Neutral Citation Number: [2021] EWHC 2473 (Fam)

Case No: FD21F00023

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SHEFFIELD DISTRICT REGISTRY

The Law Courts
50 West Bar
Sheffield
S3 8PH

Date: 20th September 2021

Before :

THE RECORDER OF SHEFFIELD
HIS HONOUR JUDGE JEREMY RICHARDSON QC
Sitting as a Judge of the High Court

- -

Between :

HER MAJESTY'S ATTORNEY GENERAL	**Applicant**
- and -	
PHILLIP HARTLEY	**Defendant**

In the matter of an Application to Commit Phillip Hartley to Prison for Contempt pursuant to Part 19 of the Family Procedure Rules

- -
- -

Mr Julian Blake (instructed by **GLD**) for **HM Attorney General**
The defendant did not attend and was unrepresented on 30th July, 10th, 20th, 26th August and 9th September 2021. He attended and was unrepresented on 13th and 17th September 2021

Hearing dates: 30th July, 10th, 20th, 26th August, 9th, 13th and 17th September 2021

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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 defendant at the prison in which he is detained and representatives of HM Attorney General by email. The date and time for hand-down is deemed to be at 2pm on 20th September 2021.

It is directed this judgment be placed on the judicial website: www.judiciary.net

THE RECORDER OF SHEFFIELD
HIS HONOUR JUDGE JEREMY RICHARDSON QC

This judgment consists of 139 paragraphs on 33 pages

THIS JUDGMENT MAY BE REPORTED AS PRINTED IN ITS APPROVED FORMAT.

A DIRECTION HAS BEEN MADE PROTECTING THE IDENTITIES OF THE PARTIES IN THE ORIGINAL FAMILY COURT PROCEEDINGS PURSUANT TO FPR PART 37.8(5).

IT WOULD BE CONTEMPT OF COURT TO REVEAL THE IDENTITIES OF THOSE WHO ARE THE SUBJECT OF ANONYMITY IN THE JUDGMENT.

THE RECORDER OF SHEFFIELD:

Introduction and the hearing on Friday 17th September 2021

1. On Friday 17th September 2021, Phillip Hartley (defendant) was committed to prison for 10 months for contempt of court. He was committed in his absence. He was present at court, but after two attempts to bring him into court by custodial officers, he was so disruptive that it was impossible to produce him in the dock of court 7 at Sheffield. He could be heard yelling that he refused to attend the court. Approximately 30 minutes before, he was abusive to the court and refused to participate in any meaningful way. He was taken to the cells with a view to calming himself and to attend later in the afternoon. His wilful refusal to engage with the court and his abusive attitude to the court has been the hallmark of his attitude throughout the entirety of this case. At first he refused to attend any hearings, and, when brought to court under arrest by the Tipstaff, he declined to engage with the court or approach the case in any semblance of a civilised manner. Indeed, at one point he stripped naked in the custody suite causing officers immense problems at a police station, such that he could not be brought to court on that day. When at last he was persuaded to instruct solicitors, he dismissed them after 21 minutes in a conference in respect of which they had gone to immense trouble to arrange. He insisted on representing himself, despite the court explaining that was an unwise course. The behaviour of the defendant has prolonged this case.

2. It is my view the defendant has deliberately endeavoured to taunt the court. I have overlooked the repeated rudeness and immense disrespect towards the court. It was at one stage hoped, with the assistance of solicitors, the defendant would agree to a psychiatric assessment. That was made impossible by the defendant. I am convinced, even if a medical consultation had been arranged, the defendant would have briskly disengaged from that process, as he has with everything connected to this case. I have a suspicion the defendant has some form of personality defect, but, having seen the defendant conduct himself in court, I am entirely satisfied that most of his behaviour is confected in an endeavour to deflect the court from its purpose; and is designed to be as insulting as he can contrive. Notwithstanding all this difficulty, I have concentrated on the contempt alleged by Her Majesty's Attorney General (Attorney General). The committal order for 10 months is imposed in respect of that contempt.

3. I have also found the defendant guilty of contempt for failing to attend court on three days when he was directed to attend and warned that if he did not, it would be regarded as a contempt. I have imposed no separate penalty in respect of those matters.

4. I have additionally ordered the defendant to pay the costs of the Attorney General of £22,423.00. That part of the order will not be enforced without leave of the court. These large costs are entirely due to the several hearings caused by the conduct of the defendant.

5. It is directed this judgment be handed to the defendant at HM Prison Doncaster – where he is currently detained – and it be explained to him that he has 25 days in which to appeal. He has a right of appeal in these contempt proceedings. I have extended to the normal 21 day deadline because the defendant was not present when he was committed to prison and will only be given this judgment on the date upon which it is handed down. The 25 days will run from the date of the committal – 17th September 2021.

6. This case has been exceptionally difficult – not because it is inherently difficult – far from it – but because the defendant has chosen to be as troublesome as he could throughout the entire process. Fairness has demanded the court act incrementally and with appropriate patience. In the end the court was compelled to act as I have explained.

7. At each stage of this process when the defendant has refused to attend, I have applied my mind to the guidance about proceeding in the absence of a defendant in a contempt case. On each occasion, I regret to say, it has been necessary to proceed in that way. Justice would have been unwarrantably delayed, and potentially defeated, if I had acted otherwise.

8. This judgment sets out the entire course of the proceedings and is to be regarded as the final compendious judgment embracing much of what I have decided as the case unfolded. I have given extempore judgments on a number of occasions. The content of those judgments is included in this single final judgment of the court. I have decided to hand-down this single comprehensive judgment to assist the defendant (everything is now in one place) and to explain to the public all that has occurred.

The Backdrop

9. The defendant is the father of children, one of whom was the subject of Family Court proceedings. The defendant, in flagrant contravention of a court order and defiance of an Act of Parliament, repeatedly published information about the case on the internet (video posts via Facebook). Several thousand people had access to the relevant social media site. He did so with scant regard for the welfare of the children concerned or their mother. In the course of the video posts he was extremely abusive to officers of the family court and the judge.

10. The two basic issues in this case were:

    (1) Is the father guilty of contempt by doing as he did?

    (2) If he is, what is the penalty?

11. In respect of all issues where contempt is alleged – in the context of this case – the burden of proving them is upon the Attorney General; and, I may only convict the defendant if I am sure he has committed the act alleged to be a contempt. It is the criminal standard of proof.

12. Many other issues have arisen as this case has unfolded – as will become apparent from the length of this judgment – for which I can only apologise. This has been occasioned by the conduct of the defendant. He has refused to attend several of the hearings despite being ordered to do so. When a warrant for his arrest was issued, he evaded the efforts of the Tipstaff to execute the order of the court until Thursday 9th September 2021. I shall explain the course of this case at a later stage of this judgment.

13. The time has now come for this case to conclude irrespective of the absence of the defendant. A further adjournment would have produced no benefit whatsoever. This judgment will explain why that is so.

14. Cases in the family court involving children are heard in private. Nothing may be publicly reported without the leave of a judge. This is all made entirely clear by the Children Act 1989. It is a contempt of court to publish anything relating to such proceedings. That too is made entirely clear by section 12 of the Administration of Justice Act 1960.

15. The Attorney General asserted the defendant deliberately violated this prohibition by repeatedly placing material on the internet about a case involving a child, which was heard in private, which had concluded in the Family Court at Sheffield. He was ordered to remove the material. He was ordered not to place material on the internet. He flouted these orders. The case was referred to the Attorney General by Her Honour Judge Pemberton (the Designated Family Judge for Sheffield and South Yorkshire). The Attorney General decided to commence these committal proceedings. Leave was granted by Keehan J to proceed. The defendant has refused to attend many of the hearings before this court. He has been given notice of all of them. He has communicated with the Government Legal Department (GLD) on several occasions, making it clear he had no intention of attending.

16. On 20th August 2021 (following hearings on 30th July 2021 and 10th August 2021) I found the defendant guilty of contempt as alleged by the Attorney General. I adjourned the question of penalty. I also issued an order directing the Tipstaff to arrest the defendant and bring him before this court. That order was eventually executed. The defendant has resolutely refused to cooperate with the court.

17. The application by the Attorney General to commit the defendant to prison for contempt of court was made pursuant to Part 19 of the Family Procedure Rules (FPR). Leave to move for committal pursuant to FPR Part 37.3(3) was granted by Keehan J on 1st July 2021. The hearing before me on 30th July 2021 was directed by an order of Arbuthnot J of 16th July 2021. The case has proceeded part-heard on several days thereafter.

18. I have given four extempore judgments in this case as it has unfolded. This compendious reserved judgment includes all that has been stated in the previous judgments.

19. The terms of the contempt alleged by the Attorney General is the defendant published information on Facebook relating to proceedings which were brought under the Children Act 1989 and heard in private on 1st June 2020 before the Family Court at Sheffield. Furthermore, the defendant published on Facebook the contents of a document which was submitted to the court which had been prepared for such proceedings. It is asserted the defendant, by making the above publications, has acted in contravention of section 12(1) of the Administration of Justice Act 1960.

20. The defendant has been repeatedly advised he is entitled to legal aid, pursuant to the decision of Chamberlain J in ***All England Lawn Tennis Club (Championships) and All England Lawn Tennis Grounds PLC v McKay*** [2019] EWHC 3065 (QBD). Notwithstanding, he has chosen to disengage from the process of the court.

21. On occasion I shall to refer to the family of the defendant. Fortunately they have a different surname to him. The details of the family and the circumstances of the case in the family court do not need to be recited in this judgment. The identity of the mother and children will be protected in this case by operation of FPR Part 37.8(5). I make such a direction. I shall refer to the former partner of the defendant as “mother” as she is the mother of the children in the case; the putative son of the defendant will be known as “M”; and the daughter of the defendant as “F”. These are not their real initials. I shall omit all reference to where they live and any other facts which may further reveal their identities. There is no need to make any reference to the substance of the proceedings in the family court. This court will not add to the anguish of the mother or further encroach upon the welfare of the children, even though the defendant has displayed scant regard for their welfare. The final order of this court will contain this anonymity provision. It will be placed on the website of the Judiciary of England and Wales together with this public judgment pursuant to FPR Part 37.8(13).

Decisions and Orders made in the High Court sitting at Sheffield

22. I shall record the various decisions I have made as this case has unfolded and thereafter give my reasons. I will explain the procedural history later (paragraph 31 et seq). This judgment is much longer than it would have been had the defendant engaged with the process of the court. The court has been forced to act incrementally; and with demonstrable fairness. At any stage of the process the defendant could have engaged and presented his case. Instead he has acted with a curious mixture of indifference laced with a variety of taunts in e-mails to either the court or lawyers acting on behalf of the Attorney General. He has also been rude to me and the court generally. He has been extremely difficult with court custodial officers, police officers and others who have acted on behalf of the Tipstaff. This has been self-evident in court.

23. As the case has proceeded the following has occurred:

(1) I decided to proceed in the absence of the defendant on 30th July 2021. I gave a short judgment giving my reasons.

(2) The case was adjourned part heard to 10th August 2021. The defendant was ordered to attend. On that date it appeared he may not have been served in sufficient time to attend the hearing. The hearing was adjourned to 20th August 2021. The defendant was ordered to attend.

(3) I decided to continue to proceed in the absence of the defendant for the same reasons given on 30th July 2021.

(4) On 20th August 2021 I found the defendant guilty of contempt as alleged by the Attorney General. A full extempore judgment, giving my reasons, was delivered. Those reasons are incorporated into this compendious judgment.

(5) I also found the defendant guilty of contempt for failing to attend the hearings on 1st July 2021 (before Keehan J), 30th July 2021 (before me), and 20th August 2021 (before me). The defendant had been ordered to attend each hearing and warned that it would be regarded as contempt if he failed to attend.

(6) Following the judgment I issued an order to the Tipstaff to arrest the defendant. The Tipstaff, despite his best endeavours, and those of the South Yorkshire Police in support, was not able to execute that order until 9th September 2021.

(7) The case was adjourned to 26th August 2021 with a view to consideration of penalty. On that day I decided the Tipstaff should be afforded extra time to see if the order could be executed.

(8) The case was listed for consideration of penalty on 9th September 2021. As the case was about to commence, it was reported to the court the defendant had been arrested and was in Doncaster. It was directed he be brought to court at Sheffield. The defendant was then extremely obstructive to officers of SYP. The custody sergeant contacted the court and advised it would be unsafe for the defendant, and for officers, to remove him to court. He had stripped naked and was causing difficulties for the custody staff.

(9) I decided to adjourn to 13th September (having decided to make that decision in the absence of the defendant) and directed he be remanded to one of Her Majesty's Prisons.

(10) On 13th September 2021, the defendant was produced. He was voluble and the endeavour to explain the situation to him was extremely difficult. I explained – after much effort and interruption by the defendant – it would be best if he was represented by solicitors and counsel. He was given a choice of solicitors. I indicated the court would assist by asking a solicitor to attend immediately. That was done. It was extremely generous of a

very busy solicitor to make herself immediately available. The defendant was remanded to 17th September 2021. He had to be remanded because it was inevitable he would not voluntarily attend if granted his liberty.

(11) In the result another firm of well-known solicitors became involved. That firm arranged a conference with the defendant via video link at HMP Doncaster at very short notice. It was a herculean effort so to do, but it was achieved. The defendant remained in the conference for 21 minutes before announcing he would defend himself and, in effect, dismissed the solicitors. The solicitors reported this to the court.

(12) On 17th September 2021 the defendant was very rude to the court and would not listen or engage with any sensible discourse. I adjourned for 30 minutes with a view to him calming himself. That, regrettably, produced no benefit. The custodial officers tried to bring him into court. He shouted ever more loudly that he would not go into court. He was extremely difficult with the officers who did their best to handle a very challenging situation. I decided to proceed to the penalty stage in the absence of the defendant. There was no point adjourning further. Had I done so, the court would have plunged into exactly the same situation on the next occasion.

(13) I heard further submissions from Mr Julian Blake (counsel for the Attorney General) about matters which it was thought the defendant had raised as he was shouting at the court namely – the fact he thought it was the mother who was contacting him; that he was not a legal entity; and he had no notice of the proceedings. This was countered by Mr Blake by reference to the judgment I gave on 20th August 2021. I announced the defendant was committed to prison for 10 months. That committal order is to be served immediately, and is not to be suspended in its operation for any period of time.

(14) I decided to impose no separate penalty in respect of each contempt where the defendant has failed to attend.

(15) It appeared just I should make an order for costs. I summarily assessed those costs in the sum of £22,423. As the defendant is to be sent to prison and appears to have few assets, I shall direct that the order for costs is not to be enforced without leave of the court.

(16) I also directed that the normal 21 days during which the defendant may appeal as of right against the committal to prison for contempt is extended to 25 days. I did this because the defendant was not in court to hear the decision and will not become aware of the full reasons of the court until this judgment is handed down.

(17) I shall direct today that this judgment is immediately sent by electronic means to HMP Doncaster and a copy is handed to the defendant. I shall also ask that an officer explain to the defendant he has 25 days from the date of the committal order – 17th September 2021 – in which to appeal

against the decision and he should seek legal advice in respect of which he is entitled legal aid.

24. I have addressed the issue whether the defendant is competent. I am entirely satisfied he is competent. The fact he is making unwise decisions is not to the point. There is nothing in the evidence before me or anything which suggests the defendant lacks competence. At one point the defendant brandished a bible in court and made reference to a deity. He also asserted he had mental health issues. As I made clear earlier in this judgment, I have a suspicion he has a personality defect, but much of what he exhibited to me appeared confected. Certain it is, he does not lack competence to make decisions – even unwise ones – about this litigation.

25. The defendant has made no written representations at any stage of the proceedings, except to make it clear he would not attend court, in the various emails he has sent to the GLD.

The Failure to Attend Contempt

26. Apart from the main allegation of contempt, there are three further contempt allegations. These relate to the three separate occasions when the defendant failed to attend hearings despite being ordered to do so, as well as being warned it would be regarded as a contempt if he failed to attend.

27. These were:

(1) The hearing before Keehan J on 1st July 2021

(2) The hearing before me on 30th July 2021.

(3) The adjourned hearing before me on 20th August 2021.

28. As the hearing was aborted on 10th August 2021 due to the later service of the order, it would be wrong to conclude the defendant is guilty of contempt by non-appearance on that date.

29. The defendant has been afforded an opportunity to make any representations to the court. As I have already explained, he has disengaged. Accordingly, I find him guilty of those three separate incidents of contempt. I am satisfied to the criminal standard of proof that these were deliberate absences. He has sent e-mails to the GLD making it clear he had received the various orders and had no intention of complying with them. Given all the circumstances of the case I shall pass no separate penalty upon each of those matters. The defendant has failed to attend when ordered to do so. He has wilfully disobeyed orders of the court, and this has caused the court a high level of inconvenience. However, as he is to be sent to prison for the main contempt, I shall not add to the misery of the defendant by imposing a further period of imprisonment. Had these three matters stood alone – and they do not – I would have committed him to prison for 28 days. As that is not the case, I do not need to consider whether it would have been an immediate or suspended committal order.

This Judgment and Proportionate Delay – Incremental Steps to a Conclusion

30. This judgment is the final definitive judgment of the court. It is to be read as a compendium of the previous judgments and it substantially incorporates judgments which have been given at various stages of the proceedings. Those were extempore judgments delivered at the conclusion of each section of the case. I have found it necessary to proceed incrementally due to the deliberate absence of the defendant, and to afford him every opportunity to attend. This approach – although fair to the defendant – has caused much inconvenience to the court, and to counsel for the Attorney General. It has also delayed justice. The need for a swift resolution of these proceedings has needed to yield to fairness to a defendant – even though he has deliberately disengaged from the process of the court. However, that policy of proportionate delay has now been exhausted. On 17th September 2021 it was time for the court to impose its authority and bring this matter to a close.

The Procedural History of the Contempt Proceedings

31. The issue of contempt was referred to the Attorney General by Her Honour Judge Pemberton shortly after 5th June 2020. The contempt proceedings were commenced on 12th March 2021. There was a procedural delay due to some doubt about the correct way forward (ultimately resolved by Keehan J in his judgment of 6th July 2021 – see infra at paragraph 33). The first attempt to serve the proceedings upon the defendant was made on 30th April 2021.

32. Peel J gave directions about service of the application upon the defendant in an order of 7th June 2021. He permitted dispensation of the requirement for personal service of the application notice and evidence upon the defendant required by FPR Part 37.5(1). He directed that service could be effected by sending the papers to the address of the defendant in Doncaster or to his email address. I am entirely satisfied the defendant has received the relevant documents. He has made reference to receipt of the papers and has referred to them. I reject any suggestion that he has not been served in accordance with the order of Peel J. Such a suggestion was shouted at the court by the defendant when he was brought before the court following his arrest.

33. Keehan J heard the application for leave on 1st July 2021 in London. The defendant did not attend that hearing. Judgment was handed down on 6th July 2021 – see [2021] EWHC 1876 (Fam). The proceedings under the Children Act 1989 in the Family Court at Sheffield concluded on 1st June 2020. The alleged contempt arose after that date. Consequently FPR Part 37.3(3) was engaged. Keehan J authoritatively resolved the procedural issue in this way:

> "10. I am satisfied that the Attorney General is correct in his analysis of FPR r. 37.3. It is irrelevant for the purposes of this rule whether the alleged actions which are relied upon in support of the committal application occurred when the family proceedings were in existence (ie before a final order was made) or after the proceedings had concluded

with a final order. It is the date of the committal application or, as the case may be, the date of the application for permission to bring a committal application which is key in determining whether the family proceedings were existing or had concluded.

11. In this case the family proceedings had concluded by the date the Attorney General had issued an application for permission to bring committal proceedings, and he had, therefore, rightly issued the application in the High Court under the FPR Part 19 procedure, as opposed to the Family Court sitting in Sheffield.

12. I agree the alleged contempt in this case could have been articulated as a breach of a court order. However, given the actions relied on:

(i) did not interfere with the outcome of the substantive family case but interfered with the administration of justice more broadly; and

(ii) the fact that these actions post-dated the conclusion of the family proceedings.

I agree that the alleged contempt is more appropriately formulated as an interference with the due administration of justice and thus more properly fits within the scope of FPR r 37.3(3).

13. Furthermore, in a case where permission to bring a committal application is needed and where the underlying proceedings have concluded in the family court, the procedure set out in CPR r 81.3(8) should be adopted and followed mutatis mutandis. Thus, the permission application and, if permission is granted, the committal application should be determined by a judge of the Family Division. However, in my view, the judge of the Family Division should retain a discretion in appropriate cases, if permission is granted, to transfer the committal application to the family court in which the underlying proceedings had been heard."

34. On 16th July 2021 Arbuthnot J made an order adjourning the substantive contempt hearing to 30th July 2021 before me at Sheffield. That order was made without a hearing. The defendant was ordered to attend, and it was made clear it may be regarded as a contempt if he failed to do so. It was an order of pellucid clarity setting out the rights of the defendant and the fact he was entitled to legal aid.

Hearing the Contempt Allegations in the Absence of the Defendant

35. On 30th July 2021 the case was called on at 2.15pm. I waited approximately 20 minutes to see if the defendant would attend. He did not. Nor had there been any communication from him to indicate any form of problem. In consequence I decided to proceed in his absence. I gave an extempore

judgment giving my reasons so to do. I replicate that judgment (infra at paragraphs 37 to 40).

36. The following guidance has been considered and applied at all hearings when the defendant has failed to attend, or has refused to come into court, or has been so difficult with custodial officers it has been impossible to produce him in court.

37. On 30th July 2021, I considered the judgment of Cobb J in ***Sanchez v Oboz*** **[2015] EWHC 235 (Fam)** where it was made clear the court has the power to proceed in the absence of a defendant in contempt proceedings, albeit it was acknowledged it would be unusual to do so. Cobb J set out a very helpful list of issues to be addressed by way of checklist. Paragraphs 4 and 5 of the judgment of Cobb J are of importance:

> "4. It will be an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent. This is so because:
>
> i) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see *Benham v United Kingdom* (1996) 22 EHRR 293 at [56], *Ravnsborg v. Sweden* (1994), Series A no. 283-B); in a criminal context, proceeding with a trial in the absence of the accused is a course which will be followed only with great caution, and with close regard to the fairness of the proceedings (see *R v Jones (Anthony)* [2003] 1 AC 1, approving the checklist provided in *R v Jones; R v Purvis* [2001] QB 862);
>
> ii) Findings of fact are required before any penalty can be considered in committal proceedings; the presumption of innocence applies (*Article 6(2) ECHR*). The tribunal of fact is generally likely to be at a disadvantage in determining the relevant facts in the absence of a party;
>
> iii) The penalty of imprisonment for a proven breach of an order is one of the most significant powers of a judge exercising the civil/family jurisdiction; the respondent faces the real prospect of a deprivation of liberty;
>
> iv) By virtue of the quasi-criminal nature of committal process, *Article 6(1)* and *Article 6(3) ECHR* are actively engaged (see *Re K (Contact: Committal Order)* [2002] EWCA Civ 1559, [2003] 1 FLR 277 and *Begum v Anam* [2004] EWCA Civ 578); *Article 6(1)* entitles the respondent to a "*a fair and public hearing*"; that hearing is to be "*within a reasonable time*";
>
> v) *Article 6(3)* specifically provides for someone in the position of an alleged contemnor "*to defend himself in person or through legal*

assistance of his own choosing", though this is not an absolute right in the sense of "*entitling someone necessarily to indefinite offers of legal assistance if they behave so unreasonably as to make it impossible for the funders to continue sensibly to provide legal assistance*" (per Mance LJ (as he then was) in *Re K (Contact: Committal Order)* (reference above)). The respondent is also entitled to "*have adequate time and the facilities for the preparation of his defence*" (*Article 6(3)(b)*).

5. As neither respondent has attended this hearing, and in view of Mr. Gration's application to proceed in their absence, I have paid careful attention to the factors identified in [4] above, and, adapting the guidance from *R v Jones; R v Purvis*, have considered with care the following specific issues:

i) Whether the respondents have been served with the relevant documents, including the notice of this hearing;

ii) Whether the respondents have had sufficient notice to enable them to prepare for the hearing;

iii) Whether any reason has been advanced for their non-appearance;

iv) Whether by reference to the nature and circumstances of the respondents' behaviour, they have waived their right to be present (i.e. is it reasonable to conclude that the respondents knew of, or were indifferent to, the consequences of the case proceeding in their absence);

v) Whether an adjournment for would be likely to secure the attendance of the respondents, or at least facilitate their representation;

vi) The extent of the disadvantage to the respondents in not being able to present their account of events;

vii) Whether undue prejudice would be caused to the applicant by any delay;

viii) Whether undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondents;

ix) The terms of the '*overriding objective*' (*rule 1.1 FPR 2010*), including the obligation on the court to deal with the case 'justly', including doing so "*expeditiously and fairly*" (*r.1.1(2)*), and taking "*any … step or make any… order for the purposes of … furthering the overriding objective*" (*r.4.1(3)(o)*).

This may be a useful checklist in all such cases."

38. I applied that checklist to the circumstances of this case in respect of commencing the contempt hearing on 30th July 2021. My decision was to proceed and the reasoning was this:

(1) The defendant was unquestionably served with all the relevant documents.

(2) The defendant was provided with ample time with which to prepare his case since 9th June 2021 when the application and associated papers were served upon him.

(3) The defendant appeared to be deliberately and contumeliously disobeying orders of this court to attend the various hearings. He made this clear in electronic communications and via the online posts.

(4) Should there have been an adjournment, it was likely that he would not attend any future hearing voluntarily. That has been demonstrated by subsequent acts of defiance. I did not see it as right to issue a warrant for his arrest before examining the case in a little detail.

(5) This case is not one where there is a mass of contentious evidence. Nor is it a case where the allegation of contempt is one where there may be significant legal issues or equivocal evidence.

(6) There was, and remains, a need for this issue to be brought to a conclusion. Prejudice would be occasioned to the interests of justice and the family in the main case, if the matter should not be resolved as soon as possible.

(7) There was, and remains, an overriding public interest is to bring this matter to a just conclusion as soon as possible.

(8) It was my view, and remains so, that no one should be allowed to unjustifiably delay justice by their wilful disengagement from the process of the court (particularly when they have been ordered to attend a hearing).

39. I made it clear on 30th July 2021 that I had the Article 6 rights of the defendant well to the fore of my analysis of the situation. Securing a fair trial is not contingent upon everyone being present, come what may. If a defendant chooses to disengage, the court will not allow itself to be paralysed from taking appropriate action and hearing the case. The administration of justice ordinarily requires active participation in the process. It demands giving a party an opportunity to fully participate in the case. However, when a party volunteers to be absent and disengages, that is their choice, but justice will not be derailed by reason of that unwise decision. It is, however, important the court proceeds thereafter with appropriate caution, care and celerity. That triad of requirements must guide the future progress of the case, but the court must also be resolute with a firm purpose of determining the matter.

40. I reached the conclusion that the court should proceed incrementally and only decide what needed to be decided at any given hearing, as well as giving the defendant repeated opportunities to attend. The case was timetabled to give

the defendant time to attend, and reflect upon the absence of wisdom by his decision to disengage. The timetable was fair and had the triad of considerations at its core. Contempt proceedings need to be concluded within a reasonable time. Litigation of this type must not be allowed to linger.

41. By 10th August 2021 I had viewed all the DVD recordings relied upon by the Attorney General. On that day the case was listed at 4pm. It was that late as I was interrupting a serious criminal trial to deal with this case. It was sufficiently important to interrupt the trial, but so as to minimise the inconvenience to the parties in that case, this case was scheduled for late in the afternoon.

42. The defendant – in contravention of the order made on 30th July 2021 – did not attend. Unfortunately, the order had only been served upon the defendant the previous day. I decided it would be unfair to proceed. The case was further adjourned to 20th August 2021. The defendant was ordered to attend.

43. On 20th August 2021 the defendant did not attend. He was unquestionably aware of the hearing. A solicitor from the GLD had communicated with the defendant on 11th, 12th and 19th August 2021 informing him of the hearing and the consequences of not attending. The defendant simply replied by sending an email with a series of emojis of smiling faces on 11th and 12 August 2021. On the day before the hearing he was rather more offensive. He stated "Creep", "Good Luck Moron" and "Eternal Flames of Hell await thee" in three separate emails to the GLD. It was plain the defendant had no intention of attending the hearing. Notwithstanding his offensive communications, I waited for 15 minutes after the scheduled time of the hearing (10.30am) to see if he might attend. I then applied my mind to the criteria, to which I have referred, and decided to proceed in the absence of the defendant. I did so for the same reasons as given before. It was a part-heard case where the defendant had been clear he had no intention of attending. Justice would have been defeated, certainly unwarrantably delayed, had I adjourned further. The defendant continued to disobey orders of the court to attend hearings and, thereby, was seeking to thwart the proper despatch of business of the court. I also took the view it would be wrong to issue a warrant for his arrest prior to making any findings against him or reaching any conclusions about the allegations of contempt.

44. At the conclusion of the hearing I gave judgment finding him guilty of contempt. I replicate my reasons (infra at paragraphs 61 to 107).

The Warrant to Arrest the Defendant

45. I decided to adjourn the question of penalty until 26th August 2021 to allow the warrant to be executed. I indicated that if he was not arrested pursuant to the warrant by that day, I would proceed to consider penalty in his absence (the penalty stage). By that date, I felt a little more time should be afforded to the Tipstaff to execute the order.

46. I was entirely satisfied I had the power to issue a warrant for the arrest of the defendant on 20th August 2021. There are two routes to the same destination. First, via FPR Part 37.7 where the court is possessed of the power to issue a warrant to secure the attendance of a defendant at a directions or substantive hearing; or, second, via the inherent jurisdiction of the High Court.

47. A recent example of this latter route is ***HM Attorney General v Branch*** **[2021] EWHC 1735 (Admin)** where the issue was addressed in the judgment of the court delivered by Dingemans LJ – see paragraphs 13 to 18. I have also considered the case of ***Hanson v Carlino*** **[2019] EWHC 1366 (Ch)**.

48. It seems to me that a warrant in contempt proceedings before the Family Division of the High Court may be issued as follows:

(1) Pursuant to FPR Part 37.7 to secure the attendance of the defendant at a directions hearing or a substantive hearing.

(2) Pursuant to the inherent jurisdiction of the High Court via the Tipstaff to bring an individual before the court and detain him for that purpose in respect of either a hearing or to enforce an order of the court which would otherwise be at risk of being neutered.

(3) These two powers may be used only when it is necessary, and with great care.

(4) Simply because a person elects not to attend, having been given an opportunity to attend, does not automatically mean the power must be used, even in contempt proceedings where the decision of the court may result in a finding of guilt and a resulting committal to prison.

(5) These are discretionary powers. It may be useful to have both parties before the court, but if one elects not to attend, the court should not be compelled to await the attendance of that party either voluntarily or under arrest, before proceeding with the case. An arrest order should, in my judgment, only be made when it is necessary – which is quite different to it being useful or expedient.

49. In this case the defendant was given every opportunity to attend and he has repeatedly made it clear he had no intention of so doing. He has been gratuitously rude to the court and the GLD in his e-mails. I did not regard it as necessary for him to be present if he voluntarily absented himself from the liability stage of the case. He voluntarily chose not to attend. However, different considerations apply to the penalty stage of the proceedings. I saw it as important for the defendant to attend the penalty stage as there was a risk he would be committed to prison. As his liberty was directly at stake, it was only right he should be forcibly compelled to attend the hearing under arrest – if at all possible.

50. It was for these reasons I issued the warrant on 20th August 2021. I adjourned to 26th August 2021 to see if the Tipstaff had been able to execute the arrest.

He had not. I decided to wait to 9th September 2021. As I have already explained the defendant was arrested on that date. He stripped naked in the custody suite and could not be brought. I remanded him in custody having considered the guidance about proceeding in the absence of a defendant. On 13th September 2021 the defendant finally accepted the advice to instruct solicitors – albeit it was a very difficult hearing.

51. The defendant was seen by solicitors between 13th and 17th September 2021. He dismissed them and decided he would represent himself.

52. At the hearing on 17th September 2021 he was produced. I have fully set out what occurred and there is no need for repetition. However, I feel it is important to set out the relevant law about proceeding in the absence of a defendant at the penalty stage of a contempt case.

The Penalty Stage – Was it lawful to proceed in the absence of the contemnor?

53. It is always preferable for a defendant who has been found guilty of contempt to be present when the issue of committal or penalty is being considered. It is axiomatic to state that the Article 6 rights of the defendant must be in the forefront of the courts analysis. The court, may however, proceed to the penalty stage, and may also commit a contemnor to prison or impose any other form of just penalty, in the absence of that contemnor. Committal for contempt is not conditional upon the physical presence of the contemnor. There is, however a necessity for the court to proceed with the triad of considerations I have previously mentioned at its core – caution, care and celerity. The guidance in ***Sanchez v Oboz*** is of importance. It appears to me the following considerations are pivotal to the decision whether to proceed to the penalty stage in the absence of the defendant. The court should: (i) carefully review the history of the case; (ii) assess what efforts have been made to compel the attendance of the contemnor; (iii) evaluate the reason why the contemnor is absent; and (iv) assess the overall fairness of the proceedings.

54. The history of the case has been fully set out in this judgment already. The defendant was given every opportunity to engage with the court by 17th September 2021. An adjournment was granted to him to instruct solicitors. He dismissed them and indicated he wished to represent himself. When produced in court he would not listen and he was gratuitously offensive. He was given an opportunity to calm himself. He did not do so and then made it very clear he would not come into court. The court has done all it could to assist.

55. I am entirely satisfied the defendant sought to thwart the court and reduce it to a state of powerless torpor.

56. As I have already explained, it was my view, following the finding of guilt on 20th August 2021, I should issue a warrant for the arrest of the defendant as his liberty would be at stake at the penalty stage of the proceedings. It was only right in those circumstances the defendant should be given an opportunity to

address the court about penalty and present any mitigation. There is, at that stage, a heightened need for him to be present and make his case.

57. The general requirement of attendance of a contemnor is not, however, a trump card. It is one thing for the court to issue a warrant for the arrest of the defendant, but if, having been arrested, he refuses to engage with the court despite being given time to reflect, or he refuses to come into court, or he places himself in a position where he cannot safely be produced, the court must not be reduced to a state of paralysis. The court must act – with caution, of course – but with a sense of resolve, and a need to bring the case to a just conclusion. The penalty cannot be postponed indefinitely. That would defeat justice and encourage some contemnors to take even greater steps to evade justice. The court may proceed to impose a penalty upon an absent contemnor providing it is fair and reasonable in all the circumstances to do so, having evaluated the considerations I set out at paragraph 53 (supra).

58. In this case I am entirely satisfied the defendant – who is now a contemnor – has deliberately sought to evade justice and thwart the court in its proper duty to administer justice.

59. The court has been generous and liberal in its attitude. It has proceeded with caution and a laboured sense of fairness. However, the time has come for action. There is a pressing need to bring finality to this litigation. I have not a shadow of doubt that I have the power to proceed to penalty in the absence of the defendant. It was fair and reasonable to do so.

60. I now turn to the contempt allegations made in this case. The following is a repetition of the extempore judgment I gave on 20th August 2021 in respect of my findings about the assertions of contempt made by the Attorney General. I apologise for the change of tense, as I have endeavoured to replicate what I stated in the original judgment.

FPR Part 37 and the Law of Contempt in this case

FPR Part 37

61. Section 12(1) of the Administration of Justice Act 1960 (1960 Act) provides:

> "The publication of information relating to court proceedings before any court sitting in private shall not of itself be a contempt of court except in the following cases, that is to say:
>
> (a) Where the proceedings –
>
> (i) relate to 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"

62. Part 37(3) of the FPR provides:

> "A contempt application in relation to alleged interference with the due administration of justice, otherwise in existing High Court or family court proceedings is made by application to the High Court under Part 19."

63. At the time the contempt proceedings were issued by the Attorney General there were no extant family court proceedings. There are none at present. Accordingly, that is why the Attorney General is proceeding under Part 37.3(3). The defendant in several posts has repeatedly stated that because he withdrew his application – and was given leave to do so by the court – he cannot be in contempt because there are no longer any proceedings. That is a misapprehension of the law on his part. It is clear that to publish anything in contravention of section 12 of the 1960 Act is a contempt whether that is during the currency of the proceedings or after the proceedings have concluded.

64. In this case the proceedings concluded on 1st June 2020 when the defendant was given leave to withdraw his applications under the Children Act 1989. He needed the leave of the court to discontinue. In family proceedings it is not a unilateral act by a party. The permission of the court is necessary. It is alleged the defendant has interfered with the due administration of justice because he is in breach of section 12 of the 1960 Act "otherwise in existing" family court proceedings. That plainly means in proceedings which were once operational, but are no longer extant. However, family court proceedings remain confidential even after they have concluded. Confidentiality in family proceedings does not end when the case ends – it is perpetual.

65. If the defendant had any challenge to the proceedings being instituted, the time for raising that challenge was before Keehan J when leave to commence these proceedings was considered on 1st July 2021.

Contempt of Court

66. I now turn to the law relating to contempt, as it is applicable to this case. This judgment is not a vehicle for an exposition on the law of contempt in family proceedings generally. No argument has taken place in relation to the law and there is no value in complicating a matter which is essentially straightforward.

67. First, I have no doubt that to publish details by way of a post on the internet or a Facebook post amounts to publication.

68. Second, the family court in this case sat in private and the proceedings were brought under the Children Act 1989. The proceedings, additionally, related wholly or mainly to the upbringing of a child. The case was about the

defendant's desire to have contact to M, the issue of his parentage and, ultimately, the withdrawal of his application to the court. Plainly section 12 of the 1960 Act covers the case.

69. Third, the defendant is not permitted to mention the substance of such a case.

70. Fourth, the interests of justice taken as whole are important in the context of family proceedings. It is not necessary for there to be an immediate or direct impact on proceedings. It is plainly in the interests of justice for family proceedings connected to children are heard in private. The arguments for that are well known and do not need exposition by me. In this regard the case of ***HM Attorney General v Pelling*** [2005] EWHC 414 (Admin) is of importance.

71. Fifth, in this case it is inconceivable the defendant was unaware of the private nature of the family proceedings or that he was forever prevented publishing anything about them.

72. In this case it has to be proved by the Attorney General so that I am sure (the criminal standard of proof): (1) the defendant posted the various items on the internet; (2) the posts from 1st June 2020 mentioned information relating to proceedings under the Children Act 1989 in a family court about children; and (3) the defendant was aware of those private proceedings.

Discussion and Findings in respect of the alleged Contempt

73. The allegations made by the Attorney General are these:

(1) The defendant has published information on Facebook relating to proceedings which were brought under the Children Act 1989 and heard in private on 1st June 2020 before a Family Court in Sheffield.

(2) The defendant has published on Facebook the contents of a document which was submitted to the court and which was prepared for such proceedings.

74. I have carefully considered the Detailed Statement of Grounds at page A3 of the trial bundle.

75. The essence of the case against the defendant is he published information on Facebook relating to proceedings under the Children Act 1989 and were heard in private contrary to section 12 of the Administration of Justice Act 1960. The Attorney General has elected to proceed in respect of postings beyond 1st June 2020 when he was explicitly directed to remove extant postings and not to make any more about the case. The publications of 1st June 2020, 8th June 2020 and 8th January 2021 clearly identify substantive content of the family proceedings held in private. The defendant was aware those proceedings were heard in private. The publication of 2nd June 2020 included a letter which had been prepared for those proceedings. In consequence of the flagrant breach, the Attorney General, seeks the committal of the defendant.

76. The basis of the case for the Attorney General is contained in the evidence of Miss Kate Mulholland (Page A10 of the trial bundle) – a legal advisor at the Office of the Attorney General. The other evidence is that of the recordings of the 8 posts on Facebook. I adjourned the case from 30th July to 10th August 2021 with a view to watching those recordings in some detail. I have watched them all.

77. The evidence of Miss Mulholland was unchallenged. The defendant was given an opportunity to raise any objection to her evidence or require her attendance at court to be cross-examined. He did not do so. Accordingly, that is the only evidence in the case, apart from the technical evidence about how the video posts on Facebook were captured for presentation to the court. I did not see it as necessary for the posts to be played in open court. The evidence is as follows.

78. The defendant made an application to the family court at Sheffield on 3rd September 2019 which related to DNA testing and contact to his son (M). Concerns were raised by the CAFCASS officer that the defendant had breached confidentiality obligations. These had been brought to her attention by the Mother. By 20th May 2020 the defendant contacted the court indicating he intended to withdraw his applications. Permission of the court is needed to do this. In family proceedings of this sort it is not simply a unilateral decision by a party; the court must gives its leave. By an order of District Judge Roebuck of 27th May 2020 the case was listed on 28th May 2020.

79. The case came before District Judge Heppell. The defendant was not present and it appeared to the judge that the court had difficulty contacting him. The CAFCASS officer also alerted the court to certain social media posts by the defendant. District Judge Heppell ordered the defendant to remove them. He further directed the application to withdraw the underlying proceedings be listed for a telephone hearing on 1st June 2020. The order of the judge expressly reminded the defendant that the proceedings were under the Children Act 1989 and were private. He also pointed out that any publication may amount to a contempt of court.

80. The defendant sent a letter to District Judge Roebuck prior the hearing on 1st June 2020. It appeared to include a blood stain and read:

> "I AM WRITING TO YOU AS THE MAN OF LIVING FLESH & BLOOD NOT MY LEGAL FICTIONAL IDENTITY MR. P. HARTLEY. I WRITE TO REMOVE MY CONSENT FROM ALL PROCEEDINGS INVOLVING MY SON (M) (I AM (M's) FATHER). THE INCOMPETENCE OF THE COURT ADVISORY SERVICE IS NOT WHAT I SEE IN TH BEST INTEREST OF MY SON. I DO NOT CONSENT TO PARENTAL ALIENATION. MY FIRST COMMUNICATION WITH THIS COURT WAS 18/5/2020 WHERE I INITIALLY REMOVED MY APPLICATION, ANY ORDERS SINCE THEN ARE NULL AND VOID."

81. On 1st June 2020 the application came before Her Honour Judge Pemberton (the Designated Family Judge for Sheffield and South Yorkshire). The defendant attended the hearing. It was heard in private. The mother was present as was the CAFCASS Officer. The judge explained the permission of the court was necessary to withdraw the application by the father for contact to M. No party objected to the necessary leave being given. The parties were told that information concerning the proceedings must not be published as such publication was prohibited by section 97(2) of the Children Act 1989 and section 12 of the Administration of Justice Act 1960. These statements were recorded in the order of the judge. It is right to observe the defendant left the hearing before its conclusion.

82. The order of Her Honour Judge Pemberton of 1st June 2020 contained the following:

> "1. The Applicant, Mr Phillip Anthony Hartley, shall by 4pm on the 3rdJune 2020 delete and take down all social media posts detailing any information in relation to these proceedings or that is intended or is likely to identify the child as being involved in these proceedings (this shall include the details of the CAFCASS officer or orders made in or reports published of these proceedings); or any details in relation to the child's address.
>
> 2. The applicant, Mr Phillip Anthony Hartley, shall not make any further social media or other public postings or publications detailing any information in relation to these proceedings or that is intended or is likely to identify the child as being involved in these proceedings (this shall include details of the CAFCASS officer or any orders mad in or reports published for these proceedings); or any details in relation to the child's address.
>
> 3. If Mr Phillip Anthony Hartley does not comply with paragraphs 1 and 2 of this order he may be fined or sent to prison - - -."

83. The court gave permission to the defendant to withdraw his application for contact to M and for DNA testing.

84. It was subsequently ordered that the defendant attend the family court in respect of his continued failure to remove the social media posts and his continued publication of material. Her Honour Judge Pemberton decided, upon reflection, that the matter should be referred to the Attorney General. In due course these proceedings were commenced.

85. This court is only concerned with postings beyond 1st June 2020. It is, however, important to relate some of the earlier material.

86. On 29th May 2020 the defendant posted a video on Facebook which referred to the future hearing on 1st June 2020. It alleged the CAFCASS officer wanted to

silence him by asking the court to direct the defendant remove the social media posts which mentioned M.

87. On 31st May 2020 a further video was posted which revealed the hearing was scheduled for 1st June 2020. He explained he had applied to withdraw the applications he made. He was critical of the system of family justice and referred to earlier proceedings in the family courts. He, however, indicated he would ask the judge for supervised contact to M. He further mentioned the CAFCASS officer had previously stated he could have supervised contact. He made mention of a mediation attempt one year before and was critical of the role of CAFCASS.

88. On the day of the hearing before Her Honour Judge Pemberton – 1st June 2020 – but after the hearing, the defendant published a further video on Facebook in which he stated that he needed the permission of the court to end the proceedings. He announced he had recorded the proceedings and that his son would soon hear it. He said the judge was only concerned about the Facebook account. He also said he had asked the judge if she was above God. He mentioned the submissions at the hearing about how he was to be addressed. The name of M was stated.

89. On 2nd June 2020 the defendant posted more via Facebook. The typed post stated: "The letter that ENDED my son being USED for corporate profits. Its bad enough he is used as a weapon by his Mum …. SIGNED IN MY DNA, BLOOD". The letter to District Judge Roebuck was displayed.

90. A further video was posted on 3rd June 2020 with a typed message "For you Thomas Cooper 1983 – 2018 #EndTheAbuse" It appears this relates to an individual who committed suicide. The video shows the defendant outside the Royal Courts of Justice and the Aldwych in London. He referred to the CAFCASS officer in his case and suggests she has tried her best to hurt him and his son.

91. Another video was posted on 4th June 2020 with a typed heading "The DOGS". It displayed the order of Her Honour Judge Pemberton of 1st June 2020. He used high octane invective to insult both the CAFCASS officer and the judge. He also referred to the hearing and the fact the mother and CAFCASS officer were asked if he should be allowed to withdraw his application. He then went on to mention he had applied for contact in the year before. He stated that District Judge Roebuck had ordered CAFCASS not to take part in an earlier hearing (I have no idea whether this is accurate). The defendant named M.

92. On 8th June 2020 there was a further video posted on Facebook under the banner "Are these people completely DUMB??". The defendant clearly named M in the video and made mention of the details of the contact application (one hour per week in a contact centre). He also mentioned the mother had refused a DNA test and had also refused contact. He went on to read extracts of the order of 1st June 2020. He again used high octane invective to insult Her

Honour Judge Pemberton and the mother. He explained he refused to attend the court and makes further comments about (and reveals details of) the hearing on 1st June 2020.

93. It is right to observe that in all of the postings on Facebook the defendant has made reference to information and individuals relating to proceedings under the Children Act 1989, all of which were heard in private. The letter to District Judge Roebuck was also mentioned as were details of the order made on 1st June 2020. There was also repeated reference to the CAFCASS officer and to Her Honour Judge Pemberton. These references were insulting and offensive. The child M was referred to often (by name) as was F on occasion. The mother was also repeatedly mentioned – often by use of insulting language.

94. The details of how these postings were captured is set out at paragraph 25 of the affidavit of Miss Mulholland.

95. After the Attorney General had been notified of the matter, the Government Legal Department (GLD) wrote to the defendant twice (on 5th and 21st January 2021) inviting him to address the proposed allegations of contempt. The defendant replied to the first communication by e-mail on 5th January 2021 by simply stating "bring it". A person who purported to be a friend of the defendant also contacted the GLD saying that the defendant had received the letter and that he would be representing himself. It was further stated that the defendant was not a legal entity or a legal person and the proceedings had been in some unspecified way wrongly brought.

96. On 8th January 2021 there was a further Facebook post by way of video in which the defendant addressed the correspondence of the GLD and referred to it. He described the GLD as "daemon dogs" and was offensive about officials. He also made reference again to the family court proceedings of 1st June 2020 including submissions he made at the hearing. He recited the name of M and was used offensive language to insult the mother.

97. I have taken time to watch these 8 videos. Several matters are prevalent in all of them:

(1) The defendant repeats details of the case on a number of occasions – naming children, his former partner, and the fact he wanted contact to his putative son.

(2) He is repeatedly abusive about his former partner (the mother).

(3) He repeatedly asserts he has no faith in the family justice system. This increases to suggest the court is corrupt and acts for profit.

(4) The leitmotif of the defendant is that the court deliberately fosters "parental alienation" and CAFCASS is biased.

(5) Every post is littered with expletives and unpleasant profanities.

(6) There is increasing venom directed towards judges and named officials within CAFCASS as the posts continue. The abuse towards the DFJ and a named CAFCASS officer is particularly unpleasant. He calls both a "feminazi" in several instances. This is all interspersed with details of the family case, how he wants contact, how he is being deprived of it, how he has withdrawn his application, how the courts (and named judges) are thwarting him, and he names both the mother, M and F – the children.

(7) In the 7th post he appears to threaten the DFJ (who he names) and the Cafcass officer (who he names) and says "Your name is never going to be forgotten". He also appears to threaten a family member of the mother.

(8) There is also much rambling and bizarre language during all the posts.

(9) There is a substructure of malevolence and anger about each one of the posts. There is also a distinct air of confrontation and menace about each one of the posts – increasingly so as they unfold.

(10) I detected a level of misogyny in his references to women judges and the CAFCASS officer who is also a woman. He sounds as if he is calling them "feminazis". Certainly, he is offensive and asserts corruption of one sort or another, to the point where he implies they are anti-men.

98. There is not a shred of doubt the defendant mentions – on several occasions – details of the family case and refers to documents which were prepared for the purposes of the family case. This is done deliberately.

99. Furthermore, the defendant makes it clear he is aware of various orders directing him to remove posts and makes it equally clear he has every intention of disobeying the orders. He is in the mistaken belief that because he has withdrawn his application (even though he needs the leave of the court to do this – which he is eventually given) he can do as he wishes and the court has no power to stop him.

100. I am very conscious the defendant has not presented a defence and I have considered whether there is any potential defence. Mr Julian Blake, counsel for the Attorney General, assisted the court by alerting me to the fact the defendant at various stages has raised issues about his name. What he chooses to call himself publicly (or, indeed, privately) is a matter for him. His name remains what it is, unless he changes it in accordance with the law. The defendant seems to use the title or epithet "Love Campaigner" on his emails, but it is noteworthy the name of the defendant is encompassed in his email address. There is absolutely nothing in the point, but Mr Blake was right to call it to may attention. No defence has been advanced by the defendant. The case against the defendant is overwhelming and I cannot conceive of any legitimate defence to the claim.

101. There is not a shred of doubt the defendant published all the material in respect of which the Attorney General asserts amounts to a contempt of court. The defendant has unquestionably breached the requirements of

confidentiality and has done so entirely deliberately and with full knowledge that he was prevented from doing so – not only by operation of section 12 of the 1960 Act – but by reason of express exposition of the law in orders of the court, in particular the order of District Judge Heppell of 28th May 2020 and the order of Her Honour Judge Pemberton of 1st June 2021. The conduct of the defendant thereafter may only be characterised as calculated to be as offensive as possible to judges and the CAFCASS officer by use of high octane invective, but, more important, to flout the protection of anonymity of two children (M and F) and their mother in private proceedings in the family court. The conduct was contumelious, deeply offensive and a grave contempt of court.

102. The rule of law requires a court to uphold the law, and enforce its orders designed to uphold the law. If any court should fail to do so, the law would soon be brought into disrepute and the rule of law would be undermined. That would be to the detriment of the citizens of this country.

103. In this country family cases involving children are heard in private by virtue of an Act of Parliament. No one is allowed to breach that prohibition. It is contempt of court to do so whether the proceedings are extant or not. Whether current or completed, the protection granted by Parliament remains operational. In this case the defendant was expressly told of this by virtue of orders of the court. He has disobeyed the law and is in contempt. His contempt has been perpetrated with flagrant disregard for the welfare of the children in the case. This is matched by the deeply offensive vitriolic language he has used towards judges and officials who seek to help the court, who were involved in the family case.

104. It is an aspect of the rule of law that the dignity of judicial office is maintained. This does not mean the personal dignity of an individual judge. It means the that litigants are expected to show respect for the court itself. The rule of law would be diminished if that were not the case. Those who are employed by, or undertake work for, CAFCASS are also entitled to the protection of the court. They must not be referred to in a public arena. These officials have a very difficult and sensitive role to play in the family court process. It is outrageous when they are subject to personal vilification and abuse in any public arena – and the internet is a public arena. In family courts, Parliament has provided for private hearings involving cases affecting the welfare of children (for very obvious reasons). The law is clear and the orders made by the judges in this case were equally clear as a means of enforcing that law. The defendant has disobeyed – wilfully so – these two aspects of the law (i) an Act of Parliament, and (ii) an order of the court. That cannot be tolerated. It is vital that the court is demonstrably seen to uphold its own dignity, but more important, is seen to uphold the law and enforce its orders. The rule of law – I repeat – would be undermined if that were not the case.

105. The defendant was warned about his conduct and went on in an even more offensive and contemptuous manner. He disregarded warning and orders of

the court. No apology has been forthcoming; and his contempt has continued by the resolute refusal of the defendant to attend court to explain his conduct.

106. I regard the conduct of the defendant to be a very serious contempt. I find the defendant guilty of the contempt alleged by the Attorney General – namely that he has published information on Facebook in each of the posts beyond 1st June 2020 (to which reference has been made in this judgment) relating to proceedings which were brought under the Children Act 1989 and were heard in private before and on 1st June 2020 before the Family Court at Sheffield. Furthermore, the defendant has published on Facebook the contents of a document which was submitted to the court and which was prepared for the family proceedings. In so doing, the defendant has breached – and, I might add, continues to be in breach of – section 12(1) of the 1960 Act.

107. The allegations of contempt brought by the Attorney General are proved. I am sure of that, without a hint of doubt.

108. The penalty stage was adjourned and warrant for the arrest of the defendant was issued. I have explained the course of events following the hearing on 20th August 2021. In all the circumstances it was fair and reasonable to hear the penalty stage of the proceedings in the absence of the defendant even though he was under arrest and in custody. In so many respects the defendant forfeited his right to be present by his disruption of the proceedings. Furthermore, he refused to come into court when the custodial officers attempted the bring him in.

The Penalty Stage

109. In respect of penalty I have the following powers pursuant to section 14 of the Contempt of Court Act 1981:

(1) Committal to prison for up to 2 years (which may be suspended – a suspended committal order).

(2) An unlimited fine.

110. The Court of Appeal has given guidance about sentence in contempt cases in ***Liverpool Victoria Insurance Co Ltd v Khan*** **[2019] EWCA (Civ) 392** at paragraphs 57 to 71. More recently the Supreme Court has added its weight to this subject in ***HM Attorney General v Crosland*** **[2021] UKSC 15** where Lord Lloyd Jones, Lord Hamblen and Lord Stephens in a joint judgment stated:

> "44. General guidance as to the approach to penalty is provided in the Court of Appeal decision in *Liverpool Victoria Insurance Co Ltd v Khan [2019] EWCA Civ 392; [2019] 1 WLR 3833, paras 57 to 71* . That was a case of criminal contempt consisting in the making of false statements of truth by expert witnesses. The recommended approach may be summarised as follows:

- 1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.

- 2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.

- 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.

- 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.

- 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.

- 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.

- 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.

111. Mr Blake has called to my attention a number of cases where sentences have been imposed following a contempt by way of social media postings. These have ranged from 6 months imprisonment when the contemnor breached a reporting restriction and filmed a defendant in a criminal trial, to 3 months imprisonment suspended for 2 years where the contemnor live-streamed on Facebook the sentencing remarks of a judge in a Crown Court trial. In the case where a convicted murderer was identified by a picture on social media an immediate custodial sentence of 9 months was imposed. I have had my attention drawn to other cases where suspended sentence orders were made when individuals published details of either witnesses or people connected to trials.

112. It is axiomatic to state – but it must be stated – that each case of a sentence in a contempt case is distinctly fact sensitive.

113. Mr Blake submits, on behalf of the Attorney General, that there are the following features of the case which aggravate the situation:

(1) The defendant continued to publish material on Facebook after the contempt was drawn to his attention. This exhibited an intentional defiance of the prohibition of publication.

(2) The postings were widely viewed. In the 8th July 2020 post over 1000 people have viewed it and in other examples to which reference has already been made, several hundred people have viewed the posts.

(3) The Parental Alienation Awareness Facebook page, which is where publication has taken place, has in excess of 4000 followers.

114. It is right to observe that there has been no harm caused to the underlying family court proceedings in the sense they were not derailed, indeed, they concluded on 1st June 2020. However, these posts have cast a long dark shadow over the participants in that litigation even after it concluded.

115. There is one important feature: the names of the two children in this family case have been put in the public domain without any regard to their welfare or their rights of privacy. The same applies to the mother of the children (the former partner of the defendant). That is a serious consideration.

116. There is also a further serious feature of this case: the mother was subject to abuse and insults in several of the posts. Additionally, the CAFCASS officer was named and also subject to high octane abuse – as was the judge. It seems to me that I cannot ignore the way in which the defendant perpetrated the contempt with the use of extremely offensive invective directed towards the mother, a CAFCASS officer and a judge.

117. The only matter which has caused me any concern is the delay between the contempt and this case. It is regrettable the process has taken as long as it has. I have this in mind. However, the defendant has added to that process by his disengagement in the process of the court.

118. I am aware the defendant has a sense of grievance. It is not justified, but he feels it is. He has every right to vent his feelings – however misguided – about the family justice system, but he is not allowed to breach section 12 of the 1960 Act and reveal details of a case involving a child heard in private. He has also defied clear orders of the court seeking to uphold that provision.

119. It has been repeatedly stated that sentencing in contempt cases is distinctly fact centric and individual. I must consider the harm caused and intended by the defendant as well as his culpability.

120. It appears to me the contempt in this case was one of deliberate defiance of the law and of orders of the court designed to uphold the law. The family case was over beyond the 1st June 2020, but the statutory protection remained. It was deliberately ignored and flouted by the defendant beyond that date. The conduct of the defendant undermined the integrity of the process of family justice which endures beyond the conclusion of the case itself. In this sense there was a serious interference with justice.

121. In my judgment the following factors are of importance in this case:

(1) The prohibition on the publication in family cases involving children was made known to the defendant on several occasions by reason of orders of the court and other court documents. He was aware of the law. It was particularly made known to him in the order of Her Honour Judge Pemberton of 1st June 2020.

(2) The defendant has *repeatedly* and, in my judgment *contumeliously* disobeyed orders of the court to remove the material and has defied the law prohibiting publication of cases involving children under the Children Act 1989.

(3) In the various posts he has expressed his defiance in a deeply offensive manner towards the mother, the CAFCASS officer and the judge. He has laced this aspect of the video posts with vulgar invective.

(4) CAFFCASS officers are particularly vulnerable in the family justice system. They undertake very difficult and sensitive tasks in the course of difficult family cases. They must be protected by the courts – and this embraces their public anonymity.

(5) The defendant has publicly revealed the names of the children without any regard for their welfare or rights of privacy.

(6) The defendant has acted in brazen manner throughout the period of the relevant postings. I shall ignore his brazen conduct towards this court in the course of the contempt proceedings and his vulgarity and rudeness to the GLS.

(7) The postings have been widely viewed – doubtless by many who share the misguided and warped opinions of the defendant. Unless this sort of conduct is punished appropriately, it will give the green light to others to do the same or similar in relation to other family court proceedings which are conducted in private.

(8) The defendant has shown not the slightest contrition.

122. It must be made very clear by the courts that to deliberately, and brazenly, flout the law prohibiting publication of family proceedings involving children will result in substantial punishment. This will be particularly manifest when the child or children are named, and/or other key participants in the

proceedings are named. That situation is accentuated when it is perpetrated repeatedly, and/or invective is utilised to perpetrate the publication.

123. The previous convictions of the defendant have been made available to me. He has breached many orders of the criminal courts. He has committed acts of violent crime and harassment. There are many pages of previous convictions from 1997 to 2021. He has been convicted of crimes of dishonesty and violence. Although, I note these convictions, they will not govern the penalty in this case, save to the extent it is clear the defendant defies orders of the criminal courts too.

124. In this case, by reason of the factors I have identified I committed the defendant to prison for 10 months on 17th September 2021. The time from the point when he was arrested on 9th September 2021 will count towards the period of committal. Imprisonment is demanded in this case. A fine would be utterly inadequate. This is a serious contempt where the defendant has deliberately and contumeliously refused to obey the law. If he is seen to avoid the serious consequences of this, others will do as they wish, and the law would be seriously reduced in its potency. There is not a shred of remorse by the defendant. Indeed, the reverse – utter defiance of the court.

125. I considered whether the committal order should be suspended in its operation. In this regard I undertook the form of balancing or weighing of factors as indicated in the Sentencing Council *Guideline on the Imposition of Custodial Sentences* of 2018. In this case I asked myself whether a custodial order is the *only* means of adequately punishing the contemnor for the contempt shown to the court. I do not see anything which militates against passing an immediate custodial order. Indeed, I see it as essential in this case that the defendant is sent to prison immediately. To suspend the committal order of 10 months in this case would, in my judgment, inevitably lead to others viewing a breach of section 12 of the 1960 Act, and/or defiance of family court orders about publication, as something about which the court cares little. It must be made clear – and this must resonate to those who might be foolish enough to think they might try doing as the defendant has done in this case – if a person does as the defendant has done in this case, severe punishment will flow from that conduct.

126. Put very shortly: if a person does as the defendant has done here, a long period of immediate custody awaits, given the maximum sentence is two years custody. It seems to me the balance will rarely come down in favour of a suspended committal order when a brazen contempt of the type in this case, is proved.

127. There is nothing which comes down in favour of making a suspended committal order in this case.

128. I am of the view that if there had been any direct interference with the family case itself, an immediate committal order of at least 12 months – if not 15 months – would have been warranted. As that is not the position, a lesser

penalty is merited. However, there was widespread dissemination of the Facebook posts. That is why there must be a committal order of some substance.

129. In the result, I made an order committing the defendant to prison for 10 months in respect of the contempt he committed. The committal order was made on 17th September 2021. The defendant will serve half the prison term.

130. It will be explained to the defendant, he may apply to the court to purge his contempt at a later stage. He would need, at least, to acknowledge and apologise for all he has done wrong, before that would have any prospect of success.

131. I have considered the issue of costs. I can see every reason why he should pay the costs of the Attorney General. I summarily assess them to be in the sum of £22,423. The high level of costs has been occasioned by the protracted nature of these proceedings. This is entirely the fault of the defendant. At present I feel I must make the assumption the defendant is in receipt of state benefits. I will, in these circumstances, make the usual order that the order for costs is not to be enforced without the leave of the court.

Conclusion

132. I have every suspicion the defendant and others with similarly warped and irrational views about the family justice system in this country will regard the defendant as akin to a martyr of a certain type. He is nothing of the sort. He has shown contempt for the court in the way I have explained and, perhaps worst of all, has placed his children and his vulnerable former partner in the public domain. This must have caused the mother a high level of emotional trauma – as would be expected. It has the potential to cause the children in the future that same harm. That is why proceedings in the family courts about children are the subject of protection. The defendant has displayed no regard whatever for the welfare – past, present or future – of his children. That is outrageous. He is nothing akin to a martyr. Only someone equally irrational as he is, would ever think he was.

133. For the reasons given in this judgment the defendant is found guilty of contempt. Furthermore, for the reasons given in this judgment the defendant is committed to prison for 10 months in respect of that contempt.

134. I direct that the order of the court and this judgment shall be made available to the press and public. I shall further direct that the order and this judgment be placed upon the judiciary website (www.judiciary.net) pursuant to FPR Part 38.8(13).

135. An order embracing a full recital of events and decisions contained within this compendious judgment shall be made today. This will include:

    (1) A recital of the fact the defendant failed to attend the hearings on 30th July, 10th, 20th and 26th August 2021.

(2) A recital that the court applied the guidance in ***Sanchez v Oboz*** on each occasion when he did not attend.

(3) A recital that he was found guilty of contempt on 20th August 2021 and an extempore judgment was delivered on that day (which is replicated in the compendious judgment of 20th September 2021)

(4) A recital that an order for the Tipstaff to arrest the defendant was made on 20th August 2021; and that it was executed on 9th September 2021. Thereafter, the defendant was remanded into the custody of HMP Doncaster because the court was entirely satisfied that if released, he would not attend any subsequent hearings.

(5) A recital that the defendant could not be brought to court by officers acting on behalf of the Tipstaff until 13th September 2021, due to the conduct of the defendant.

(6) A recital that on 13th September 2021 the court arranged for legal representation of the defendant; but he later dismissed the solicitors and indicated he would represent himself.

(7) A recital that the issue of penalty was adjourned to 17th September 2021.

(8) A recital that the defendant could not be brought into court on 17th September 2021 because of his disruptive behaviour and his eventual refusal to come into the courtroom.

(9) A recital that the committal order committing the defendant to prison for 10 months was made on 17 September 2021 and the reasons for that decision would be handed down in a reserved judgment on 20th September 2021.

(10) A recital that an order for costs was made on 17th September 2021 in the sum of £22,423.

136. The order will also contain the following:

(1) A direction under FPR Part 37.8(5) preventing publication of the names of the mother and children in this case.

(2) A direction that this judgment be placed on the judiciary website.

(3) A direction that this judgment be immediately sent to the defendant and be personally delivered to him at the prison where he is detained.

(4) A direction that the period of time given to the defendant in which to commence an appeal is extended to 23.59 hours on 12th October 2021.

137. The court will be in communication with the prison to ensure the defendant is has been given this judgment and the order made today. It is essential he is also made aware of his rights in respect of any potential appeal against decisions made by this court.

138. An order embracing the above is made today. This is in addition to the Committal Order that was made on 17th September 2021.

Post-Script

139. It would not be right for me to leave this case without thanking Mr Julian Blake, counsel for the Attorney General. He has been inconvenienced as much as the court by the conduct of the defendant and the adjourned hearings. Mr Blake has assisted the court to a high degree in difficult circumstances. I shall ensure these observations are made known to Her Majesty's Attorney General.