



Case No: FD21F00024

Neutral Citation Number: [2022] EWFC 25

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 March 2022

Before:

MR JUSTICE MACDONALD

Between:

Her Majesty's Attorney General

Claimant

- and -

**Mr Elavi Dowie (also known as Mark Vincent
Dowie)**

Defendant

Ms Kathryn Howarth (instructed by the Government Legal Department) for the Claimant
The Defendant appeared in person

Hearing date: 3 March 2022

In Public

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic. Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email. The date and time for hand-down is deemed to be at 10.30am on 11 March 2022.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application by Her Majesty's Attorney General for an order committing Mr Elavi Dowie to prison for contempt arising out of his alleged interference with the administration of justice. That application is brought under Part 19 of the FPR 2010 pursuant to FPR r. 37.3(3). On 22 November 2021, I granted permission to the Attorney General to make her application for the committal of Mr Dowie. The Attorney General is represented by Ms Kathryn Howarth of counsel. Mr Dowie represented himself at the final hearing. In circumstances where Mr Dowie is a serving prisoner, the hearing took place over CVP with the agreement of all parties.
2. Following the Attorney General issuing her application for permission to bring committal proceedings, on 2 July 2021, Keehan J adjourned the application in order that Mr Dowie could obtain legal representation. On 9 August 2021, Dillex Solicitors informed the Government Legal Department that they had been instructed on behalf of Mr Dowie. Legal aid was granted to Dillex Solicitors on 24 August 2021. However, on 3 November 2021, Dillex Solicitors indicated they were having difficulty taking instructions from Mr Dowie. On 2 December 2021, Dillex Solicitors indicated they were no longer acting for Mr Dowie in respect of the committal application. On 10 January 2022, Mr Dowie applied for an adjournment of the final hearing on 18 January to allow him to obtain further legal representation (in the event, the hearing was adjourned after Mr Dowie contracted COVID-19). Mr Dowie has not obtained further legal representation and he did not make an application for further time to secure such representation at the commencement of this hearing.
3. The Attorney General asserts that Mr Dowie is in contempt of court for interfering with the administration of justice otherwise than in existing family proceedings. The specific grounds relied on by the Attorney General are set out in a Statement of Grounds served on Mr Dowie at HMP Preston on 16 April 2021, which service Mr Dowie has acknowledged, and are as follows:
 - i) Mr Dowie published information on YouTube by way of videos uploaded by Mr Dowie on 2 June 2020, 17 June 2020 and 1 July 2020 relating to proceedings which were brought under the Children Act 1989 and heard in private before the Family Court at Preston concluding in 2017, contrary to s.12 of the Administration of Justice Act 1960.
 - ii) Mr Dowie published on YouTube by way of videos uploaded by Mr Dowie on 2 June 2020, 17 June 2020 and 1 July 2020 the recording of proceedings heard at the Family Court in Preston concluding in 2017, contrary to s.9(1) of the Contempt of Court Act 1981.
4. The evidence in support of the application made by the Attorney General is in the form of an affidavit from Kate Mulholland, Legal Adviser to the Attorney General's Office, which affidavit contains a number of exhibits. At the outset of the hearing Mr Dowie indicated that he wished to cross-examine Ms Mulholland. However, in circumstances where the statement of Ms Mulholland simply relates, in short terms, the factual background to the application and the enquiries made by the Attorney General and where, as I will come to, Mr Dowie admits those facts, I exercised my case management

powers to refuse to require the attendance of Ms Mulholland for cross-examination. In short, I was satisfied that in circumstances where none of the facts contained in Ms Mulholland's affidavit were disputed by Mr Dowie, it was neither necessary nor proportionate to require her attendance at the hearing. To adopt the formulation used by the Administrative Court in *HM Attorney General v Pelling* [2005] EWHC 414 (Admin) at [17], there were no relevant facts requiring any further elucidation.

5. In response to the application of the Attorney General, Mr Dowie has sent a number of documents to the court and to the Attorney General. Those documents, which I have read in full, can be summarised as follows:
 - i) A letter from Mr Dowie dated 2 September 2020 addressed to the Attorney General and the Solicitor General.
 - ii) An affidavit signed by Mr Dowie dated 3 September 2020.
 - iii) A letter dated 20 April 2021 enclosing a number of documents in response to the application of the Attorney General, comprising a signed acknowledgement of service, a request for an adjournment and a statement dealing with the application by the Attorney General for permission to issue committal proceedings.
 - iv) A letter dated 22 April 2021 to the Attorney General requesting a *nolle prosequi*.
 - v) A letter dated 19 August 2021 to the Attorney General.
 - vi) A letter dated 22 February 2022 enclosing a number of documents on which Mr Dowie relies at this hearing.
6. As I have made clear above, Mr Dowie conceded in his signed affidavit dated 30 September 2020 that he made the series of recordings of the family proceedings, he says "due to the pervasive corruption and institutional racism that I faced as a Black man". Mr Dowie further conceded in his April 2021 response to the application of the Attorney General for permission to issue proceedings that he had uploaded the videos to YouTube. Within this context, Mr Dowie states that he does not deny the acts set out in the Attorney General's grounds.
7. However, Mr Dowie contends that he is not in contempt of court in circumstances where (a) at the time he uploaded the videos he was not aware that the family proceedings were heard in private, it being only later that he realised his actions were unlawful, (b) that his mental state at the time meant that he lacked the requisite intention to act illegally or be reckless in that regard and lacked the requisite intention to impede or prejudice the administration of justice and, in any event, that (c) the publication of the videos had no impact on the Children Act proceedings long since concluded and that there is no evidence that the publication in fact undermined the administration of justice more widely.
8. Finally, by way of introduction, the process of committal for contempt is a highly technical one. Within this context it is important, in circumstances where the liberty of the citizen is at stake, to recall at the very outset the strict procedural requirements of a properly constituted committal hearing that have to be complied with in respect of the

Attorney General's application. I have in particular borne in mind the following requirements:

- i) The committal application must be dealt with at a discrete hearing and not alongside other applications.
- ii) The alleged contempt must be set out clearly in a notice of application or document, the summons or notice identifying separately and numerically each alleged act of contempt.
- iii) The application notice or document setting out separately each alleged contempt must be proved to have been served on the Respondent in accordance with the rules.
- iv) The Respondent must be given the opportunity to secure legal representation as he or she is entitled to.
- v) The committal hearing must be listed publicly in accordance with the Lord Chief Justice's Practice Direction: Committal / Contempt of Court – Open Court of 26 March 2015 (and as amended on 20 August 2020) and should ordinarily be held in open court.
- vi) Consideration must be given to whether the allocated judge should hear the committal or whether the committal application should be allocated to another judge.
- vii) The burden of proving the alleged contempt lies on the person or authority alleging the contempt.
- viii) The Respondent is entitled, subject to the case management powers of the court, to cross-examine witnesses, to call evidence and to make a submission of no case to answer.
- ix) The alleged contempt must be proved to the criminal standard of proof, i.e. beyond reasonable doubt.
- x) The Respondent must be advised of his or her right to remain silent and informed that he or she is not obliged to give evidence in his or her own defence.
- xi) Where a contempt is found proved on the criminal standard the committal order must set out the findings made by the court that establish the contempt.
- xii) Sentencing should proceed as a separate and discrete exercise, with a break between the committal decision and the sentencing of the contemnor. The contemnor must be allowed to address the court by way of mitigation or to purge his or her contempt.
- xiii) The court can order imprisonment (immediate or suspended) and/or a fine, or adjourn consideration of penalty for a fixed period or enlarge the injunction.
- xiv) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval and be designed to

secure compliance in the future. Committal to prison is appropriate only where no reasonable alternative exists. Where the sentence is suspended or adjourned the period of suspension or adjournment and the precise terms for activation must be specified.

- xv) The court should briefly explain its reasons for the disposal it decides to impose if it finds the contempt proved.
9. In this case, I am satisfied that each of the aforesaid procedural imperatives has been met ahead of and during the hearing.

BACKGROUND

10. Whilst the proceedings under the Children Act 1989 from which this application emerges have a long and protracted history, for the purposes of the committal application that history can be taken relatively shortly.
11. As I have noted, Mr Dowie was involved in private law proceedings under the Children Act 1989 commenced on 1 December 2015, in which Mr Dowie sought child arrangements orders in respect of his two children. Those proceedings concluded on 8 September 2017. The court has before it the judgment of District Judge Turner. At the conclusion of the proceedings, District Judge Turner made an order pursuant to s.91(14) of the Children Act 1989 providing that Mr Dowie could not make an application in respect of the children without the permission of the court for a period of 18 months. On 22 December 2017, District Judge Turner made a non-molestation order in favour of the mother; that order including an injunction prohibiting Mr Dowie from publishing photographs and video images of the mother and the children through electronic social media or otherwise.
12. On 7 December 2018, Mr Dowie applied to the court for permission to apply for a further child arrangements order. That application met with considerable delay, in part caused by Mr Dowie's imprisonment for repeated breaches of the non-molestation order made in December 2017. A restraining order was imposed by Liverpool Crown Court on Mr Dowie on 29 November 2019.
13. Within this context, on 3 June 2020, Mr Dowie emailed the Family Court at Preston expressing his dissatisfaction that his application had not yet been given a hearing date. In addition, he sent a link to a video posted on YouTube, explaining in his email to the court that:
- “I have created this video and provided a link below, which will highlight some of the evidence that is necessary for you to understand how my children were ripped from my life by the criminal cartel mentioned in the video. It was not practical to include all the evidence I have, however, at any point you are at liberty to request more compelling evidence that I have.”
14. By a letter of 20 June 2020, Her Honour Judge Bancroft, the Designated Family Judge for Lancashire, wrote to the Attorney General's Office notifying the Attorney General that the video posted by Mr Dowie contained information from the concluded Children Act proceedings before District Judge Turner, and that she considered the video to be,

prima facie, in breach of the Administration of Justice Act 1960, the Contempt of Court Act 1981 and the Children Act 1989 s.97(2).

15. Following the correspondence from HHJ Bancroft, the Attorney General's Office identified further videos that had been uploaded to YouTube that had been produced by Mr Dowie and which contained information concerning the private law proceedings concluded in 2017. Each of the relevant recordings has been downloaded and exhibited to a statement of evidence filed and served from Adina Mercioniu of Legatstat Ltd. I have watched each of the subject videos in full.
16. The first video was uploaded on 2 June 2020. The video was entitled "*An Open Message to His Honour Judge Brown: Here is the Evidence*". In the video, Mr Dowie states its purpose to be to highlight the fact that his application to the Family Court has not yet received a listing. For the purposes of these proceedings, the key element of the video is a recording it contains from the private law proceedings before District Judge Turner. Specifically, the recording includes the cross-examination by Mr Dowie of a psychologist whom he alleges in his video is "a criminal", had wrongly diagnosed him with narcissistic personality disorder and a paranoid personality disorder and had plagiarised her report, together with Mr Dowie's consequential exchanges with District Judge Turner, who Mr Dowie in the video accuses of fabricating evidence. In addition, the video includes a recording of Mr Dowie's cross-examination of the Child and Family Reporter. It is plain that Mr Dowie made the recording in the courtroom. At the outset of the first video, Mr Dowie makes references to orders preventing him from revealing certain information concerning the proceedings and at one point acknowledges that his conduct may be considered in violation of an order.
17. The second video relied on by the Attorney General was uploaded by Mr Dowie on 17 June 2020. The second video was entitled "*False Allegations in the Family Court*". Again, for the purposes of these proceedings, the key element of the video is that it contains a recording of District Judge Turner asking questions of the mother, including a description by the mother of a conversation with one of the subject children. Thereafter, the video contains a recording of Mr Dowie cross-examining the mother regarding allegations of rape. The video includes Mr Dowie asserting that counsel has fraudulently obtained legal aid and that the court is complicit in criminal activity. Finally, the video contains a recording of Mr Dowie speaking with a solicitor seeking advice following him reporting to the police what he asserted were false allegations of rape. Again, during the course of the video, Mr Dowie appears to make a distinction between information he is permitted to publish and information he is prohibited from publishing.
18. The third video relied on by the Attorney General was uploaded to YouTube on 1 July 2020. That video is entitled "*Cafcass and the Destruction of my Children's Rights*". That video contains a recording of evidence in chief given by the Child and Family Reporter, whom Mr Dowie describes as a "soft spoken devil". The video also details conversations that Mr Dowie has had with his children. With respect to Cafcass, Mr Dowie alleges during the course of the video that Cafcass prevented evidence being heard by the court and that Cafcass has an agenda for "paedophilic individuals" to have access to children.
19. On 7 August 2020, the Attorney General invited Mr Dowie's response to the matters set out above. On 2 September 2020, Mr Dowie sent to the Attorney General a letter

enclosing an affidavit dated 3 September 2020. As I have noted, that document conceded that Mr Dowie had made the recordings summarised above and had uploaded the videos to YouTube. However, as I have further noted, Mr Dowie stated that he had taken this course of action “due to the pervasive corruption and institutional racism that I faced as a Black man”. Mr Dowie further relied on the fact that he had reported himself to the police following the publication of the videos, that the police had investigated the matter and that HHJ Singleton QC, the Designated Family Judge for Greater Manchester, had stated that Mr Dowie was at liberty to utilise his recordings as he saw fit. It has subsequently been confirmed that HHJ Singleton QC gave no permission for Mr Dowie to use the recordings of the proceedings that he had made. Later in his affidavit Mr Dowie also asserts that HHJ Singleton QC “gave an order for me to be killed”. It should go without saying that HHJ Singleton QC made no such order.

20. On 4 December 2020, District Judge Brown amended the non-molestation injunction granted in favour of the mother in December 2017 to include an injunction prohibiting Mr Dowie from publishing in any print or electronic form (to include publication on any public forum or social media site) any evidence, information, (including the names of the judge, the parties or their legal representatives) documents, orders and / or judgment arising from case PR18P91620 and, in the event he has already done so, to remove the same. Mr Dowie has declined to remove any of the material he has published on the Internet.
21. On 12 August 2021, Mr Dowie was convicted at the Bradford Crown Court on an eight count indictment concerning breaches of a restraining order imposed by Liverpool Crown Court on 29 November 2019 and further serial breaches of the non-molestation order imposed by Preston Family Court on 22 December 2017 and amended on 4 December 2020. Following his conviction, Mr Dowie was sentenced to eight years imprisonment. Mr Dowie has stated that he is appealing his conviction and sentence.
22. In light of the criminal conviction, the Attorney General very properly gave consideration to the proportionality of continuing to prosecute these contempt proceedings. On 4 January 2022, the Attorney General wrote to the court and Mr Dowie confirming that she intended to proceed with the application. The basis of that conclusion was that (a) there was no factual overlap between the breaches of the restraining order and non-molestation order for which Mr Dowie was convicted and sentenced in the Crown Court and the breaches that are the subject of the application to commit before this court, (b) the repeated nature of Mr Dowie’s alleged breaches, (c) Mr Dowie’s refusal to remove the subject videos from YouTube, (d) Mr Dowie’s continued publication of recordings notwithstanding the contempt proceedings and (e) that were Mr Dowie to be found in contempt a copy of the judgment could be provided to YouTube with a request that the videos be removed from the platform. The letter from the Attorney General also made clear that the Solicitor General had given further consideration to the public interest and had concluded that the committal application remained in the public interest.

THE LAW

23. Section 9(1) of the Contempt of Court Act 1981 provides as follows with respect to the use of recording devices in court:

“9 Use of tape recorders

(1) Subject to subsection (4) below, it is a contempt of court—

(a) to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court;

(b) to publish a recording of legal proceedings made by means of any such instrument, or any recording derived directly or indirectly from it, by playing it in the hearing of the public or any section of the public, or to dispose of it or any recording so derived, with a view to such publication;

(c) to use any such recording in contravention of any conditions of leave granted under paragraph (a).

(d) to publish or dispose of any recording in contravention of any conditions of leave granted under subsection (1A).

(1A) In the case of a recording of Supreme Court proceedings, subsection (1)(b) does not apply to its publication or disposal with the leave of the Court.

(2) Leave under paragraph (a) of subsection (1), or under subsection (1A), may be granted or refused at the discretion of the court, and if granted—

(a) may, in the case of leave under subsection (1)(a), be granted subject to such conditions as the court thinks proper with respect to the use of any recording made pursuant to the leave and;

(b) may, in the case of leave under subsection (1A), be granted subject to such conditions as the Supreme Court thinks proper with respect to publication or disposal of any recording to which the leave relates; and

where leave has been granted the court may at the like discretion withdraw or amend it either generally or in relation to any particular part of the proceedings.

(3) Without prejudice to any other power to deal with an act of contempt under paragraph (a) of subsection (1), the court may order the instrument, or any recording made with it, or both, to be forfeited; and any object so forfeited shall (unless the court otherwise determines on application by a person appearing to be the owner) be sold or otherwise disposed of in such manner as the court may direct.

(4) This section does not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.

(5) See section 32 of the Crime and Courts Act 2013 for power to provide for further exceptions.”

24. The effect of s.9(1) of the Contempt of Court Act 1981 is to make it a contempt of court either to use in court, or to bring into court for use, any tape recorder or other instrument for recording sound save where the court has given permission. Further, the 1981 Act

makes it a contempt to publish a recording of legal proceedings made by means of a tape recorder or other recording instrument, or any recording derived directly or indirectly from such recording, by playing it in the hearing of the public or any section of the public.

25. Recording of proceedings without the permission of the court, or the broadcasting of any recording, including on YouTube, is considered to be a serious matter. In *Attorney General v Scarth* [2013] EWHC 194 (Admin) the Lord Chief Justice observed as follows at [32] to [34]:

“[32] There is no alternative but to face up to his repeated deliberate contempts. We have reached the conclusion that there should be a committal on each of these two counts for 28 days, to run concurrently. But we shall suspend that order so that it will not take immediate effect. It will be suspended for a period of twelve months. That is the order of the court.

[33] Before leaving the judgment, however, we should perhaps endeavour to reduce some of the temperature. We remind ourselves, as we remind anyone here in court, and the defendant himself, that he is entitled to apply to the court before any hearing for permission to record the proceedings by way of some mechanical device. We make it clear that if he had attended the hearing today and had made that application (or invited counsel to make the application on his behalf), we should have granted permission. We should have done so because of his age and infirmity, his apparent diminution in hearing and also his burning sense of grievance and his total mistrust of any process by which the court's proceedings are recorded. Given that combination of circumstances we would have been prepared to grant permission. We invite any court which has to deal with him in future as a defendant or a party to litigation, or acting as a McKenzie friend for an individual who is not already legally represented, at least to consider with some sympathy an application, if he chooses to make one, for permission to make a recording.

[34] That sympathy, however, does not extend to the misuse of "YouTube" or modern technology for publishing the court process, or part of the court process, any further than that. Our sympathy is designed to enable the defendant to make his own recording of the proceedings -- a recording which he would then feel able to trust in a way that he cannot repose confidence in the court process. That is by way of a footnote. Our decision is the order that we have made.”

26. The Administration of Justice Act 1960 s.12 provides as follows with respect to the publication of information from proceedings held in private:

“12 Publication of information relating to proceedings in private.

(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—

(a) where the proceedings—

(i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

(ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;

(b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;

(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).”

27. The effect of s.12 of the Administration of Justice Act 1960 is to make it a contempt of court to publish material in respect of proceedings before the court where those proceedings are brought under the Children Act 1989. Under s.12 of the 1960 Act, court includes references to a judge.

28. However, not all dissemination of information from proceedings under the Children Act 1989 will contravene the provisions of the 1960 Act. In *P v Liverpool Daily Post and Echo Newspapers PLC* [1991] 2 AC 370, Lord Bridge observed that the essential privacy which is protected by each of the exceptions in paragraphs (a) to (d) of s. 12(1) of the 1960 Act attaches to the substance of the matters which the court has closed its doors to consider, not to the fact the court will sit, is sitting or has sat at a certain date,

time or place. Further, in *X v Dempster* [1999] 1 FLR 894, Wilson J (as he then was) made clear that, in the absence of a specific injunction, the exceptions under s.12(1) will not prohibit publication of the fact that a child is the subject of proceedings under the Children Act 1989, the name, address and photograph of that child, the name, address and photograph of the parties, the date, time and place of past and future hearings, the nature of the dispute in the proceedings, anything heard by a person lawfully conducting themselves in the public precincts of the court or the text or summary of the whole or part of any order made by the court.

29. As set out in Aldridge, Eady & Smith on Contempt 5th Ed. at 3-28, for largely historical reasons, different forms of contempt have been allocated to one or other of the two traditional broad categories, namely criminal contempts and civil contempts. The learned authors go on to note that:

“Most examples of conduct classified as contempt have been characterised as “criminal”. They include contempts in the face of the court; publication of matter scandalising the court; acts calculated to prejudice the fair trial of a pending case (criminal or civil); reprisals against those who participate in legal proceedings for what they have done; impeding service of, or forging, the process of the court; and also most contempts in relation to wards of court.”

30. Within this context, and by contrast to a civil contempt involving disobedience of a court order or undertaking by a person involved in litigation in response to which the court may invoke its summary contempt jurisdiction, in England and Wales the general approach has been that an act which so threatens the administration of justice that it requires punishment from the public point of view constitutes a criminal contempt. In the Australian case of *Prothonotary of Supreme Court of South Wales v Costello* [1984] 3 NSWLR 201 at 208, Priestly JA noted as follows with respect to the meaning of interference with the administration of justice:

“To my mind it denotes the doing of something which, if successful, would bring about consequences in the working of the system of justice in this State by improper means. It is wrongful behaviour whether or not it is successful.”

31. Actions contrary to the exceptions contained in s.12 of the Administration of Justice Act 1960 are considered to be an instance of interference with the administration of justice (see *HM Attorney General v Pelling* [2005] EWHC 414 (Admin) at [50]). Within this context, the Divisional Court’s judgment in *HM Attorney General v Pelling* makes clear that it is a criminal contempt to publish on the internet the substance of matters which are heard in private during proceedings under the Children Act 1989.
32. The standard of proof applicable where the criminal contempt is alleged to comprise interference with the due administration of justice remains that of beyond reasonable doubt.
33. Within the foregoing context, a further question has arisen in these proceedings as to the *mens rea* required to prove, in this case, the contempts amounting to an interference in the due administration of justice. In this case, the question of *mens rea* falls to be addressed separately in respect of each statutory ground of contempt relied on with

respect to the publication by Mr Dowie of videos containing recordings of the proceedings under the Children Act 1989.

34. Dealing first with the ground of contempt established by s.9(1) of the Contempt of Court Act 1981, the Contempt of Court Act 1981 creates what is termed the “strict liability rule”. Section 1 of the Contempt of Court Act 1981 provides as follows:

“1. The strict liability rule

In this Act ‘the strict liability rule’ means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.”

35. The strict liability rule, negating the need to prove intent, applies only with respect to publications addressed to the public at large or any section of the public, only to publications that create a substantial risk that the course of justice will be seriously impeded or prejudiced and only in respect of proceedings that are active. Section 2 of the Contempt of Court Act 1981 providing as follows:

“2 Limitation of scope of strict liability.

(1) The strict liability rule applies only in relation to publications, and for this purpose “publication” includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public.

(2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

(3) The strict liability rule applies to a publication only if the proceedings in question are active within the meaning of this section at the time of the publication.

(4) Schedule 1 applies for determining the times at which proceedings are to be treated as active within the meaning of this section.

(5) In this section “programme service” has the same meaning as in the Broadcasting Act 1990.”

36. With respect to the question of whether proceedings are “active”, paragraph 12 of Schedule 1 to the Contempt of Court Act 1981 provides that proceedings other than criminal proceedings are active from the time when arrangements for the hearing are made or, if no such arrangements are previously made, from the time the hearing begins, until the proceedings are disposed of or discontinued or withdrawn. Any motion or application made in or for the purposes of any proceedings, and any pre-trial review in the County Court, is treated as a distinct proceeding.

37. Section 3 of the Contempt of Court Act 1981 provides a statutory defence to contempt of court under the strict liability rule in cases of innocent publication or distribution:

“3 Defence of innocent publication or distribution.

(1) A person is not guilty of contempt of court under the strict liability rule as the publisher of any matter to which that rule applies if at the time of publication (having taken all reasonable care) he does not know and has no reason to suspect that relevant proceedings are active.

(2) A person is not guilty of contempt of court under the strict liability rule as the distributor of a publication containing any such matter if at the time of distribution (having taken all reasonable care) he does not know that it contains such matter and has no reason to suspect that it is likely to do so.

(3) The burden of proof of any fact tending to establish a defence afforded by this section to any person lies upon that person.”

38. Accordingly, under the strict liability rule in the Contempt of Court Act 1981 liability will be imposed even where there is no intention to interfere with the administration of justice. Thus, in *Re Hooker* [1994] CLY 766, Kennedy LJ held that, in respect of s.9(1)(a) there would be no need to demonstrate intention to interfere with the administration of justice or an element of defiance. Within the context of that section, the authors of Aldridge, Eady & Smith on Contempt 5th Ed. at 10.208 further note that:

“It would seem in principle to be enough for liability under s.9(1)(a) that one knowingly takes a tape recorder, intending to use it. In accordance with the general rule that mistake of law is no defence, it would not avail a person who was unaware of the provision; a student for example, who went to court and hoped to take a recording of that experience would commit an offence. But ignorance of that sort would be understandable, and should be regarded as an important matter of mitigation. Similarly, as to s.9(1)(b), all that would appear to be required is that the publication should take place knowingly.”

39. Thus, in respect of the question of *mens rea* for the ground of contempt under the Contempt of Court Act 1981 s.9(1) in cases where the strict liability rule applies, to establish a contempt it is only necessary to prove beyond reasonable doubt that the alleged contemnor knowingly took a tape recorder or other recording device into court with the intention of using it, or that the alleged contemnor knowingly published the information recorded.
40. With respect to the second statutory ground of contempt, namely that established by the terms of the Administration of Justice Act 1960 s.12, in *P v Liverpool Daily Post and Echo Newspapers PLC* [1991] 2 AC 370, Lord Bridge considered that if there is knowledge that the published information is within one of the prohibited categories, in the sense of knowing that the proceedings are being heard in private, then subject to any defence that would be available at common law, *prima facie* the person publishing the information will be in contempt by virtue of the provisions of s.12 of the 1960 Act.
41. Within this context, in respect of the ground of contempt under the 1960 Act, ignorance of the operative legal provisions themselves will not be a defence, although other common law defences may be available. It would, for example, be a defence for the alleged contemnor to show that he was unaware that the information related to those proceedings, or unaware that the proceedings were in private (see *Re F (Orse A)* (A

Minor) [1977] Fam 58 at 100B). Delay in publication does not generally constitute a defence. In *Attorney General v Pelling* [2005] EWHC 414 (Admin), the Divisional Court held that it was a criminal contempt to publish on the internet the content of a judgment given in private during the course of proceedings under the Children Act 1989 years earlier notwithstanding that the publication could have no direct impact on the proceedings, the court accepting that the publication undermined the interests of justice in a broader sense. It is not a defence to submit that the relevant actions were carried out in order to expose alleged wrongdoing (see *HM Attorney General v Patterson* [2019] EWHC 1914 (QB) at [14]).

42. In the circumstances, with respect to the question of *mens rea* required to establish the ground of contempt under the Administration of Justice Act 1960 s.12(1), it is necessary to prove beyond reasonable doubt that the alleged contemnor published information in the knowledge that the proceedings were being heard in private. Beyond being aware that that the information relates to proceedings taking place in private, it would not appear to be necessary to show that the alleged contemnor was aware of the specific legal provisions which prohibit publication, having regard to the general principle that ignorance of the law is no defence.
43. However, the strict liability rule under the Contempt of Court Act 1981 is *not* operative in this case in circumstances where the relevant proceedings were not active at the time of publication and where it is said that the publication interferes with the administration of justice more widely than in the “particular legal proceedings”. Further, publication for the purposes of the Administration of Justice Act 1960 does not any event fall within the strict liability rule provided by the Contempt of Court Act 1981. In these circumstances, the question arises whether it is *also* a necessary component of the *mens rea* for contempt under s.9(1) of the Contempt of Court Act 1981 or under s.12 of the Administration of Justice Act 1960 in this case for Mr Dowie also to have intended to interfere with the administration of justice.
44. Pursuant to s.6(c) of the Contempt of Court Act 1981, nothing in that Act restricts liability for common law contempt of court in respect of conduct intended to impede or prejudice the administration of justice. Thus, where the strict liability rule does not apply, it is still possible for the court to determine that a contempt has occurred by reason of the recording of proceedings and/or by reason of the publication of such recording, subject to the question of whether a common law defence to the charge of contempt is available, as made clear in *P v Liverpool Daily Post and Echo Newspapers PLC* [1991] 2 AC 370. Within this context, in Aldridge, Eady & Smith on Contempt 5th Ed. At 3.45 the authors note that (emphasis added):

“In the case of criminal contempts *not* falling within the strict liability rule, it would appear that an intention to interfere with the administration of justice is required, *at least for publication contempts*. For other types of criminal contempt, the mental element is less clear.”
45. Further, within the context of examining the distinction between civil and criminal contempts, in *Att-Gen v Times Newspapers Ltd* [1992] 1 A.C. 191 at 217-18, Lord Oliver stated as follows regarding the role of intent in cases concerning alleged interference with the administration of justice:

“A distinction (which has been variously described as ‘unhelpful’ or ‘largely meaningless’) is sometimes drawn between what is described as ‘civil contempt’, that is to say, contempt by a party to proceedings in a matter of procedure, and ‘criminal contempt.’ One particular form of contempt by a party to proceedings is that constituted by an intentional act which is in breach of the order of a competent court. Where this occurs as a result of the act of a party who is bound by the order or of others acting at his direction or on his instigation, it constitutes a civil contempt by him which is punishable by the court at the instance of the party for whose benefit the order was made and which can be waived by him. The intention with which the act was done will, of course, be of the highest relevance in the determination of the penalty (if any) to be imposed by the court, but the liability here is a strict one in the sense that all that requires to be proved is service of the order and the subsequent doing by the party bound of that which is prohibited. When, however, the prohibited act is done not by the party bound himself but by a third party, a stranger to the litigation, that person may also be liable for contempt. There is, however, this essential distinction that his liability is for criminal contempt and arises not because the contemnor is himself affected by the prohibition contained in the order but because his act constitutes a wilful interference with the administration of justice by the court in the proceedings in which the order was made. Here the liability is not strict in the sense referred to, for there has to be shown not only knowledge of the order but an intention to interfere with or impede the administration of justice—an intention which can of course be inferred from the circumstances.”

46. Within this context, it would appear that a criminal contempt that does *not* fall within the strict liability rule (either because that rule is excluded by the terms of the Contempt of Court Act 1981 or the contempt is said to be grounded in the terms of the Administration of Justice Act 1960) *and* that is said to constitute an interference with the administration of justice, will *also* require proof beyond reasonable doubt of an intention to interfere with or impede the administration of justice, an intention which may be inferred from the circumstances demonstrated by the admissible evidence. In this context, the essence of the criminal contempt consists of an intentional interference in the administration of justice (see *AG v Punch* [2003] AC 1046 at [2] and [66]). It is sufficient *mens rea* for the specific intent to impede the course of justice if the contemnor intends to risk impeding the course of justice by his acts, even if he did not intend the precise manner in which his acts will have that effect (see *HM Solicitor General v Cos & Anor* [2016] EWHC 1241 (QB) at [60]).
47. Drawing all these threads together, it seems to me that the legal framework in which the application by the Attorney General can be summarised is as follows as regards the position in respect of *mens rea*:
 - i) For alleged contempts under s.9(1) of the Contempt of Court Act 1981 falling *within* the strict liability rule, the Attorney General is required to prove beyond reasonable doubt that Mr Dowie knowingly took a tape recorder or other recording device into court with the intention of using it and, where publication has taken place, that Mr Dowie knowingly published the information so recorded.

- ii) For alleged contempts under s.9(1) of the Contempt of Court Act 1981 that fall *outside* the strict liability rule, it is necessary for the Attorney General to additionally prove beyond reasonable doubt that Mr Dowie intended to interfere in the due administration of justice.
- iii) For alleged contempts under one of the exceptions set out in s.12 of the Administration of Courts Act 1960, the Attorney General is required to prove beyond reasonable doubt that Mr Dowie knew that the published information was within one of the prohibited categories, in the sense of knowing that the proceedings are being heard in private, *and* intended to interfere in the due administration of justice.

DISCUSSION

48. I am satisfied that the Attorney General has proved beyond reasonable doubt that Mr Dowie brought into court for use and used an instrument for recording sound without the leave of the court and that he published the resulting recordings of legal proceedings by uploading videos containing the recordings to YouTube on 2 June 2020, 17 June 2020 and 1 July 2020, thereby also publishing information relating to proceedings under the Children Act 1989 before a court sitting in private. I am further satisfied that Mr Dowie knew that the proceedings he recorded were proceedings that were being heard in private. Finally, in circumstances where I am satisfied that Mr Dowie's actions did not fall within the strict liability rule under s.1 of the Contempt of Court Act 1981, I am satisfied that he intended by his actions to interfere with the due administration of justice. My reasons for so deciding are as follows.
49. With respect to the *actus reus* of the alleged contempts, as I have already noted, Mr Dowie has always been candid about the fact that he brought into court for use and used an instrument for recording sound without the leave of the court and that he published the resulting recordings of legal proceedings by uploading videos containing the recordings to YouTube on 2 June 2020, 17 June 2020 and 1 July 2020, thereby also publishing information relating to proceedings before a court sitting in private in proceedings under the Children Act 1989. Further, I am satisfied that the evidence before the court demonstrates each of these elements of the *actus reus* independent of Mr Dowie's frank admissions. Within this context, I am satisfied that the Attorney General has proved these matters beyond reasonable doubt.
50. Within this context, in respect of the *actus reus* of the contempts alleged by the Attorney General, the question is whether Mr Dowie's actions did in fact interfere in the administration of justice. The Attorney General submits that whilst the proceedings had concluded, Mr Dowie's actions contrary to the provisions of the Contempt of Court Act 1989 undermined the interests of justice more widely even though the proceedings from which the recordings were derived had finished. Against this, Mr Dowie contends that, in circumstances where the proceedings under the Children Act 1989 were long concluded, his actions of bringing into court for use, and using, an instrument for recording sound and publishing the resulting recordings of legal proceedings to YouTube on 2 June 2020, 17 June 2020 and 1 July 2020, did not interfere with the administration of justice.
51. As I have noted, publication of material from proceedings after they have concluded will not prevent a contempt being committed. With respect to the Contempt of Court

Act 1981, the completion of the proceedings will mean that the strict liability rule does not apply but a contempt may still be committed subject to proof of the applicable *mens rea*. In respect of the Administration of Justice Act 1960, the conclusion of proceedings will likewise not prevent the commission of a contempt under one of the exceptions set out in s.12. Within this context, it is still possible to interfere with the administration of justice notwithstanding that proceedings have been completed. Once again, in *Attorney General v Pelling* [2005] EWHC 414 (Admin), the Divisional Court held that it was a criminal contempt to publish on the internet the content of a judgment given in private during the course of proceedings under the Children Act 1989 years earlier, notwithstanding that the publication could have no direct impact on the proceedings, the court accepting that the publication undermined the interests of justice in a broader sense.

52. Within this context, I am satisfied beyond reasonable doubt that Mr Dowie's actions did, as a matter of fact, interfere with the administration of justice. The statutory prohibition on recording in court without the permission of the court, and on publishing such recordings, reflects what Parliament considers to constitute a serious risk to the administration of justice if those actions are taken. Within this context, I am satisfied that the recording by Mr Dowie of proceedings and the publication of those recordings, in breach of a prohibition against doing so, interfered with the administration of justice more widely through the very act of defying the clear prohibition on pursuing such a course of action. The reason that this is so is obvious, both in respect of this case and more widely. If those giving evidence in future private proceedings concerning this family were to be required to do so in the knowledge that their evidence has been recorded and relayed to the public at large they may well be reticent in giving full and frank evidence to the court in the future. The same risk arises if parties know that deeply personal matters relayed in evidence in private proceedings have been disseminated to the public at large. Within this context, Mr Dowie's children, the subject of the proceedings in respect of which recording publication has taken place, are still minors and the family's circumstances are still the subject of some litigation under the Family Law Act 1996. More widely, if those giving evidence in private proceedings under the Children Act 1989 generally were to be required to do so in the knowledge that their evidence may be recorded and relayed to the public at large may likewise be reticent in giving full and frank evidence to the court in the future.
53. Beyond this, in this case Mr Dowie uses his recordings to present the judge presiding over the proceedings, and the expert jointly instructed in the proceedings, as "criminals", the judge as a fabricator of evidence, mother's counsel as committing a fraud on the Legal Aid Agency and to assert that Cafcass has an agenda to allow "paedophilic individuals" access to children. In my judgment, the use of recordings of proceedings held in private to level unfounded allegations and to paint a highly partial and partisan account of proceedings is itself apt to further undermine the administration of justice more widely.
54. In respect of *mens rea*, the questions for the court centres on whether the Attorney General has proved beyond reasonable doubt that Mr Dowie knew the proceedings were in private and whether, in taking the actions he did, he intended to interfere with the due administration of justice.
55. The first question arises only in respect of the alleged criminal contempt under s.12(1) of the Administration of Justice Act 1960 which, as I have noted, requires proof beyond

reasonable doubt that the alleged contemnor knew that the published information was within one of the prohibited categories, in the sense of knowing that the proceedings are being heard in private. In this regard, the Attorney General contends that given the extent to which Mr Dowie was involved in proceedings under the Children Act 1989, and that previous orders were made prohibiting him from publishing information about the family, it is simply not credible that he did not know he was involved in proceedings being heard in private. Mr Dowie contends that at the time he uploaded the videos he was not aware that the family proceedings were being heard in private, it being only later that he realised his actions were unlawful, at which time he reported himself to the police. I am satisfied beyond reasonable doubt that Mr Dowie *did* know at the time he made the recordings, and certainly by the time he published the same, that the family proceedings were proceedings that were held in private.

56. Whilst Mr Dowie also contends that his mental health at the time the recordings were made prevented him from understanding that the proceedings were in private, there is no medical evidence to support such a contention and such a contention is inconsistent with the evidence. Prior to his recording and publication of the information, Mr Dowie had been involved in family proceedings held in private since 2017. On 4 January 2018, Mr Dowie was specifically prohibited from communicating to any third party, person, business or organisation any information or document arising from the proceedings and was prohibited from publishing the same. As I have already noted, at the outset of the first video, Mr Dowie makes references to orders preventing him from revealing certain information concerning the proceedings and at one point acknowledges that his conduct may be considered in violation of an order. In my judgment, this indicates that Mr Dowie was well aware at the time he published the videos that information concerning proceedings was sensitive and the subject of special considerations regarding publication.
57. In addition, and more importantly, at no point has it been suggested by Mr Dowie that he recorded the proceedings openly or that he sought permission to record the proceedings. There is no indication on the recordings that the judge, the lawyers or the witnesses were aware that a recording was being made. Within this context, I am satisfied that the recordings made by Mr Dowie were made covertly. I am further satisfied that it is reasonable to infer from that covert action on his part that Mr Dowie was well aware that he was not permitted to record proceedings because they were being held in private. In my judgment, that is the only reasonable inference that can be drawn from the fact that Mr Dowie acted covertly.
58. Finally in this regard, Mr Dowie contends that “a couple of days” after the making and publication of the recordings in June and July 2020, he reported himself to the police. Whilst Mr Dowie contends this is evidence of the fact that he only realised after the event that the hearing was in private, taken in the foregoing context I am satisfied that this is further evidence that he was aware that the proceedings were private and that his course of conduct was not permitted. In any event, on Mr Dowie’s *own* evidence in this regard, he was therefore *definitely* aware that the proceedings were held in private at the time he published the covert recordings he made of the proceedings.
59. The second question arises in respect of both the alleged contempt under the Contempt of Court Act 1981 and the alleged contempt under the Administration of Justice Act 1960 in circumstances where the strict liability rule does not apply (by reason, in respect of the Contempt of Court Act 1981, of the proceedings not being active and in any event

in respect of the Administration of Justice Act 1960), namely whether the Attorney General has proved beyond reasonable doubt that Mr Dowie intended to interfere with the administration of justice. The Attorney General submits that such intention on the part of Mr Dowie can readily be inferred as the publication was inherently, obviously and foreseeably prejudicial to the administration of justice given the private nature of the Children Act 1989 proceedings. As I have noted, Mr Dowie argues that his mental state at the time meant that he lacked the requisite intention to act illegally or be reckless in that regard and lacked the requisite intention to impede or prejudice the administration of justice. Again, no medical evidence has been produced to substantiate this contention and no application to adduce such evidence was made by Mr Dowie. Again, I am satisfied beyond reasonable doubt that Mr Dowie intended by his actions to interfere with the administration of justice.

60. As I have noted, it is plain from watching each of the videos containing the relevant recordings in their entirety, that Mr Dowie used those recordings to present the judge and the expert as “criminals”, the judge as a fabricator of evidence, mother’s counsel as committing a fraud on the Legal Aid Agency and to assert that Cafcass has an agenda to allow “paedophilic individuals” access to children. Within this context, Mr Dowie used the recordings of proceedings held in private to level unfounded allegations and to paint a highly partial and partisan account of proceedings. I am satisfied that the obvious inference to be drawn from this conduct, which conduct was in breach of provisions designed to prevent interference in the administration of justice, is that Mr Dowie intended at the time he made the recordings, and at the time he published those recordings, to interfere in the administration of justice. In my judgment, that intention is clear from the manner in which Mr Dowie proceeded to make partial recordings of the hearings in order to publicly subvert the account of what had *in fact* taken place as set out in the judgment of District Judge Turner. In seeking to depict the conduct of the judge, the witnesses and counsel as criminal, fraudulent and facilitative of paedophilia can only have been intended by Mr Dowie to have one aim, namely, to undermine with spurious and entirely unevicenced allegations, the credibility of the court process to the public at large. Further, this approach undermines Mr Dowie’s competing contention that he intended by his actions simply to bring to the attention of the public what he considered to be injustices committed against him by reason of him being a Black man. In any event, as I have noted, it is not a defence to a charge of contempt that the relevant actions were carried out in order to expose alleged wrongdoing.
61. Within the foregoing context, I am satisfied beyond reasonable doubt that Mr Dowie intended by his actions to interfere with the administration of justice.

CONCLUSION

62. Having regard to the foregoing matters, I am satisfied that the Attorney General has proved both charges of contempt. For the reasons I have given, I am satisfied beyond reasonable doubt that Mr Dowie brought into court for use and used an instrument for recording sound without the leave of the court and that he published the resulting recordings of legal proceedings by uploading videos containing the recordings to YouTube on 2 June 2020, 17 June 2020 and 1 July 2020, thereby also publishing information relating to proceedings before a court sitting in private in proceedings under the Children Act 1989, that he knew the proceedings he recorded were proceedings that were being heard in private and that he intended by his actions to interfere with the due administration of justice.

63. In the circumstances, I must now consider the question of sentence and will list this matter to determine that question after giving Mr Dowie a short period to consider this judgment and to give him the opportunity to provide the court with any mitigation prior to my passing sentence.
64. That is my judgment.