Neutral Citation Number: [2024] EWHC 3245 (Admin)

Case No: AC-2023-CDF-000120

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

Bristol Civil Justice Centre

Date: 16 December 2024

Before :

LORD JUSTICE WARBY
and
MR JUSTICE DOVE

- -

Between :

THE KING **on the application of** **CLEARSPRINGS READY HOMES LIMITED**	**Claimant**
- and -	
SWINDON MAGISTRATES' COURT	**Defendant**
-and-	
SWINDON BOROUGH COUNCIL	**Interested Party**
-and-	
SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT	**Intervener**

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Chris Buttler KC and Imran Mahmood (instructed by **Anthony Gold Solicitors LLP**) for the **Claimant**
Stephanie Harrison KC and Tim Baldwin (instructed by **Swindon Borough Council**) for the **Interested Party**
Jack Holborn (instructed by **Government Legal Department**) for the **Intervener**

Without a hearing

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Approved Judgment

This judgment was handed down remotely at 10.30am on 16 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

LORD JUSTICE WARBY and MR JUSTICE DOVE :

1. The claimant is a provider of asylum seeker accommodation pursuant to a contract with the Home Office (HO). On 22 and 23 October 2024, we heard the claimant's claim for judicial review of a decision of the Swindon Magistrates' Court by which the court refused to dismiss a prosecution of the claimant for breach of the Management of Houses in Multiple Occupation (England) Regulations 2006. Swindon Borough Council is the prosecutor in the Magistrates' Court. It was an Interested Party to the judicial review claim. The Secretary of State for Housing Communities and Local Government (SSHCLG) was an intervenor.

2. At the end of the hearing we reserved judgment. On 19 November 2024, we sent the parties the draft of our judgment, subject to embargo. On 26 November 2024, we handed down the final version of the judgment, dismissing the judicial review claim.

3. This second judgement is concerned with a breach of the embargo.

The embargo arrangements

4. Most decisions in substantial civil disputes are delivered in the form of reserved written judgments, handed down some time after the hearing. For many years it has been the practice to circulate a draft of the judgement to the parties and their representatives some days before the formal hand-down.

5. The process is intended to be confidential. Currently, it is governed by Practice Direction 40E. This provides, among other things, that:

> 2.4 A copy of the draft judgment may be supplied, in confidence, to the parties provided that –
>
> > (a) neither the draft judgment nor its substance is disclosed to any other person or used in the public domain; and
> >
> > (b) no action is taken (other than internally) in response to the draft judgment, before the judgment is handed down.
>
> …
>
> 2.7 If the parties or their legal representatives are in any doubt about the persons to whom copies of the draft judgment may be distributed they should enquire of the judge or Presiding Judge.
>
> 2.8 Any breach of the obligations or restrictions under paragraph 2.4 or failure to take all reasonable steps under paragraph 2.6 may be treated as contempt of court.

6. A draft judgment circulated under these provisions invariably has a rubric at the top that reiterates the need for confidentiality. The standard rubric in use at the relevant time included the following wording:

> This draft is confidential to the parties and their legal representatives. Neither the draft itself nor its substance may be disclosed to any other person or made public in any way. The parties must take all reasonable steps to ensure that it is kept confidential.
>
> As explained in *Counsel General v. BEIS (No. 2)* [2022] EWCA Civ 181, the draft judgment is only to be used to enable the parties to make suggestions for the correction of errors, prepare submissions on consequential matters and draft orders and to prepare themselves for the publication of the judgment. A breach of any of these obligations may be treated as a contempt of court.

7. The *Counsel General* case was about a violation of the embargo by publication of a press release by a set of barristers' chambers. The judgment of the Master of the Rolls explained at [29]-[31] the purposes of the embargo and its importance:

> 29 … The purpose of the process is to enable the parties to make suggestions for the correction of errors, prepare submissions and agree orders on consequential matters and to prepare themselves for the publication of the judgment.
>
> 30. CPR PD40E exists for good reasons. The consequences of a breach of the embargo can be serious. It is not possible to generalise about the possible consequences as judgments will range, for example, from dealing with highly personal information in some cases to price-sensitive information in others. The court is rightly concerned to ensure that its judgments are only released into the public domain at an appropriate juncture and in an appropriate manner.
>
> 31. … (iv) proper precautions and double-checks need to be in place in barristers' Chambers and solicitors offices to ensure that errors come to attention before the embargo is breached, and (v) in future, those who break embargoes can expect to find themselves the subject of contempt proceedings as envisaged in paragraph 2.8 of CPR PD40E

The facts

8. Our draft judgement contained the standard rubric and identified the date of hand down as 26 November. On 25 November, Leading Counsel for the claimant sent an e-mail to the court disclosing that the claimant had communicated the substance of our decision to the HO on 21 November 2024. A summary of the circumstances in which this had occurred was given, an apology was provided, and brief submissions were made. We asked for further information and a witness statement to verify the details. We now have a witness statement from Samantha Gordon, a Solicitor employed by the claimant as head of its legal department ("the Solicitor"). We now also have a witness statement from Samuel Parsons, a lawyer in the Government Legal Department, which represents the intervenor, SSHCLG.

9. What happened is this. Late on the afternoon of 18 November, a senior HO official emailed the claimant's managing director (the MD) on the subject of "public statements on the outcome of the Swindon JR". The e-mail pointed out that the claimant was required to obtain HO approval for any public announcement relating to the services provided by the claimant under its contract with the HO. The official requested "copies of press releases for approval prior to publication." On 19 November, the court sent out our draft judgment. It was forwarded to the Solicitor by the claimant's leading counsel and external solicitors. Both, in doing so, drew attention to the embargo and the need for confidentiality. The Solicitor was in any event well aware of the rules concerning draft judgments. Before joining the claimant she had worked as a litigator in private practise for several years.

10. That afternoon the MD sent the HO a brief reply, which made no reference to the draft judgment or its substance. But at 4:31pm on 21 November the Solicitor sent the following to the HO ("the Solicitor's Email"):

> "Further to your email below, we confirm that we will not be releasing a 'press statement' or making a public announcement but if we are asked for a comment by the press, we will be using the following wording:-
>
> The Divisional Court of the High Court accepted Clearsprings Ready Homes interpretation of the HMO regulations under the Housing Act 2004. The consequence of that interpretation is to increase the protection for occupiers for HMOs because there will now always be someone liable for the breach of the Management Regulations. The court also accepted that CRH was not a 'person managing' for the purpose of the Management Regulations, and whether CRH are a 'person having control' will be determined on a case-by-case basis. We continue to work with our landlords to ensure they understand their obligations in this regard and ultimately, the vulnerable people we accommodate are done so in safe and appropriate housing."

11. Mr Parsons was later contacted by an official at the HO and told that they had been sent a draft press release in relation to the outcome of the case by the claimant prior to the judgment being handed down. Once he was provided with the draft press release which the claimant had sent to the HO both he and counsel advising him formed the view that there had been a breach of the embargo. At 1:24pm on 25 November 2024 Mr Parsons emailed the claimant's external Solicitors on behalf of the SSHCLG, suggesting that the Solicitor's Email appeared to be a breach of the embargo. Later that afternoon the Solicitor wrote to the HO asking it to delete the Solicitor's Email and to ensure that it was not further circulated. Leading Counsel for the claimant was then instructed to communicate with the court in the terms that we have summarised.

12. The Solicitor's witness statement states that she takes the embargo very seriously. For that reason she had carefully avoided disclosing the draft judgment or its substance to members of the claimant's board of directors, even though she had been advised that disclosing the substance would be legitimate. The Solicitor states, however, that at

the material time she and the Board of the claimant believed that the HO was working with the SSHLG "as part of a cross-government intervention on this case". She sets out details of communications from the HO between August and November 2024 which she says induced that belief. She and, she says, others at the claimant had "assumed that the Home Office were aware of the outcome of the case". She had read the HO e-mail of 18 November as reflecting such knowledge. It was against this background that she sent the Solicitors E-mail "on the understanding that it would not be a breach of the embargo" to do so.

Contempt proceedings

13. The authorities suggest that disclosure of the text or substance of a draft judgement which is subject to an embargo is a contempt of court if the disclosure (a) violates the terms of the embargo and (b) is a deliberate act performed in the knowledge that the embargo applies; on an application to commit for breaching the embargo "it is not necessary for the applicant to prove an ulterior intention to interfere with the administration of justice": *Attorney General v Crosland (No 1)* [2021] UKSC 15, [2021] 4 WLR 103 [28].

14. Sometimes, proceedings alleging a contempt of court are brought by the Attorney General or a party to the proceedings. That has not happened here. CPR 81.6 caters for "cases where no application is made". Rule 81.6(1) states that "If the court considers that a contempt of court … may have been committed, the court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings."

15. The cases make clear that this is a two-stage process. First, the court decides whether a contempt "may have been committed". If not, that is the end of the matter. If so, the court must decide whether to proceed. This is a discretionary decision, which will take into account the gravity of the alleged contempt, the importance of enforcing the embargo, the circumstances in which the breach occurred, any other relevant facts, and the overriding objective. See *Griffiths v Tickle* [2022] EWCA Civ 465, [2022] FLR 879 [5], [21], [32], *Interdigital Technology Corporation V Lenovo Group Limited* [2023] EWCA Civ 57 [19]-[20], *Wright v McCormack* [2023] EWHC 1030 (KB) [36]-[40], and *World Uyghur Congress v Secretary of State for the Home Department* [2023] EWHC (Admin) [13]-[14].

16. We have received detailed submissions on behalf of the Solicitor and endorsed by the claimant. Within those submissions it is accepted that a contempt may have been committed by the Solicitor in her communication with the HO. It is, however, submitted that it would not be proportionate in this case to pursue contempt proceedings, in particular in the light of the Solicitor's contrition and the limited harm to the interests of justice which was caused by the breach of the embargo in this case.

Our decision

17. Both the Solicitor and the claimant are content that there is no need for a hearing in this case and that the matter can be resolved on the papers. No other party made representations that there was a need for a hearing and we consider that disposing of this matter on the papers is a proportionate approach.

18. The Solicitor's Email disclosed the substance of the court's decision to at least one member of staff at the HO, which was not a party to the proceedings. We are satisfied that this was a breach of confidence and a breach of the embargo and that it "may" have been a contempt. We accept that the Solicitor did not intend to breach the embargo or to interfere with the administration of justice. But the disclosure was a deliberate act not an accidental one. When she sent the email, the Solicitor was well aware that the draft judgment was subject to the embargo, and that a breach may amount to a contempt of court. She was aware of the terms of the embargo and that it limited disclosure to the parties and their representatives. She knew that the HO was not a party to the litigation.

19. Notwithstanding these concerning aspects of the case we do not consider it necessary or appropriate to proceed further. The harm done is limited in extent and very modest in scale. The error was swiftly identified and addressed. The level of culpability is low: we accept the Solicitor's evidence and the claimant's submissions on this point. The mistake was promptly acknowledged and disclosed to the court. A full and candid account has been provided. We accept the full and unreserved apology that has been offered. We consider that the Solicitor and the claimant are now fully aware of the true implications of the embargo. The witness statement of Mr Parsons provides further context and we note that in the letter accompanying the witness statement the intervener does not press for contempt proceedings.

20. Observance of the embargo is an important matter. If the court concluded that parties and their representatives cannot be trusted to comply with it, the practice of circulating draft judgments would have to be abandoned. That would have significant implications for efficiency. We are however satisfied that on the facts of this case there is no need for any further proceedings in relation to this issue and that the observations which we have made in this judgment are an adequate marking of what occurred and an appropriate warning to those dealing with embargoed judgments in future.