiting that zone], that I intended to breach the Court order, and that the breach was more than *de minimis*, or without lawful excuse such as to amount to a breach of the Court order, requiring a finding of contempt of court, and punishment."

24. Ms Laidlaw:

i) contended that she had not been personally served with the Injunction prior to the alleged breaches of that order made in the First Contempt Application; and

ii) denied that she had breached the Injunction as alleged or at all and put the Claimants to proof in similar terms to Mr Maher.

25. There is no issue that, for the purposes of the Second Contempt Application, Ms Laidlaw had been personally served with the Injunction on 27 December 2021 (see [16] above).

26. Although Mr Maher had originally raised a challenge to the effectiveness of the service of the Injunction on him (on the grounds that he had not actually been able to access the Injunction via the link provided), by the end of the hearing Mr Maher no longer challenged that he had been properly served with the Injunction. That concession was realistic in light of the authority of ***Cuciurean -v- Secretary of State for Transport*** **[2021] EWCA Civ 357**.

27. In some cases, the need to secure compliance with a lawful injunction order will justify the Court granting permission to serve the injunction order by means other than personal service. In ***Cuciurean***, the Court of Appeal held that if an order for alternative service has been made, and its terms complied with, then the respondent will have been given sufficient notice of the injunction order to sustain a contempt application. Thereafter, if s/he is found, to the necessary standard, to have breached the terms of the order, the defendant will be held to be in contempt of court.

28. But that is not an end of the matter. If such 'deemed' notice is unfair on the facts of any individual case, there are two safeguards.

i) First, in an appropriate case, a respondent can apply to set aside the alternative service order. As the Court of Appeal noted in ***Cuciurean***, on any application for an order for alternative service, the Court must be satisfied that such an order is justified by evidence and an appropriate order to make. Fundamentally, the Court will not grant an order for alternative service unless satisfied that the proposed method of service is such as can reasonably be expected to bring the order to the attention of the defendant: ***Cameron -v- Liverpool Victoria Insurance Co Ltd*** **[2019] 1 WLR 1471** [21] *per* Lord Sumption; and ***Ineos Upstream Ltd -v- Persons Unknown*** **[2019] 4 WLR 100** [34(3)] *per* Longmore LJ. Too liberal an approach to alternative service orders increases

the risk that respondents to injunction orders will not actually receive notice of what the Court has ordered them to do. In turn, that risks generating costly satellite contempt applications that serve little purpose.

ii) Second, if the Court is satisfied on the evidence that, despite the alternative service order, the respondent was not aware of the terms of the injunction, then applying ***Cuciurean*** – and consistent with ECtHR jurisprudence (see further [94]-[97] below) – that will be highly relevant to the penalty (if any) that the Court would impose for the breach: see [58] and [62] *per* Warby LJ.

E: The Claimants' argument as to service of the injunction order on Ms Laidlaw

29. A principal point of dispute between the Claimants and Ms Laidlaw is her contention that the injunction order has not been personally served on her and the Court has not made an order for alternative service in respect of service of the injunction order. The Claimants contend that, since the introduction of the new Part 81, it is not necessary (nor is it even permitted) to serve an injunction order personally on a respondent if s/he has solicitors acting for him/her.

30. The Grounds of Application for the First Contempt Application set out a summary of the Claimants' case as to service of the injunction order on Ms Laidlaw:

> "[Ms Laidlaw] is represented by solicitors (Cohen Cramer Solicitors) in the injunction proceedings, such that service of the Injunction Order on them amounts to good service. … [Ms Laidlaw] was served with the Injunction Order by the sending of the same to Cohen Cramer Solicitors by way of recorded delivery on 15 November 2021. That delivery was received on 17 November 2021 at 10.24. A certificate of service is exhibited to Ms Susan Pressick's Affidavit".

31. The Claimants' argument (which is addressed in more detail below) is that the new CPR 81 contains no requirement personally to serve an injunction order on a respondent. As such, it is contended that service of an injunction order is now governed by the general provisions of CPR Part 6, the relevant provisions of which are as follows:

i) CPR 6.20 provides:

> "(1) A document may be served by any of the following methods –
>
> (a) personal service in accordance with rule 6.22
>
> (b) first class post, document exchange or other service which provides for delivery on the next business day, in accordance with Practice Direction 6A
>
> (c) leaving it at a place specified in rule 6.23
>
> (d) fax or other means of electronic communication in accordance with Practice Direction 6A, or
>
> (e) any method authorised by the court under rule 6.27 …"

ii) CPR 6.22 provides:

> "(1) Where required by another Part, any other enactment, a practice direction or a court order, a document must be served personally.
>
> (2) In other cases, a document may be served personally except-
>
> (a) where the party to be served has given an address for service under rule 6.23;…
>
> (3) A document may be served personally as if the document were a claim form in accordance with rule 6.5(3)."

iii) CPR 6.23 provides:

> "(1) A party to proceedings must give an address at which that party may be served with documents relating to those proceedings. The address must include a full postcode unless the court orders otherwise.
>
> (2) Except where any other rule or practice direction makes different provision, a party's address for service must be –
>
> (a) the business address within the United Kingdom or a solicitor acting for the party to be served; or …
>
> (c) where there is no solicitor acting for the party –
>
> (i) an address within the United Kingdom at which the party resides or carries on business …
>
> (4) Subject to the provisions of Section IV of this Part (where applicable) any document to be served in proceedings must be sent or transmitted to, or left at, the party's address for service under paragraph (2) or (3) unless it is to be served personally or the court orders otherwise…
>
> (8) This rule does not apply where an order made by the court under rule 6.27 (service by alternative method or at an alternative place) specifies where a document may be served."

32. The Claimants argue that the effect of these provisions is that, where a respondent to an injunction order has instructed solicitors, then, unless the Court orders otherwise, the order *must* be served on the solicitors and not on the respondent personally. To anyone familiar with the law of contempt, such a submission might appear startling. I shall consider below whether it is correct.

F: The alternative service application in respect of service of the injunction order on Ms Laidlaw

33. As I have noted, the Claimants' primary submission, in respect of the First Contempt Application, is that service of the Injunction on Ms Laidlaw's solicitors is sufficient to render her liable for breach of the order. In the alternative, the Claimants issued an Application Notice, on 14 January 2022, seeking an order, pursuant to CPR 6.15 and 6.27, that the steps taken of serving the Injunction on Ms Laidlaw's solicitors "*be deemed effective service*" on her.

34. Separately, and finally, the Claimants contended at the hearing that the evidence demonstrates that the terms of the injunction had come sufficiently to the attention of Ms Laidlaw and that this justifies the Court dispensing with the requirement that the Injunction be served upon her.

G: Evidence at the Contempt Application

35. Three witnesses, who had provided affidavits on behalf of the Claimants, gave evidence at the hearing of the Contempt Applications: Philip Burchell, David Manning and Susan Pressick. Largely, the important evidence in respect of the allegations of breaches made against the two Respondents was provided in video recordings, that were produced by the witnesses, of what took place outside the Wyton Site on the various dates.

36. None of the Claimants' witnesses was cross-examined in any detail. A point that did assume some importance, at least initially, was about the marking of the Exclusion Zone outside the Wyton Site. Some lines had been painted onto the verge by Mr Manning, prior to the hearing on 10 November 2021, to demonstrate various distances from the gate to the Wyton Site and photographs showing the markings were shown to me at that hearing. Annex 1 to the Injunction had referred to the Exclusion Zone being marked with "*posts on the grass verge*" (see [7] above). In fact, no such posts were ever installed, but a point was initially raised that an existing bollard on the highway (which was actually situated within the Exclusion Zone) was understood by some of the protestors to be one of the posts that was being referred to in Annex 1. Mr Manning, who is one of the security officers at the Wyton Site, stated in his evidence that the bollards had been installed by the Highways Authority about a year after he had started to work at Wyton Site, which he thought would have been around 2015. Mr Underwood cross-examined Mr Manning about the painting of white lines to mark out the width of the Exclusion Zone, but Mr Manning confirmed that he had not painted a white line on the road or verge. Ms Pressick's evidence had suggested that he had painted a white line, and she was cross-examined about this by Mr Underwood. Ultimately, in the light of the position finally adopted by the Respondents (see [37]-[38] and [45] below), it is not necessary for me to resolve this dispute.

37. Mr Maher gave evidence, and he confirmed a witness statement, dated 27 March 2022 that he had filed voluntarily in answer to the allegations made against him in the First Contempt Application. Mr Maher was cross-examined by Ms Bolton. Mr Maher accepted that he received the Facebook Message, but he stated that he had experienced problems accessing the Injunction using the link provided. Nevertheless, Mr Maher confirmed that he knew that the Injunction had imposed an Exclusion Zone around the entrance of the Wyton Site, but he stated that he thought it was to a width of 10 metres either side of the gate. As part of her cross-examination, Ms Bolton played extracts from the video footage upon which the Claimants relied to establish that Mr Maher had entered the Exclusion Zone on the occasions alleged against him. In response to several of these incidents, Mr Maher responded by stating that if he was in the Exclusion Zone, as appeared from the video evidence, then he apologised. In response to one question, Mr Maher stated, by way of example: "*... if it appears I'm in the Exclusion Zone, then I do profusely apologise and there's no way did I set out to break [the] order... deliberately or in any way like that*".

38. In respect of the alleged breaches consisting of approaching and/or obstructing vehicles directly exiting the Exclusion Zone, Ms Bolton again played to Mr Maher the video

footage upon which the Claimants relied. In fairness to Mr Maher, he did not substantially dispute Ms Bolton's suggestions to him that the footage showed him approaching and obstructing vehicles that could be seen to be exiting the Exclusion Zone and which were trying to drive off down the road. When he was re-examined, Mr Underwood QC put to Mr Maher, "*you've accepted now you've seen these tracked videos a number of breaches, have you anything to say…?*" Mr Maher responded, "*Yes. I do truly apologise. It was not done… intentionally or deliberately, and I am really, really sorry.*" Mr Underwood QC also confirmed that Mr Maher would not be making any point about the positioning of posts/bollards.

39. Ms Laidlaw also gave evidence. She confirmed the contents of her witness statement, dated 27 March 2022, that she had provided voluntarily. She was cross-examined by Ms Bolton. Ms Laidlaw was not present at the hearing on 10 November 2021, when the Injunction was imposed, but she confirmed that she had been informed by her solicitors that an injunction had been granted.

40. Ms Bolton played some video recordings in which Ms Laidlaw could be heard speaking about the Injunction.

i) On 13 November 2021, which it should be noted was four days before the Injunction had been received by Cohen Cramer (see [12] above), Ms Laidlaw had posted a video on Facebook, apparently whilst she was outside the Wyton Site, in which she said:

> "Camp Beagle has to stay and stay we will. They've got their driveway back! Have it! We don't want your poxy driveway. We've had it for four months. Don't mean we're going anywhere! We're still going to be bloody annoying you! Telling you that your business is null and void. Nothing more than blood money. Dirty disgusting people who abuse animals for money."

ii) On 16 November 2021, Ms Laidlaw had posted a further video on Facebook in which she referred to a question that they had been asked about Will Young, who was protesting outside the gates of the Wyton Site. Ms Laidlaw answered:

> "Hi Sally, we would love to take him a cup of tea. He's been chucked some water. But we have an injunction in place now. Which is 10 meters either side of the driveway."

Later in the same message, Ms Laidlaw could be seen to step back from the middle of the road outside the Wyton Site and she said:

> "Sorry, we can't get any closer. We are adhering to the injunction. Campers had paperwork on them this morning."

Finally, in the Facebook video, Ms Laidlaw said:

> "We have had an injunction served today. It's official. They've got their driveway back. Like I say, have it. We don't want your poxy driveway. We've had it for four months. We're not going anywhere. We'll be leaving on the day you close those gates once and for all."

41. In her evidence, Ms Laidlaw confirmed that she was talking about the effect of the Injunction. Ms Bolton asked her from where she had got information about the restrictions that had been imposed. Ms Laidlaw said that she had been at the hearing on 4 October 2021 and the injunction was being discussed and subsequently the Injunction had been put up at a board at the Wyton Site. Ms Bolton asked, "*Did you read it?*" and Ms Laidlaw replied, "*some of it*". Ms Bolton did not pursue that answer to clarify what she had read, but asked, instead, "*how else did you know of the injunction?*". Ms Laidlaw replied, "*solicitors talking to other people at the camp*", and she confirmed that the solicitors to whom she was referring were the Claimants' solicitors, Mills & Reeve. Ms Laidlaw confirmed in answer to further questions that she did not recall any solicitor talking to her about the Injunction, "*it was just general knowledge that we [weren't] to stop any cars and we [weren't] to enter the flash zone, or flashpoint… that was my understanding*". In further answers in cross-examination, Ms Laidlaw stated that she knew that the Court had imposed an Exclusion Zone, but that she thought it was for a width of 10 metres either side of the mid-point of the gate to the Wyton Site.

42. Ms Bolton asked several further questions about Ms Laidlaw's knowledge of the Injunction:

Q: You knew that you'd been made party to the injunction?

A: Yeah.

Q: You knew that you weren't supposed to approach and obstruct vehicles?

A: Well, actually my understanding was not to stop any cars from leaving or entering the Exclusion Zone because it was classed as a flashpoint.

Q: Where did you get the idea that you weren't to stop any cars?

A: From the injunction, so not to obstruct, not to stop any cars. So the reason why we're here in the injunction is because cars were getting stopped sometimes.

Q: So you got that from the injunction?

A: Well it was my understanding from bits and pieces, yeah.

Q: Reading it on the notice board?

A: Yeah, partly.

Q: I think you earlier said that you had also had communication about the injunction from Cohen Cramer?

A: Yeah.

Q: Were you concerned to comply with the injunction?

A: Concerned?

Q: Were you wanting to make sure that you complied with the injunction?

A: Well, of course.

Q: Wouldn't you have read all of the injunction on the noticeboard?

A: There was a lot of paperwork. When I went to my first court hearing, I was presented with two boxes that I was expected to carry back. I just read what I thought was the important bits. It's quite overwhelming having to go through all that paperwork.

Q: But if you wanted to comply with the injunction order, you'd have read the injunction order?

A: Well, the injunction order that's relevant to me, not everyone else, is that we don't go in to the Exclusion Zone and we don't stop the cars.

Q: Where do you get that from, the actual paperwork? You understand that – you say it's the bit that applies to you?

A: Yeah.

Q: Is that from what you understand when you read the paperwork?

A: Yeah, from reading parts on the injunction sign board and, as I've said, speaking to other people who are also at camp.

…

Q: So would it be fair to say that from the injunction notices on the noticeboard you knew about the Exclusion Zone?

A: I knew about the Exclusion Zone, yes.

Q: And you knew that there [were] provisions in there about not being in the way, shall we say, of vehicles?

A: Stopping the cars and – yeah, stopping them from going about their business.

…

Q: Right. It's fair to say then, Ms Laidlaw, whether you'd read the injunction cover to cover, you were aware of the key provisions, shall we call them?

A: Yes.

43. I sought to clarify when Ms Laidlaw had looked at an injunction on a noticeboard at the site. She could not recall when, but she stated that the board she had looked at had been situated to the side of the gates of the Wyton Site. As became clear later, when she was re-examined, prior to the imposition of the Injunction on 10 November 2021, the notice board upon which information and copies of relevant documents were posted was situated next to the gates to the Wyton Site. As this was within the Exclusion Zone, after the Injunction was granted, the notice board was moved to the opposite side of the road, outside the Exclusion Zone. Whatever Ms Laidlaw had seen when she said she

had consulted documents on the notice board, it therefore cannot have been the Injunction. It may have been the previous interim injunction granted by Stacey J.

44. It appears, from Ms Laidlaw's oral evidence and the video evidence that immediately following the grant of the Injunction, that members of the camp moved red and white temporary barriers to mark what they believed to be the width of the Exclusion Zone. Unfortunately, they were not placed at the correct point. This error may have arisen because people at the camp thought that the width was 10 metres either side of the midpoint of the gateway. It was only later that the red and white barriers were moved back correctly to mark the width of the Exclusion Zone.

45. In re-examination, rather like Mr Maher had done, Ms Laidlaw appeared to accept that, insofar as she had been properly served with the Injunction, she had acted in a way that was in breach of its terms, both in terms of entry into the Exclusion Zone and by obstructing vehicles. In respect of the latter, Ms Laidlaw said in her evidence that she thought the obstructing a vehicle meant that it had to come to a complete stop. She apologised for what she stated were "*genuine mistakes*" on her part.

H: The Respondents' Bases of Admissions

46. At the end of the first day of the hearing, and in the light of the apparent admissions of (or at least lack of challenge to) alleged breaches of the Injunction, I asked Mr Underwood QC whether he might be able to produce what in a criminal case would be called a basis of plea; a clear statement of factual admissions that each Respondent was prepared to make.

47. Overnight, both Respondents took the opportunity to put forward documents headed "Basis of Admissions".

    i) Mr Maher's document, signed by him, made the following admissions as to breaches of the Injunction:

        a) that he had entered the Exclusion Zone on 20 November 2021, though he did so without intending to disobey the Injunction;

        b) that he had approached a black Volkswagen car as it was directly exiting the Exclusion Zone on 20 November 2021, though he did not intend to disobey the Injunction;

        c) that he had entered the Exclusion Zone on 22 November 2021, initially to speak to a police officer, but he accepts that he did not speak to the officer for the whole time that he was within the Exclusion Zone, though he had no intention of disobeying the Injunction; and

        d) that he had entered the Exclusion Zone on 24 November 2021, but he did not believe that he was entering the Exclusion Zone because he thought the limit of the Exclusion Zone was marked on the road with a white line;

    ii) Ms Laidlaw's document, signed by her, admitted, in respect of the Second Contempt Application, that on three occasions, on 6 January 2022, she had

obstructed cars by hindering each car's progress as it directly exited the Exclusion Zone, though she stated that she believed that the Injunction only prohibited bringing cars to a halt and also that the she did not believe that each vehicle was "directly" exiting the Exclusion Zone, accordingly she did not believe that she was disobeying the Injunction.

Ms Laidlaw made no admissions in respect of the alleged breaches of the Injunction that were the subject of the First Contempt Application. However, at the commencement of the hearing on 7 April 2022, Mr Underwood QC told me that if the Court ruled against her argument that she had not been properly served with the Injunction, she would additionally admit that she had approached and/or obstructed the path of two vehicles directly exiting the Exclusion Zone on 20 November 2021.

48. Sensibly, in my judgment, and with an eye to the proportionality of the exercise, Ms Bolton confirmed that the admissions offered by the Respondents (in Ms Laidlaw's case, expressly reserving her point on service of the Injunction in respect of the First Contempt Application) were acceptable to the Claimants. For my part, I am satisfied that the admissions made by the Respondent are sufficient to mean that it would be disproportionate to go on to resolve the non-admitted breaches that were alleged by the Claimants.

49. In view of the admissions that have been made by the Respondents, the issues that I must resolve are:

i) whether the service of the Injunction on Ms Laidlaw's solicitors was good service for the purposes of the First Contempt Application made against her;

ii) if not, should the Court grant, retrospectively, the Claimants' Application for alternative service permitting the Injunction to be served on Ms Laidlaw by service upon her solicitors; and

iii) if not, whether, in light of the evidence about Ms Laidlaw's knowledge of the terms of the Injunction, the Court should dispense with the requirement that the Injunction be served upon her.

I: Is service of the injunction order on Ms Laidlaw's solicitors good service for the purposes of the First Contempt Application made against her?

50. This is the main issue of dispute that I must resolve. It is a novel point that has, so far as I am aware, not been raised in any other contempt proceedings following the introduction of the new Part 81. I was satisfied that the novelty, and potential importance of the point, justified granting permission for leading counsel to be instructed for Ms Laidlaw.

51. The issue can be shortly stated. Do the changes to Part 81 mean that, where a solicitor has been instructed for a respondent, an injunction order must be served on those solicitors rather than on the respondent personally?

52. To answer this question, I shall first consider the introduction of the new CPR Part 81 before turning to consider the history of the general requirement of personal service of an injunction order.

(1) The genesis of the new CPR Part 81

53. The Civil Procedure Rule Committee ("CPRC") carried out a consultation on proposed changes to Part 81 between in March-April 2020. The then Part 81 had received criticism for unsatisfactory wording (see e.g. ***Solicitor General -v- Holmes*** **[2019] 1 WLR 5253** and ***Attorney General -v- Yaxley-Lennon*** **[2020] 3 All ER 477**). The consultation document included the proposed revised Part 81 –together with commentary on each rule – and asked consultees to respond to several questions. The Foreword, written by Coulson LJ, the Deputy Head of Civil Justice and chair of the CPRC, included the following:

> "In July 2019, the CPRC set up a subcommittee to consider the issue. At its September 2019 meeting, the CPRC endorsed the view of the subcommittee that the procedural aspects of contempt proceedings are causing frequent difficulties and that the subcommittee should look at ways of simplifying, shortening and strengthening the procedural rules to make them operate more fairly and reduce the number of cases where procedural unfairness is found.
>
> Part 81 comprises rules moved from the Rules of the Supreme Court, with little amendment, to the CPR. The subcommittee undertaking this exercise in 2010-2012 was not given the remit to simplify and rationalise the procedural rules on contempt. It was a 'lift and shift' exercise. Consequently, Part 81 is segmented, long, complicated and repetitive. It replicates substantive law as well as dealing with procedure. The procedural content is then largely replicated in a Practice Direction (PD), supplemented by a further PD and Practice Guidance (PG) from the Lord Chief Justice. CPR PD4 prescribes no less than 27 prescribed Forms for use in contempt proceedings.
>
> The existing Part 81 is not easy to operate in the present litigation environment. In a redrafted Part 81, we propose a new approach which (a) omits nearly all the substantive law (b) deals with procedure in rules not PDs (c) creates a uniform procedural code for use in all contempt proceedings where the CPR apply (d) sets out the applicable requirements in rules rather than PDs or Practice Guidance and (e) reduces the number of prescribed forms."

54. Following the consultation, the revised Part 81 was introduced from 1 October 2020 (Civil Procedure (Amendment No.3) Rules 2020 SI 2020/747). The new Part 81 was accompanied by five new forms (which replaced the existing forms): N600 Contempt Application; N601 Summons under CPR 81.6(3); N602 Warrant to Secure Attendance at Court under CPR 81.7(2); N603 Order under CPR 81.9; and N604 Warrant of Committal under CPR 81.9.

55. CPR 81.1 provides:

> "(1) This Part sets out the procedure to be followed in proceedings for contempt of court ("contempt proceedings").
>
> (2) This Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law.

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

56. CPR 81.3 sets out how to make a contempt application and CPR 81.3(5) provides that permission is required for some types of contempt application.

57. CPR 81.4 is headed "*Requirements of a contempt application*". CPR 81.4(1) requires that, unless the Court directs otherwise, every contempt application must be supported by evidence given by affidavit or affirmation. CPR 81.4(2) provides as follows:

> "A contempt application must include statements of all of the following, unless (in the case of (b) to (g)) wholly inapplicable-
>
> (a) the nature of the alleged contempt (for example, breach of an order or undertaking or contempt in the face of the court);
>
> (b) the date and terms of any order allegedly breached or disobeyed;
>
> (c) confirmation that any such order was personally served, and the date it was served, unless the court or the parties dispensed with personal service;
>
> (d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service;
>
> (e) confirmation that any order allegedly breached or disobeyed included a penal notice;
>
> (f) the date and terms of any undertaking allegedly breached;
>
> (g) confirmation of the claimant's belief that the person who gave any undertaking understood its terms and the consequences of failure to comply with it;
>
> (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
>
> (i) that the defendant has the right to be legally represented in the contempt proceedings;
>
> (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
>
> (k) that the defendant may be entitled to the services of an interpreter;
>
> (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
>
> (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;
>
> (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant;

(o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt of court if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;

(p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;

(q) that if the defendant admits the contempt and wishes to apologise to the court, that it is likely to reduce the seriousness of any punishment by the court;

(r) that the court's findings will be provided in writing as soon as practicable after the hearing; and

(s) that the court will sit in public, unless and to the extent that the court otherwise orders, and that its findings will be made public."

58. In its consultation, the CPRC described CPR 81.4 as "*the cornerstone*" of the new Part 81:

> "It is intended to stand as the guarantor of procedural fairness and incorporates the requirements of procedural fairness to the defendant. If the rule is complied with, procedural fairness is likely to be observed… The rule should be accompanied by a single new form mirroring the content, with an electronic (or paper for the digitally excluded) template to be competed in order to ensure procedural fairness…"

59. The reference to the new form was to the new N600 which contains a series of questions designed to ensure that the Court (and the Respondent) has the necessary information relevant to the Contempt Application. The form states that the written evidence in support of the Contempt Application must be provided in the form of an affidavit or affirmation and contains, in page 3, a clear statement of the rights of the respondent. Questions 5-12 on the N600 appear under a heading "*The following information is required to be included in the application pursuant to rule 81.4(2) of the Civil Procedure Rules 1998*". Question 5 requires the applicant to identify the nature of the alleged contempt (e.g. breach of an order of the Court or contempt in the face of the Court); Question 6 asks whether the application is based on an alleged breach of an Order. If so, the applicant is directed to go on to answer Question 7, which asks for details of the order that it is alleged has been breached. Question 8 asks: "*Date of personal service of the order?*" or "*If the order was not personally served, state the date and terms of any order dispensing with personal service of the order*". Question 9 seeks confirmation of whether the order included a penal notice. Questions 10 and 11 deal with circumstances where there is an alleged breach of an undertaking, requiring details of the terms of the undertaking given, and confirmation that the person who gave the undertaking understood its terms and the consequences of a failure to comply. Question 12 requires the applicant to set out the facts alleged to constitute the contempt.

60. CPR 81.5 sets out the requirements for service of the contempt application and provides:

> "(1) Unless the court directs otherwise in accordance with Part 6 and except as provided in paragraph (2), a contempt application and evidence in support must be served on the defendant personally.
>
> (2) Where a legal representative for the defendant is on the record in the proceedings in which, or in connection with which, an alleged contempt is committed –
>
> (a) the contempt application and evidence in support may be served on the representative for the defendant unless the representative objects in writing within seven days of receipt of the application and evidence in support;
>
> (b) if the representative does not object in writing, they must at once provide to the defendant a copy of the contempt application and the evidence supporting it and take all reasonable steps to ensure the defendant understands them;
>
> (c) if the representative objects in writing, the issue of service shall be referred to a judge of the court dealing with the contempt application; and the judge shall consider written representations from the parties and determine the issue on the papers, without (unless the judge directs otherwise) an oral hearing."

61. Reflecting the position as it had been under the previous rule (the old CPR 81.10(4)), the default position under the new CPR 81.5 is that the contempt application should be served personally on the defendant. However, the new rule also provided a modified form of alternative service of the contempt application where the defendant has a legal representative on the record. In the consultation, the CPRC explained:

> "Rule 81.5(1) brings into play the rules in Part 6 of the CPR on personal service and dispensing with service. We see no need for the 81.5(1) to say more. The judge would only dispense with personal service if sure the defendant is evading service or already aware of and fully informed about the contempt proceedings.
>
> Rule 81.5(2) is introduced to deal with a specific problem identified by the Attorney General's office. They say that the personal service requirement is often unnecessary where solicitors are on the record and causes the expense and delay of applying to the court for an order dispensing with personal service. We agree, subject to safeguards to ensure the defendant is properly and fully informed about the contempt proceedings."

62. CPR 81.6 governs cases where no contempt application is made and the Court acts under its own initiative. It provides:

> "(1) If the court considers that a contempt of court (including a contempt in the face of the court) may have been committed, the court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings.
>
> (2) Where the court does so, any other party in the proceedings may be required by the court to give such assistance to the court as is proportionate and reasonable having regard to the resources available to that party.

(3) If the court proceeds of its own initiative, it shall issue a summons to the defendant which includes the matters set out in rule 81.4(2)(a)-(s) (in so far as applicable) and requires the defendant to attend court for directions.

(4) A summons issued under this rule shall be served on the defendant personally and on any other party, unless the court directs otherwise. If rule 81.5(2) applies, the procedure there set out shall be followed unless the court directs otherwise."

63. CPR 81.6(4) requires that, like the contempt application, the summons be personally served upon the defendant, unless the court directs otherwise. The reference back to CPR 81.5(2) means that the modified alternative service provisions, for service of the contempt application, would also apply for service of the summons on a defendant who is legally represented. Form N601 provides the form of summons for use under CPR 81.6(3), and CPR 81.6(2) enables the Court, where appropriate, to require another party personally to serve the summons on the defendant.

64. The new Part 81 also has a key omission: it contains no rule expressly governing service of an injunction order. The old Part 81 – in CPR 81.5 to 81.8 – did contain such a requirement (in CPR 81.6), together with a rule permitting the Court, in an appropriate case, either to permit alternative service or to dispense with the requirement personally to serve the injunction order.

"**81.5 Requirement for service of a copy of the judgment or order and time for service**

(1) Unless the court dispenses with service under CPR 81.8, a judgment or order may not be enforced under rule 81.4 unless a copy of it has been served on the person required to do or not to do the act in question, and in the case of a judgment or order requiring a person to do an act-

(a) the copy has been served before the end of the time fixed for doing the act, together with a copy of any order fixing that time;

(b) where the time for doing the act has been varied by subsequent order or agreement under rule 2.11, a copy of that subsequent order or agreement has also been served; and

(c) where the judgment or order was made under rule 81.4(5), or was made pursuant to an earlier judgment or order requiring the act to be done, a copy of the earlier judgment or order has also been served.

(2) Where the person referred to in paragraph (1) is a company or other corporation, a copy of the judgment or order must also be served on the respondent before the end of the time fixed for doing the act.

(3) Copies of the judgment or order and any orders or agreements fixing or varying the time for doing an act must be served in accordance with rule 81.6 or 81.7, or in accordance with an order for alternative service made under rule 81.8.(2)(b)

> **81.6 Method of service – copies of judgments or orders**
>
> Subject to rules 81.7 and 81.8, copies of judgments or orders and any orders or agreements fixing or varying the time for doing an act must be served personally.
>
> …
>
> **81.8 Dispensation with personal service**
>
> (1) In the case of a judgment or order requiring a person not to do an act, the court may dispense with service of a copy of the judgment or order in accordance with rules 81.5 to 81.7 if it is satisfied that the person has had notice of it –
>
> (a) by being present when the judgment or order was given or made; or
>
> (b) by being notified of its terms by telephone, email or otherwise.
>
> (2) In the case of any judgment or order the court may-
>
> (a) dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or
>
> (b) make an order in respect of service by an alternative method or alternative place.

65. The CPRC consultation did not acknowledge or explain the removal of what might be regarded, historically, as a fundamental requirement (unless the Court orders otherwise) that the injunction be personally served before a person could be proceeded against for alleged contempt.

66. One of the issues that may be material is whether the requirement personally to serve the injunction order is a requirement of the substantive law of contempt or is merely a procedural requirement. If it is the former, then the effect of CPR 81.1(3) is that the requirement of personal service of an injunction order (unless the Court directs otherwise) remains and is unaffected by the other changes to Part 81. Whether the requirement of personal service is part of the substantive law requires an analysis of the historic development of the law of contempt.

(2) The historical development of the requirement of personal service of an injunction order

67. There is no doubt that the species of civil contempt of court – disobedience of an order of the Court – existed long before the creation of the Supreme Court of Judicature by the Judicature Acts of 1873 and 1875, which merged the previously separate English courts of common law and equity. The 1883 Rules of the Supreme Court were the first iteration of the procedural rules of the new Supreme Court of Judicature. They contained only sparse reference to contempt. In an article in the Law Quarterly Review, "*Practice in Contempt of Court Cases*" (1922) 38(2) LQ Rev 185, which dealt with both civil and criminal contempts, the author noted of the 1883 rules:

> "The expression 'contempt' occurs only four times in those rules. Order 16, rule 31 E provides that any person who takes a fee in a poor person's case shall be

> guilty of contempt of Court. Order 37, rule 8, provides that any person wilfully disobeying an order requiring his attendance for examination shall be deemed guilty of contempt of Court and may be dealt with accordingly. Order 42, rule 30, indicates an alternative course to proceedings for contempt, if a mandamus, injunction or judgment for specific performance of a contract is not complied with. Order 55, rule 17, provides that parties and witnesses summoned to attend before a Master shall be liable to process of contempt in a like manner as they are liable thereto in case of disobedience to any order of the Court.
>
> 'Process of contempt' is nowhere defined in the rules, nor is the punishment for contempt provided for. We know that the processes of contempt of court at common law were attachment and committal, and the punishment, imprisonment at discretion, fine at discretion and binding to the peace; but if authority for these propositions is called for we might begin with Glanville and cite cases, records and text-books from the twelfth century to the present time. So the framers of the rules left the definition of contempt and its punishment to the codification of the law by Act of Parliament. To the process of attachment and committal the Court of Chancery added sequestration, and since the Judicature Acts this has become applicable in all divisions of the High Court.
>
> Contemporaneously with the preparation of the Rules of 1883 an attempt was made to amend the law of contempt by statute. Lord Selbourne, then Lord Chancellor, brought in a Bill, entitled the Contempts of Court Bill, in 1883. It did not attempt to codify the law, but it made a beginning. It proposed to limit the period of imprisonment for contempt to three months and the fine to £500, and gave a right of appeal except in the case of contempt in the face of the Court. This Bill failed to pass and was followed by other Bills down to the year 1908, which all shared the same fate."

68. The author also explains the distinction between the process of attachment to enforce an order requiring a person to do an act and orders for committal for breach of a prohibitory order:

> "In the Court of Chancery attachment issued *without order*, to enforce an appearance or answer or an order to do some act; in the common law Courts it never issued without an order, and it can never issue without order under the present rules… (emphasis in original)
>
> Attachment followed by examination was the procedure in the Court of Chancery as well as in the common law Courts in certain cases. In the Court of Chancery in modern times contempts of a criminal nature were punished by committal on motion and no writ of attachment issued. Breach of an injunction was also punished by committal, being considered a more serious offence than a mere failure to comply with an order directing an act to be done, for which, as we have seen, attachment issued without any order. It is true that in some cases where committal was the strictly appropriate remedy the Court of Chancery allowed an attachment to issue, but in the ordinary course attachment was limited to cases in which it issued without leave; the prosecuting party simply filed an affidavit proving the default and the writ issued as or course. Since the Judicature Acts the writ never issues without an order of the Court. This is provided by rule 2 of Order 44…

> The question is often asked, 'What is the difference between attachment and committal?' It is important to know, because in matters affecting the liberty of the subject the Court is careful to apply the rules of practice strictly, and if committal is applied for, when attachment is the appropriate remedy, the application will probably fail. A difference between attachment and committal as understood in the Court of Chancery has already been pointed out. Before the Judicature Acts, as now, there was also this difference, that upon attachment the prisoner was lodged in the county gaol by the sheriff and committal was executed by the tipstaff, wherever the offender was found, and he was lodged in the Fleet, the prison of the Court (see Mr. Registrar Lavie's Memm. [1893] 1 Ch at p.259). The rules of the Supreme Court specify certain circumstances under which attachment or committal is appropriate as a form of execution, but we shall find nothing in the rules to guide use in a case of criminal contempt."

69. The reference to Registrar Lavie's memorandum was to the case of ***Evans -v- Noton*** **[1893] 1 Ch 252**, which included (as a footnote) the memorandum from the Registrar. It succinctly described the difference between attachment and committal before the Judicature Acts: "*A man was committed for doing what he ought not to do, and attached for not doing what he was ordered to do.*" And then explained:

> "This distinction is, to a great extent, done away with by Order [42], rule 7 under which a judgment which includes an order (see Order [42], rule 24), requiring a person to do an act other than payment of money, or to abstain from doing anything may be enforced by attachment or committal. But it is submitted that a large class of cases yet remains unaffected by this rule. As for example, where there is a breach of an undertaking, misconduct towards a ward, interference with a receiver, unjustifiable comment on a pending case, or what may be called personal contempt of the Court, as in the *Egg Case*, in none of which is there any enforcement of an order to do or abstain from doing anything…"

70. In ***Evans -v- Noton***, the Court of Appeal dismissed an appeal from a decision of Kekewich J that personal service of the notice of motion was not required before an order for attachment (as opposed to committal) could be made. The Court of Appeal expressed some discomfort at this outcome. Bowen LJ said (p.267): "*I should prefer to have it enacted by the rules that leave to issue an attachment should not be given without personal service of notice on the party, or such substituted service as the Court might direct.*"

71. The 1883 Rules of the Supreme Court appear not to have contained any provisions as to the method of service of a prohibitory injunction as a pre-requisite for seeking committal of the respondent for alleged breach. They did include a requirement – in Order 41 rule 5 – for personal service of an order requiring any person to do an act and for that order to be endorsed with a penal notice.

72. In the cases I have been able to find (see below), in which the issue of service of the injunction order was material, there is no reference to the procedural rules as being the source of the general requirement of personal service. In ***Mander -v- Falcke*** **[1891] 3 Ch 488**, the requirement that a motion to commit for alleged contempt of court must be served personally was discussed and the principle upheld. Kekewich J noted that it was not a requirement imposed by any procedural rule (pp.492-493):

> "The rule in Lord Eldon's time was that there must be personal service of a notice of motion to commit. It is not laid down anywhere that you cannot have an order for committal without personal service of the notice of motion; but the Court will not allow the order to go until it is satisfied that every endeavour has been made to effect personal service. I do not find any rule so laid down in terms in the General Orders; but that was certainly the rule of practice in Lord Eldon's time, and it is within the recollection of many of us that it was a rule of the old Court of Chancery. The authority of Vice-Chancellor Stuart has been cited to the same effect; and I remember a case in which, as counsel, I endeavoured to obtain an order for committal from the same learned Judge without personal service but he refused it on that very ground. This, then, was the rule of practice down to modern times. Then there crept in, it was said, a difference of practice; but that was challenged by Mr. Justice Stirling in ***Nelson -v- Worssam*** **(1890) WN 216**. There Mr Justice Stirling referred to ***Ellerton -v- Thirsk*** **(1820) 1 Jac & W 376**, which is the main authority for the necessity of personal service of a notice of motion to commit; and upon counsel asking whether this was consistent with the modern practice, the learned Judge asked 'When has it been altered?' That question challenged the practice, and no answer was given to it. But counsel went on to argue that the object of requiring personal service was to satisfy the Court that the defendant was informed of the proceedings against him, and that the defendant, if he appeared, could not object that he had not been personally served. The question, however, in that case as in this, was one of practice, and I find no authority for altering what is the settled practice, and I do not think a Judge of first instance ought to attempt to alter it."

73. In my judgment, ***Mander -v- Falcke*** establishes that the substantive requirements of the law of contempt – designed to ensure procedural fairness in an area where the liberty of the subject was at stake – were established by the common law well before efforts were made to codify them in procedural rules.

74. At common law, a respondent was required to have notice of the injunction order before he could be found in contempt of court for breaching it. Generally, the common law required that the injunction order be served personally on the respondent: ***Hyde -v- Hyde*** **(1888) 13 PD 166, 171-172** *per* Cotton LJ. In respect of prohibitory injunctions, notice was capable of being demonstrated by means other than personal service of the injunction order. In ***Hearn -v- Tennant*** **(1808) 14 Ves 136**, Lord Eldon LC held that it was sufficient that the order was made at a hearing at which the respondents were present. In ***ex parte Langley*** **(1879) 13 ChD 110**, the Court accepted that a telegram, which effectively communicated the terms of an injunction order, could be sufficient notice to sustain proceedings for contempt for alleged breach, albeit on the facts of the case the Court accepted that the respondents believed that no injunction had been granted. ***Avery -v- Andrews*** **(1882) 51 LJ Ch 414**, is an example of the Court being satisfied, on evidence, that the respondents were in fact aware of the terms of the injunction order, notwithstanding the lack of personal service of the order. In ***United Telephone Company -v- Dale*** **(1884) 25 ChD 778**, the respondents actually *consented* to an injunction order, but contended, in contempt proceedings alleging breach, that they had never been personally served with the order. The argument was rejected as the Court was satisfied "*beyond all doubt or dispute*" that the defendants were aware that the injunction has been granted and also that the defendants "*knew perfectly well that… they were violating the order of the Court*". Committing the defendants for their contempt of court, Pearson J observed: "*What is the necessity for*

serving an order upon a defendant, if he knows perfectly well without that service what it is which he is bound to obey?" (p.787).

75. ***Hall & Co -v- Trigg*** **[1897] 2 Ch 219** was a case where the defendant to a committal motion contended that there was no affidavit demonstrating service upon him of the injunction order. The order had been consented to by the defendant's counsel, but the defendant was apparently not in court himself. Kekewich J held that the requirements of service were to be construed strictly, and observed (pp.221-222):

> "… A man is not allowed to come to the Court and say, 'I told the respondent there was an order against him in a case,' because that does not bring the exact form of the order to his knowledge. Therefore the Court requires that there should be an affidavit of service of the original order, and that a copy of the order should be delivered at the same time to the respondent so that he may know exactly what the order is. That can be got over when the respondent is himself in court at the hearing of the application, and, rising in the well of the court, argues the case himself, and the order is made either adversely to him or otherwise. In that case it is enough to shew by the order itself that the man was present and knew perfectly what was done. That is a very ancient and well-established exception, and many men have been sent to prison without service of the order because it was brought to their attention in that way and they knew of it. I have known many cases in which respondents or applicants have been held bound by the order, on the Court being satisfied that the respondent or applicant was present in person and must be deemed to have heard what passed. The question I have to consider here goes a step further, for the defendant did not consent to the order himself, but his counsel consented to what he thought was a proper order. Is there any difference between that and an adverse order? Can I assume that the defendant knew of the order? What one would do in a case where the liberty of the subject was not concerned, I do not consider now; but where the liberty of the subject is concerned, I think I ought to enforce the law in its strictest possible way; and in substance I do not see the difference between an adverse order and a consent order."

76. An example of the distinction in the service requirements between mandatory and prohibitory injunctions is ***Re Tuck*** **[1906] 1 Ch 692.** Again, the procedural rules did not supply the answer, and, for the purposes of identifying the "*settled practice*", the Court of Appeal asked the senior registrar for a memorandum. The Court set out the relevant part, which was clearly accepted by the Court as an accurate statement of the requirements:

> "The practice in the registrar's office where an order has been made for a person to do an act within a limited time is to require that the order be personally served for the purposes of founding a motion for an attachment, except in cases of orders for discovery or inspection… or where an order for substituted service has been made, or where in the opinion of the Court, the service has been evaded; and it has not been the practice to make an exception on the ground that the person ordered to do the act was aware of the order. The service of the order after the time limited has expired for doing the act required is not good service."

Emphasising the distinction with prohibitory orders, Cozens-Hardy LJ, added:

> "It must not for a moment be understood that any doubt is cast by us upon the result of disobeying an order not to do a thing of which notice can be proved to have reached a defendant."

77. Further support for the proposition that, quite apart from the applicable procedural rules, there is a free-standing requirement that those intended to be bound by an injunction (and liable for punishment for breach) should be given notice of it, can be found in ***Iberian Trust Ltd -v- Founders Trust and Investment Co Ltd*** **[1932] 2 KB 87**. That case involving alleged default by the directors of a company to comply with an injunction order granted against the defendant company. Luxmore J noted that the procedural rules in force at the time did not require service of a copy of an injunction on a person (the director) who is personally not required by the order to do a particular act (which was the company), but nevertheless held (pp.97-98):

> "… in practice the Courts have always required that the order to be enforced should be personally served on the director before it would be enforced against him by attachment. As authority for this proposition I refer to the decision of North J in ***McKeown -v- Joint Stock Institute Ltd*** **[1899] 1 Ch 671**…"

78. The RSC continued to contain a requirement – in Order 41 rule 5 – for personal service of a mandatory injunction, but not for prohibitory injunctions. However, the commentary to Order 42 rule 7, in the 1962 Annual Practice, acknowledged that such a requirement was the established practice and cited many of the cases identified in [74] above. The alternative procedure for attachment was still available under Order 44, but the commentary in the Annual Practice noted that the history of the remedies of attachment and committal was an "*unhappy one*" and suggested "*the procedure would have been best simplified by abolishing attachment and employing committal alone by a tipstaff acting with the assistance of the police*".

79. Such calls for reform of the procedural rules were not new. In 1951, the Evershed Committee on Supreme Court Practice and Procedure had published its Second Interim Report in which it strongly recommended that "*a complete revision of the Rules be immediately put in hand*" (Cmd. 8176, para. 117). A Rule Committee of the Supreme Court was formed and charged with revising and re-writing the entire body of rules governing civil procedure in the Supreme Court. The process was undertaken in two stages. First, around half of the Rules were revised and reintroduced on 1 January 1964 by RSC (Revision) 1962 (SI 1962/2145). Second, the remaining original Rules were revised and reintroduced by RSC (Revision) 1965 (SI 1965/1776). This gave the Supreme Court, for the first time, one complete, integral body of procedural rules ("the 1965 RSC").

80. The 1965 RSC came into force on 1 October 1966. Although the subject of various amendments in subsequent years, as regards contempt of court and committal proceedings, the 1965 RSC largely unchanged until the introduction of the Civil Procedure Rules in April 1999 (which continued to apply RSC Orders 45 and 52 by transitional provisions) and subsequently the introduction of a new Part 81 in 2012.

81. The provisions in the 1965 RSC relevant to enforcement of orders, including by committal, were contained in new Orders 45 and 52, the latter of which dealt specifically with committal. The old attachment procedure was abolished, leaving only

committal. The commentary in the new Supreme Court Practice in 1967 noted, of the new Order 52 rule 1:

> "This paragraph, new in 1965, happily terminates a long and unfortunate history, in the course of which distinctions developed and multiplied in the decisions of the Courts and in the rules, and contempt of court was punishable in some circumstances by attachment and in others by committal, and the applicant adopted the one procedure or the other at his peril… Now the present rule provides the remedy by way of committal for all cases of contempt."

82. Order 45 rules 5 to 7 in the 1965 RSC set out a new procedural code for the enforcement of judgments and orders:

> "**Enforcement of judgment to do or abstain from doing any act**
>
> 5. (1) Where-
>
> (a) a person required by a judgment or order to do an act within a time specified in the judgment or order refuses or neglects to do it within that time or, as the case me be, within that time as extended or abridged under a court order under Order 3, rule 5; or
>
> (b) a person disobeys a judgment order requiring him to abstain from doing an act,
>
> then subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say –
>
> (i) with the leave of the court, a writ of sequestration against the property of that person;
>
> (ii) where that person is a body corporate, with the leave of the court, a writ of sequestration against the property of any director or other officer of the body;
>
> (iii) subject to the provisions of the Debtors Act 1869 and 1878, an order of committal against that person or, where that person is a body corporate, against any such officer.
>
> (2) Where a judgment or order requires a person to do an act within a time therein specified and an order is subsequently made under rule 6 requiring the act to be done within some other time, references in paragraph (1) of this rule to a judgment or order shall be construed as reference to the order made under rule 6.
>
> (3) Where under any judgment or order requiring the delivery of any goods the person liable to execution has the alternative of paying the assessed value of the goods, the judgment or order shall not be enforceable by order of committal under paragraph (1), but the court may, on the application of the person entitled to enforce the judgment or order, make an order requiring the first mentioned person to deliver

the goods to the applicant within a time specified in the order, and that order may be so enforced.

Judgment, etc. requiring act to be done: order fixing time for doing it

6. (1) Notwithstanding that a judgment or order requiring a person to do an act specifies a time within which the act is to be done, the court shall, without prejudice to Order 3 rule 5 have power to make an order requiring the act to be done within another time, being such time after service of that order, or such other time, as may be specified therein.

(2) Where, notwithstanding Order 42 rule 2(1), or by reason of Order 42 rule 2(2), a judgment or order requiring a person to do an act does not specify a time within which the act is to be done, the court shall have power subsequently to make an order requiring the act to be done within such time after service of that order, or such other time, as may be specified therein.

(3) An application for an order under this rule must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the person required to do the act in question.

Service of copy of judgment, etc., prerequisite to enforcement under rule 5

7. (1) In this rule reference to an order shall be construed as including references to a judgment.

(2) Subject to Order 24, rule 16(3), Order 26 rule 6(3), and paragraphs (6) of this rule, an order shall not be enforced under rule 5 unless –

(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and

(b) in the case or an order requiring a person to do an act, the copy has been so served before the expiration of the time within which he was required to do the act.

(3) Subject as aforesaid, an order requiring a body corporate to do or abstain from doing an act shall not be enforced as mentioned in rule 5(1)(b)(ii) or (iii) unless –

(a) a copy of the order has also been served personally on the officer against whose property permission is sought to issue a writ of sequestration or against whom an order of committal is sought; and

(b) in the case of an order requiring the body corporate to do an act, the copy has been so served before the expiration of the time within which the body was required to do the act.

(4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served –

(a) in the case of service under paragraph (2), that if he neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if he disobeys the order, he is liable to process of execution to compel him to obey it, and

(b) in the case of service under paragraph (3), that if the body corporate neglects to obey the order within the time specified or, if the order is to abstain from doing an act, that if the body corporate disobeys the order, he is liable to process of execution to compel the body to obey it.

(5) With the copy of an order required to be served under this rule, being an order requiring a person to do an act, there must also be served a copy of any order made under Order 3 rule 5, extending or abridging the time for doing the act and, where the first-mentioned order was made under rule 5(3) or 6 of this order, a copy of the previous order requiring the act to be done.

(6) Without prejudice to its powers under Order 65 rule 4, the court may dispense with service of a copy of an order under this rule if it thinks it just to do so."

83. Order 65 rule 4 governed substituted service, and provided:

"(1) If, in the case of any document which by virtue of these rules is required to be served personally on any person, it appears to the Court that it is impracticable for any reason to serve that document personally on that person, the Court may make an order for substituted service of that document.

(2) An application for an order for substituted service may be made by affidavit stating the facts on which the application is founded.

(3) Substituted service of a document, in relation to which an order is made under this rule, is effected by taking such steps as the Court may direct to bring the document to the notice of the person to be served."

84. The new Order 45 rule 7 replaced the former Order 41 rule 5 and extended the requirement of personal service to prohibitory orders. This is the first occasion when the procedural rules required personal service of all injunction orders. But this change did not introduce a wholly new requirement. The cases that I have identified above demonstrate that this was already required by the common law. The substantial revisions to the 1965 RSC effectively codified the substantive common law requirements for enforcement of an injunction order by committal proceedings. In other respects, the procedural rules built on, and in some respects went further than, the requirements established by the common law. For example, the requirement that a penal notice be endorsed on an injunction was introduced by procedural rules. Until the revisions in the 1965 RSC, the requirement to include a penal notice on the front of the injunction order applied only to mandatory injunctions: see discussion in ***Sofroniou -v- Segetti*** **[1991] FCR 332, 336** *per* Neill LJ and observations of Cozens-Hardy LJ in ***Re Tuck*** (at p.696).

85. The next case of significance is ***Churchman -v- Joint Shop Stewards' Committee of the Workers of the Port of London*** **[1972] 1 WLR 1094** ("***Churchman***"). That concerned an appeal against an order for committal for contempt made against three men made, not by the High Court, but by the National Industrial Relations Court ("the Industrial Court"). Under s.99(6) Industrial Relations Act 1971, the Industrial Court had "*the like powers, rights and privileges and authority… as the High Court*", including like powers to punish for contempt of court. In exercising those powers, the Court of Appeal held that "*any breach giving rise to punishment must be proved in the Industrial Court with the same strictness as would be required in the High Court*": 1098A *per* Lord Denning MR.

86. The Industrial Court had made an order prohibiting the respondents from preventing vehicles from entering or leaving certain premises in East London and/or making threats to blacklist the operators of lorries crossing the picket line. The respondents to the contempt proceedings had not been before the Industrial Court. The Court found (p.1098E-F):

> "… it was important that the order should be served on them, so that they should know the precise terms of it. It might have been sufficient if the substance of the order had been brought to their notice in some other way, but, in order to support a committal, it would have to be made clear to them what conduct would be a breach of the order, so that they would know what was lawful and what was not, and such notice ought to be proved beyond reasonable doubt. It may be that some sort of knowledge, through various means, may have got to these three men soon after the order was made, but we do not known whether it was sufficient or not…"

87. The case is significant because the proceedings before the Industrial Court were not governed by the RSC, but by the Industrial Court Rules (SI 1971/1777). Those rules did not contain any provisions regarding failure to comply with an order made by the Industrial Court or the requirements as to service of any injunction order. As such, and in my judgment, the above statement by Lord Denning MR's, reflects not requirements of procedural rules but fundamental principles of procedural fairness that were part of the substantive common law of contempt of court.

88. In ***R -v- City of London Magistrates' Court ex parte Green*** **[1997] 3 All ER 551** ("***ex parte Green***"), the contempt proceedings arose from alleged breaches of injunction orders made against the Serious Fraud Office in respect of computers seized following a raid on Mr Green's premises. The order contained a prohibitory element – to restrain further "downloading" from the computers – and a mandatory element – to return the computers. The injunction orders were not directed at any named individuals. Contempt proceedings were brought against five members of the SFO, including the Director. The Court dismissed the contempt motion, holding that where an injunction order is obtained against the SFO and it is intended to enforce it against the Director, then it must be properly served on the individuals. Two of the respondents were found, on the evidence, to have known nothing about the injunctions. Giving the judgment of the Divisional Court, Scott Baker J held (p.558g-j):

> "Although there is an obligation to comply strictly with the terms of an injunction the courts will only punish a person for contempt upon adequate proof of the following. (1) That the terms of the injunction are clear and unambiguous:

> ***Iberian Trust Ltd***… (2) That the particular defendant in the contempt proceedings had proper notice of such terms (see RSC Order 45 rule 7). (3) That he has broken those terms.
>
> In the present case neither of the first two criteria is met. The terms of the injunction were ambiguous both as to precisely what was to be done and by whom it was to be done. Ordinarily a copy of the order must be served personally on the person required to do or refrain from doing a specified act. However, by Ord 45, r7(6), where an order is prohibitory (as opposed to mandatory) actual notice of the injunction may be sufficient and it is not obligatory to back the order with a penal notice…"

89. The RSC were replaced with the introduction of the Civil Procedure Rules in April 1999. Some of the old RSC were retained by operation of transitional provisions. Until the introduction of Part 81 from 1 October 2012 (SI 2012/2208), RSC Orders 45 and 52 (with some modifications) continued to govern enforcement of judgments and orders and committal for contempt.

90. When Part 81 was introduced to the CPR from 2012, CPR 81.5-81.6 (see [64] above) contained the long-standing requirement that, unless the court ordered otherwise, an injunction order was to be served personally on the respondent. In the notes to the 2020 edition of the White Book, the editors observed (§81.5.1):

> "It is to be expected that any procedure for applications for committal for breach of a judgment or order… will require that the party alleged to be in breach should have been given notice of the judgment or order including, in the case of positive orders, dates for compliance before the time fixe for doing the act. That proposition was clearly established in English procedural law well before it was translated into rule form for all circumstances in which it might apply (***Iberian Trust Ltd -v- Founders Trust and Investment Co Ltd*** **[1932] 2 KB 87**)."

91. The general requirement that an injunction must be personally served on the defendant is dealt with by the leading textbooks.

92. In *Arlidge, Eady & Smith on Contempt* (5th edition, 2017, Sweet & Maxwell) ("*Arlidge*"), the authors refer to the requirements in two sections. First, in Chapter 12, Section I "*Requirements as to service of the order said to be breached*" (some footnotes converted into references in square brackets):

> "§12-41 It is also necessary where committal is sought to establish service of any order which is alleged to have been disobeyed by leaving a copy with the person to be served. The importance of personal service of the order is to enable the person bound by the order, and who is alleged to be in contempt, to know what conduct would amount to a breach [***ex parte Green***]: and such notice is required to be proved beyond reasonable doubt [***Churchman***]. It seems, however, that it is no excuse that a party who has been served with the relevant document failed to read it [***Witten Re*** **(1887) 4 TLR 36**]. In cases of urgency, before formal service can be effected, it may suffice, with permission of the court, to telephone, fax or email the terms of an injunction to the appropriate person. Indeed, in an appropriate case, the court may

dispense with personal service altogether and grant permission for service to be effected by one or other of these means.

…

§12-43 A distinction has been drawn between prohibitory and mandatory injunctions, in the sense that the court will sometimes be readier to enforce a prohibitory order (than in the case of a mandatory order). The requirements for service are now amalgamated in CPR 81.5(1). The provisions for dispensation in CPR 81.8 are slightly different. In the case of a prohibitory order, the court may dispense with service if satisfied that the person concerned has had notice of it. As to any other order, the court may dispense with personal service if it thinks it just to do so; or may make an order for service by an alternative method or at an alternative place.

§12-44 Personal service of such a document is effected by leaving a copy with the individual to be served. Formerly it was also necessary to show the original to the person to be served, if so requested, but since 1979 this is no longer necessary. The copy served must bear a penal endorsement. It is necessary to prove service beyond reasonable doubt [***Churchman*** and ***ex parte Langley***]."

Then, later, in Chapter 15:

"§15-27 Where the contempt relied upon is disobedience to an order of the court, as a general rule it is necessary to prove beyond reasonable doubt due service of that order upon the person sought to be committed, so that he should know what conduct would amount to a breach [the former CPR 81.5 to 81.7 and ***Churchman***]. In the case of an order requiring a person not to do an act, such an order may be enforced by way of committal notwithstanding that service has not been effected, provided the court is satisfied that, pending services, the person in question has had notice either by being present when the order was made or subsequently by some other means, such as by 'telephone, email or otherwise' [the former 81.8(1)]. In the case of any judgment or order (i.e. including a mandatory order), the court may make an order dispensing with service if it thinks it just to do so, or make an order for service by an alternative method or at an alternative place [the former CPR 81.8(2)."

93. Similar statements of principle are set out in §§6.7 to 6.8 of *Borrie & Lowe: the Law of Contempt* (4th edition, 2010, Butterworths) (published at a time that proceedings for contempt were governed by the old RSC) and §§12.34 to 12.35 of *Miller on Contempt of Court* (4th edition, 2017, OUP). As to the requirement of personal service of the injunction order, the authors of *Borrie & Lowe* commented:

> "Although as one author [Miller, *Contempt of Court* (2nd edition), p.423) has expressed it, 'personal service is little more than a convenient way of establishing notice where the order is couched in negative or prohibitive terms', however, the procedure of serving notice should normally be observed."

94. Finally, I would note that the requirement that sufficient notice be given to a respondent of an injunction is also consistent with jurisprudence of the European Court of Human Rights.

95. Article 5(1)(b) ECHR provides (so far as material):

> "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> …
>
> (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law …"

96. The ECtHR has held that "*the person arrested or detained must have had an opportunity to comply with [the] order and has failed to do so*": ***Beiere -v- Latvia* (2011) App. No. 30954/05; [2013] MHLR 247** [49]. Furthermore, "*a person cannot be held accountable for 'non-compliance' with a court order if he or she has never been informed of that order*"; she must "*know about the contents of the court order and [be] given [a] chance to comply with it voluntarily*": *ibid* [50]. In ***Gatt -v- Malta* (2014) 58 EHRR 32**, the ECtHR held at [40] (footnotes omitted):

> "A period of detention will, in principle, be lawful if it is carried out pursuant to a court order. However, the domestic authorities must strike a fair balance between the importance in a democratic society of securing compliance with a lawful order of a court, and the importance of the right to liberty. The Court considers that in such circumstances issues such as the purpose of the order, the feasibility of compliance with the order, and the duration of the detention are matters to be taken into consideration. The issue of proportionality assumes particular significance in the overall scheme of things."

97. The English Court gives effect to these principles in several ways. First there are the substantive procedural safeguards that I have identified, long recognised under the common law, and given effect to by the various procedural rules noted above. The second is that a finding of liability for contempt of court, as a result of breach of a court order, is only the first stage. The Court must then go on to consider the appropriate penalty (see [28] above).

(3) Has the general requirement of personal service of an injunction order been removed by the changes made to Part 81?

98. In my judgment it has not.

99. The clearest indication that the CPRC had not intended to remove the ordinary requirement that an injunction order should be personally served on the defendant is contained in CPR 81.4(2)(c), which contains an express requirement that the applicant in a contempt application must provide "*confirmation that [the order] was personally served, unless the court or the parties dispensed with personal service*". As recognised in the CPRC consultation, CPR 81.4 was regarded as the "*cornerstone*" of the new contempt provisions (see [58] above) which, together with the new form N600, sought

to ensure procedural fairness, an essential element of which is the requirement to give notice of the injunction to the respondent. Inherent in the requirement to confirm that an injunction order has been personally served is the recognition that there is a requirement that it be served personally.

100. Further, form N600, which was intended to ensure that the relevant information was obtained and presented to the defendant to a contempt application, contains a direct question asking for confirmation of the date on which the injunction order was personally served on the defendant or provision of details of the order dispensing with personal service (see [59] above). Ms Bolton submitted that procedural forms are not part of the CPR. Whilst I broadly accept that submission, here the form was devised by the CPRC as a package of the reforms to Part 81 expressly to ensure procedural fairness (see [58] above). The N600 Form was clearly drafted on the premise that personal service of the injunction order was required unless the Court dispensed with the requirement.

101. I reject Ms Bolton's argument that, by instructing solicitors, Ms Laidlaw has "*dispensed*" with personal service. This is a strained interpretation of CPR 81.4(2)(c). It also cannot sensibly be maintained that the requirements of 81.4(2)(c) are "*wholly inapplicable*" once solicitors have been instructed for a defendant. Whilst it has always been open to parties to agree a method of service of an injunction that avoids the need for personal service, Ms Laidlaw was not asked to agree to dispense with personal service of the Injunction and she did not do so. Instruction of solicitors cannot amount to a prospective dispensation of the requirement that an injunction order be personally served on a defendant, unless the Court otherwise orders.

102. In my judgment, and from my analysis of the historic position, the general requirement of personal service of an injunction order is a substantive requirement of the law of contempt, that existed well before it was codified in procedural rules. My conclusion is that the express requirement of personal service – contained in the former CPR 81.6 (see [64] above) – was removed because Part 81 provides the procedural rules for contempt applications (and service of an injunction order is an anterior stage), and the general requirement of personal service was recognised to be part of the substantive law. Replication of the substantive law was one of the problems with the former Part 81 that had been identified by the CPRC in its consultation (see [53] above).

103. Support for the conclusion that personal service of the injunction order is generally required is also provided by a comparison of the service requirements for the contempt application, under CPR 81.5, and a summons issued by the Court, under CPR 81.6. In respect of the former, the default position is that personal service is required, but a modified form of alternative service, by service on a legal representative, is permitted where one is on the record for the defendant. Service on the legal representative is subject to strict safeguards, including placing an express obligation upon the legal representative, even where no objection is taken to the method of service, to "*provide to the defendant a copy of the contempt application and the evidence supporting it and take all reasonable steps to ensure that the defendant understands them*". If objection is taken to service on the legal representative, then it appears that valid service has not been effected, and the matter must then be referred to a Judge for decision. Similarly, CPR 81.6 also requires personal service of the summons on the defendant, unless the court otherwise directs. Again, if the defendant has a legal representative on the record, the modified alternative service procedure under CPR 81.5(2) can be used.

104. If Ms Bolton's argument were correct, the requirements, both for service of the contempt application, under CPR 81.5, and service any summons, issued under CPR 81.6, would be more onerous than for service of the original injunction order. Further, the regime for service on a party's legal representative of the injunction order would be subject to none of the safeguards that the CPRC considered should be imposed in relation to service of any contempt application and service of any summons. If the CPRC had intended to remove the long-standing rule that, subject to the Court making a different order, an injunction order was required to be served personally on the defendant, and instead to permit (or more accurately, to require) service instead on a solicitor, where one was instructed by the defendant, then it would be most strange not to opt for the form of modified alternative service permitted on an instructed legal representative under CPR 81.5(2). I am also satisfied that, had it really been the intention of the CPRC to *prohibit* personal service of an injunction order on a defendant, who had solicitors on the record, and instead to *require* service on those solicitors, then the CPRC would (a) have said so expressly; and (b) have consulted fully on the proposal, all the more so when they did consult on the more modest proposals for service of the contempt application upon solicitors for a defendant and that such a change would have represented a very significant departure to what the authorities show was a principle firmly embedded in the common law.

105. The effect of my conclusions is that personal service of an injunction order is still required by CPR 81.4(2)(c), unless the Court has permitted a different mode of service or has exceptionally dispensed with the need to serve the injunction order. As such, CPR 6.22(1) must be read as requiring personal service of an injunction order. Unless permitted by an alternative service order under CPR 6.15 and 6.27, service of an injunction order upon a legal representative who is on the record for a defendant is not good service. As a result, in this case, service of the Injunction on Cohen Cramer was not good service on Ms Laidlaw.

(J) Should the Court grant, retrospectively, the Claimants' Application for alternative service permitting the Injunction to be served on Ms Laidlaw by service upon her solicitors?

106. As noted above (see [33] above), the Claimants have issued an Application Notice seeking a retrospective order that service of the Injunction be permitted by alternative means and that service of the Injunction on Cohen Cramer "*be deemed effective service*" pursuant to CPR 6.15 and 6.27.

107. CPR 6.15 provides the alternative service regime for service of the Claim Form. In turn, CPR 6.27 applies CPR 6.15 "*to any document in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly*". So far as material, CPR 6.15 contains the following:

> "(1) Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place.
>
> (2) On an application under this rule, the court may order that steps already taken to bring the [document] to the attention of the defendant by an alternative method or at an alternative place is good service."

108. When the alternative service application is being made under sub-paragraph (2) to validate service relying upon steps already taken to bring the relevant document to the attention of the defendant, the Court must ask two questions:

i) Is there a 'good reason' to authorise the method of service not otherwise permitted by Part 6?; and

ii) Is the court satisfied that the steps taken did bring the document to the attention of the defendant?

109. As to "*good reason*", Ms Bolton referred to ***Abela -v- Baadarani*** **[2013] 1 WLR 2043** [33]-[41]. Mr Underwood QC did not refer to any authorities. I can take the summary of the law applying to CPR 6.15 as it applies to service of the Claim Form from ***Piepenbrock -v- Associated Newspapers Ltd*** **[2020] EWHC 1708 (QB)** [53]:

> "(1) The issue for the court to decide is whether the claimant has demonstrated a good reason to justify the making of the order. This is essentially a question of fact and it should not be necessary for the Court to spend undue time analysing previous cases which depend on their own facts ***Abela -v- Baadarani*** [33]-[35] *per* Lord Clarke.
>
> (2) Generally, the main relevant factors are likely to be (a) whether the claimant has taken reasonable steps to effect service in accordance with the rules; (b) whether the defendant or his solicitor was aware of the contents of the Claim Form at the time when it expired; and (c) what if any prejudice the defendant would suffer by the retrospective validation of a non-compliant service of the Claim Form, bearing in mind what he knew about its contents. None of these factors can be regarded as decisive in itself. The weight to be attached to them will vary with all the circumstances: ***Barton -v- Wright Hassall LLP*** **[2018] 1 WLR 1119** [10].
>
> (3) It is not necessary for a claimant to show that he '*left no stone unturned*' in his/her efforts to serve the Claim Form: ***Barton*** [21].
>
> (4) The mere fact that the defendant learned of the existence and content of the Claim Form cannot, without more, constitute a good reason to make an order under 6.15(2). However, the wording of the rule shows that this is a critical factor: ***Abela*** [36]. '*It has never been enough that the defendant should be aware of the contents of the originating document such as a claim form. Otherwise any unauthorised mode of service would be acceptable, notwithstanding that it fulfilled none of the other purposes of serving originating process*': ***Barton*** [16].
>
> (5) The question is whether there is good reason for the Court to validate the mode of service used, not whether the claimant had good reason to choose that mode: ***Barton*** [9(3)].
>
> (6) The difficulties faced by litigants in person may be a basis for the Court making allowances in respect of case management decisions, but they will not usually justify applying to litigants in person a lower standard of compliance with rules of Court. It is reasonable to expect a litigant in person to familiarise him/herself with the rules that apply to any step s/he is about to take: ***Barton*** [18].

(7) Claimants who issue a Claim Form at the end of the limitation period, opt not to have it served by the Court, and then make no attempt to serve it themselves until the very end of its period of validity '*can have only a very limited claim on the court's indulgence*' in any subsequent application under CPR 6.15(2): ***Barton*** [23].

(8) The CPR clearly stipulate the acceptable methods for serving the Claim Form. Absent some difficulty in using these methods, CPR 6.15(2) does not enable litigants to devise their own methods to effect service. It is necessary in the interests of certainty that the Court permits a litigant to depart from the prescribed methods of service only where a compelling case is made out to do so: ***Brown -v- Innovatorone*** **[2009] EWHC 1376 (Comm)** [44] *per* Andrew Smith J."

110. Not all those factors apply directly to service of documents other than the Claim Form. But in ***Piepenbrock***, I also observed [65]:

> "… It is illuminating to consider whether the Court would have granted the Claimant an order under CPR 6.15(1) had he applied [prospectively] for permission to serve the Claim Form on the Defendants by sending it: (a) to them by email; and/or (b) to their solicitors by email and/or post. It seems to me to be tolerably clear that such an application would have failed. There would be no reason – still less a good one – for the Court to validate a mode of service not prescribed by the rules... The circumstances in which a Court would permit service of a Claim Form upon solicitors under CPR 6.15(1), where a defendant had refused to nominate them for that purpose, would have to be compelling and would probably require evidence that it was practically impossible to serve the defendant by any other method. I cannot see how, if a claimant would not have been able to demonstrate a 'good reason' under CPR 6.15(1), s/he should be in any materially better position if his/her efforts validly to serve the Claim Form fail and he is forced to apply under CPR 6.15(2) to validate his invalid service…"

111. I consider the same analysis should be employed here. Had the Claimants applied, on 10 November 2021, for an alternative service order permitting them to serve the Injunction on Ms Laidlaw by serving it on her solicitors, I am satisfied that the application would have been refused. Indeed, without evidence that an alternative service order was necessary, I would have made clear (if necessary, by inserting an express requirement into the order) that the Injunction had to be personally served on Ms Laidlaw. Of course, had the Claimants been candid about their plans for service of the Injunction (and their novel interpretation of requirements for service of an injunction order following the revised Part 81), the position they now find themselves in would probably have been avoided. But there was, and is, no evidence that Ms Laidlaw was evading service. On the contrary, the evidence demonstrates that she was regularly to be found at Camp Beagle, outside the Wyton Site, in the period immediately following the grant of the injunction (for example, see [40] above). Her unchallenged evidence was that she was well known to the Claimants as she stayed regularly at Camp Beagle. Service of the Injunction on the solicitors was simply expedient. The application for an alternative service order is now made to avoid the consequences of having wrongly interpreted the service requirements of an injunction order. That is not a 'good reason'.

112. I would also have refused the alternative service application on the grounds that the Claimants have failed to demonstrate, by evidence, that the Injunction had nevertheless come to the attention of Ms Laidlaw. Whereas with a prospective alternative service application under sub-paragraph (1), the Court has to make an assessment, on the evidence, of the likelihood that the proposed alternative service method can reasonably be expected to bring the relevant document to the attention of the defendant (see the authorities cited in [26(i)] above), with a retrospective application under sub-paragraph (2) the Court can assess the evidence and determine whether it *has* brought the relevant document to the attention of the defendant. I can scarcely think that it would be right to make an alternative service order retrospectively unless the Court was so satisfied. It is not a matter of "*deeming*" the order served on the relevant defendant. The question is whether it has come to the attention of the defendant or not.

113. On this point, the standard of proof is the criminal standard: the evidence must make the Court sure. The evidence presented by the Claimants had not met this standard. The Claimants have not demonstrated to the required standard that Cohen Cramer provided a copy of the Injunction to Ms Laidlaw or even that she received a copy by some other means. Ms Bolton did not establish, by cross-examination or otherwise, that the solicitors had explained the terms of the injunction to Ms Laidlaw. The circumstantial evidence relied upon by the Claimants to attempt to demonstrate that Ms Laidlaw had received the Injunction Order is weak. The evidence relied upon in [40] above, is of statements made by Ms Laidlaw *before* the Injunction had been received by Cohen Cramer. These statements are also consistent with Ms Laidlaw's evidence that she was generally aware – "*from bits and pieces*" – that an injunction had been imposed and that its "*key provisions*" were the imposition of an Exclusion Zone and restrictions on not stopping cars from entering or leaving the Exclusion Zone (see [42] above). Critically, however, it is clear from Ms Laidlaw's evidence – and on this she was not challenged – that she erroneously thought (at the time of the acts alleged against her in the First Contempt Application) that the Exclusion Zone was to a width of 10 metres either side of the midpoint of the gate to the Wyton Site.

114. My conclusion, on the evidence, is that Ms Laidlaw had not received a copy of the Injunction, and she had not read it, carefully or at all. She knew generally of the existence of the Injunction because she was a defendant to the proceedings and had attended the hearing, on 4 October 2021, when there had been discussion of the possible imposition of in Exclusion Zone and, naturally, it was a point of discussion amongst the protestors at Camp Beagle following the grant of the Injunction on 10 November 2021, a hearing she did not attend. I am not satisfied, to the required standard, that the Injunction (or its specific restrictions) came to the attention of Ms Laidlaw as a result of the Claimants' solicitors serving it on Cohen Cramer.

115. I therefore refuse the Claimants' Application for an order, retrospectively, that service of the Injunction on Cohen Cramer is good service of the Injunction on Ms Laidlaw.

(K) In light of the evidence about Ms Laidlaw's knowledge of the terms of the Injunction, the Court should dispense with the requirement that the Injunction be served upon her?

116. The Court does have a wide discretion to dispense with defects in service of an injunction order. Ms Bolton submitted that the key question is whether injustice would be caused by so doing: ***Khawaja -v- Popat*** **[2016] EWCA Civ 362** [40]. Ms Bolton also referred to the Court of Appeal decision in ***Davy International Ltd -v- Tazzyman***

[1997] 1 WLR 1256, 1262-1266 *per* Morritt LJ. ***Tazzyman*** is principally authority for the proposition that the power to dispense with service of an injunction order can be used retrospectively (including mandatory injunctions), but the decision contains a useful review of the authorities on when it would be just nevertheless to dispense with the requirement that an injunction order must be served. One category, which has been long recognised in respect of prohibitory injunctions, is where the Court is satisfied that the respondent knows of the terms of the injunction, for example because s/he was in Court when the injunction was granted (e.g. ***Turner -v- Turner*** referred to at 1262E and see cases discussed in [74] above). In ***Hill Samuel & Co Ltd -v- Littaur*** (referred to at 1264B), the Court of Appeal was satisfied that the defendant "*knew precisely the terms of [the] order*" and that it was just in the circumstances for the Judge to have dispensed with service of the injunction order.

117. In my judgment the authorities show that the key question, if the Court is considering retrospectively dispensing the requirement to serve an injunction order, is whether the Court is satisfied, to the criminal standard, that the material terms of the injunction order said to have been breached were effectively communicated to the defendant. The cases show that it is possible to demonstrate this by evidence in several ways, but the objective is clear, as are the statements of principle from the ECtHR (see [94]-[96] above). What is required is knowledge of the *specific* terms of the order, not its general character (cf. ***Hall & Co -v- Trigg*** **[1897] 2 Ch 219** referred to at [75] above and ***Churchman*** referred to at [86] above).

118. Largely for the same reasons that I have set out above (see [113]), the evidence does not satisfy me so that I am sure that Ms Laidlaw had sufficient knowledge of the specific terms of the Injunction to justify dispensing with the ordinary requirement that she be served with the Injunction. On the contrary, and critically, the evidence demonstrates that Ms Laidlaw was, at the material time for the purposes of the First Contempt Application, mistaken about the width of the Exclusion Zone, which also affects the issue of whether she was approaching and/or obstructing vehicles that were directly entering or exiting that Zone.

119. In consequence, I refuse to dispense with service of the Injunction on Ms Laidlaw.

(L) Conclusion and next steps

120. The effect of my decision is that, as regards Ms Laidlaw, the First Contempt Application must be dismissed.

121. I find that Mr Maher is guilty of contempt of court in respect of his admitted breaches (set out in [47(i)] above) and that Ms Laidlaw is guilty of contempt of court in respect of her admitted breaches (set out in [47(ii)] above). This judgment will be handed down remotely, and the Court will fix a date for further submissions as to penalty.