



Neutral Citation Number: [2021] EWHC 1876 (Fam)

Case No: FD21F00023

**IN THE HIGH COURT OF JUSTICE**  
**FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 06/07/2021

**Before :**

**MR JUSTICE KEEHAN**

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**Between :**

**Her Majesty's Attorney General**  
**- and -**  
**Phillip Hartley**

**Claimant**

**Defendant**

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**Mr J Blake (instructed by Government Legal Department) for the Claimant**  
**The Defendant was neither present nor represented**

Hearing dates: 1st July  
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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....  
MR JUSTICE KEEHAN

This judgment was delivered in public.

## **The Hon Mr Justice Keehan :**

### Introduction

1. In March 2021 Her Majesty's Attorney General made a Part 19 application for permission to bring committal proceedings for contempt of court against the defendant, Phillip Hartley. The substantive family case which had been proceeding in the Family Court at Sheffield had concluded by the time of the alleged actions which were relied upon to establish the contempt. The matter was listed for the permission application to be heard, with the substantive committal application to follow if permission was granted, on 1<sup>st</sup> July 2021. The defendant failed to attend the hearing whether remotely or in person. I adjourned the application to 16<sup>th</sup> July 2021, ordered the defendant to attend that hearing and attached a penal notice to this direction.
2. A discrete procedural issue was raised by counsel for the Attorney General, Mr. Blake, upon which the court was invited to give guidance. The issue may be stated shortly, in cases where an application is made for committal for interference with the due administration of justice after the substantive family case has concluded, should the application be made in the High Court pursuant to Part 19 of the Family Procedure Rules 2010 ('the FPR') or to the relevant family court pursuant to Part 18 of the FPR?

### The Law

3. Part 37 of the FPR was updated and simplified in October 2020 and r. 37.3 now provides as follows:

#### “37.3

- (1) A contempt application made in existing High Court or family court proceedings is made by an application under Part 18 in those proceedings, whether or not the application is made against a party to those proceedings.
- (2) If the application is made in the High Court, it shall be determined by a High Court judge of the Division in which the case is proceeding. If it is made in the family court, it shall be determined by a judge of the family court.  
  
(The Family Court (Composition and Distribution of Business) Rules 2014( ) make provision for which level of judge may determine a contempt application.)
- (3) A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or family court proceedings, is made by an application to the High Court under Part 19.
- (4) Where an application under Part 19 is made under paragraph (3), the rules in Part 19 apply except as modified by this Part and the defendant is not required to acknowledge service of the application.

- (5) Permission to make a contempt application is required where the application is made in relation to—
- (a) interference with the due administration of justice, except in relation to existing High Court or family court proceedings;
  - (b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.
- (6) If permission to make the application is needed, the application for permission shall be included in the contempt application, which will proceed to a full hearing only if permission is granted.
- (7) If permission is needed and the application relates to High Court proceedings, the question of permission shall be determined by a single judge of the High Court. If permission is granted the contempt application shall be determined by a single judge or Divisional Court of that Division.”
4. The previous version of FPR Part 37 provided different mechanisms in respect of committal applications for:
- i) breach of a judgment or order;
  - ii) contempt in the face of the court;
  - iii) for interference with the due administration of justice; and
  - iv) for making a false statement of truth.

Chapter 4 of the former Part 37 provided as follows:

“37.13 Scope

- (1) This Chapter regulated committal applications in relation to interference with the due administration of justice in connection with family proceedings, except where the contempt is committed in the face of the court or consists of disobedience to an order of the court or a breach of an undertaking to the court.
- (2) A committal application under this Chapter may not be made without the permission of the court.”

“37.14 Court to which application for permission under this Chapter is to be made

- (1) Where the contempt of court is committed in connection with any family proceedings, the application for permission may be made only to a single judge of the Family Division.
- (2) Where the contempt of court is committed otherwise than in connection with any proceedings, Part 81 of the CPR applies.”

“37.15 Application for permission

- (1) The application for permission to make a committal application must be made using the Part 18 procedure, and the application notice must include or be accompanied by –
  - a. a detailed statement of the applicant’s grounds for making the committal application; and
  - b. an affidavit setting out the facts and exhibiting all documents relied upon.
- (2) The application notice and the documents referred to in paragraph (1) must be served personally on the respondent unless the court otherwise directs.
- (3) Within 14 days of service on the respondent of the application notice, the respondent –
  - a. must file and serve an acknowledgment of service; and
  - b. may file and serve evidence.
- (4) The court will consider the application for permission at an oral hearing, unless it considers that such a hearing is not appropriate.
- (5) If the respondent intends to appear at the permission hearing referred to in paragraph (4) the respondent must give 7 days’ notice in writing of such intention to the court and any other party and at the same time provide a written summary of the submissions which the respondent proposes to make.
- (6) Where permission to proceed is given, the court may give such directions as it thinks fit, and may –
  - a. transfer the proceedings to another court; or
  - b. direct that the application be listed for hearing before a single judge or a Divisional Court.”

5. These rules did not distinguish between family proceedings which were ‘existing’ and those which had been concluded.
6. Rule 37.13(2) provided that all committal applications for interference with the due administration of justice required an application for permission to be made and r 37.14(1) required that the permission application may only be made to a judge of the Family Division. If permission to proceed was given the court could:
  - i) transfer the committal application to another court for hearing; or
  - ii) list it before a single judge of the High Court or before a Divisional Court: FPR r 37.15(6).
7. Further, in contrast to the provisions of r 81.3 of the Civil Procedure Rules (‘the CPR’), r 37.3 FPR does not provide for which court should determine the permission application and the contempt application in proceedings which were before the family court and were not High Court proceedings. The CPR 81.3 is in like terms to FPR r 37.3 save that rr 81.3(7) & (8) provide as follows:

“(7) If permission is needed and the application relates to High Court proceedings, the question of permission shall be determined by a single judge of the Division in which the case is proceeding. If permission is granted the contempt application shall be determined by a single judge or Divisional Court of that Division.

(8) If permission is needed and the application does not relate to existing court proceedings or relates to criminal or county court proceedings or to proceedings in the Civil Division of the Court of Appeal, the question of permission shall be determined by a single judge of the Queen’s Bench Division. If permission is granted, the contempt application shall be determined by a single judge of the Queen’s Bench Division or a Divisional Court.”

#### Submissions

8. On behalf of the Attorney General, Mr Blake make the following written submissions:
  - “4. These rules therefore distinguish between an application “made in existing...proceedings” and an application that is not. This rule is quite different to its predecessor, which provided different mechanisms in respect of committal for breach of an order, contempt in the face of the court, committal for interference with the due administration of justice etc.
  5. The Attorney General has chosen to pursue these matters under FPR rule 37.3(3) for the following two reasons:

6. First, in both of these cases, the action which constitutes the contempt is the publication of information relating to proceedings after the cases have concluded:

a. In the case of Mr Phillip Hartley, the Defendant withdrew his family court application on 1 June 2020. The publications that are the subject of complaint are those of 1 June 2020 (after withdrawal), 4 June 2020, 8 June 2020 and 8 January 2021....

7. The Attorney General is concerned that the reference in the new rules to “existing” proceedings is (intentionally or not) a reference to ongoing cases or at least cases where the contempt occurred whilst the cases were ongoing.

8. Second, whilst the Defendants’ contempt could be articulated as a breach of a court order, it is also an interference with the course of justice. The Court’s attention is drawn to the case of *Attorney General v Pelling* [2005] EWHC 414 (Admin). In *Pelling*, the Divisional Court found that it was a criminal contempt for the defendant to publish on the internet a judgment from proceedings under the Children Act 1989 (wardship proceedings). Laws LJ held at [50]:

“this species of contempt is in truth an instance of interference with the course of justice. As we have shown that is the rationale of Lord Haldane's reasoning in *Scott v Scott*, with which Scarman LJ's own earlier observations in *In re F*, which we have already set out, are wholly consonant. Moreover it is plainly not a condition of contempt by publication that any express order of the court directing a private hearing should have been made.” (and see [51] to [54]).

9. See also *In Re F (A Minor)* [1977] Fam 58 where the Court of Appeal considered the contempt to be “akin to the contempt which is committed by a person who disobeys an order of the court” (at 89D-H and also at 100E), but a breach of an explicit order is not a necessary element of the contempt which arises simply as a result of the court sitting in private.

10. In light of the repeated nature of the publications in the present cases, the fact that they did not interfere with the disposal of the underlying cases but interfered with the course of justice more broadly, and the fact that they post-date the proceedings themselves (in one case by several years), the Attorney General considers that the proceedings fit most naturally into FPR rule 37.3(3).”

9. In oral submissions Mr. Blake referred me to two further authorities in support of the Attorney General’s analysis of the meaning of FPR r 37.3, namely *HM Attorney*

*General v. Yaxely-Lennon* [2019] EWHC 1791 (QB) and *Solicitor General v. Holmes* [2019] 1 WLR 5253.

## Discussion

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.

## Conclusion

14. This application by the Attorney General for permission to bring a committal application against the defendant was rightly issued in the High Court pursuant to the provisions of FPR r 37.3(3) and using the FPR Part 19 procedure.