



Neutral Citation Number: [2024] EWHC 984 (Fam)

Case No: FD24F00107

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
SITTING AT LEEDS

Date: 26 April 2024

Before:

MR JUSTICE POOLE

EBK v DLO (Permission for Further Contempt Application)

Between:

EBK

Claimant

- and -

DLO

Defendant

The Claimant in person

Dan Foster (instructed by **Watson Ramsbottom Solicitors**) for the Defendant

Hearing date: 17 April 2024

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This judgment was handed down remotely at 10.30am on 26 April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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This judgment was delivered in public but a reporting restrictions order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the child and the parties must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Approved Judgment**Mr Justice Poole:**

1. The Claimant, EBK, seeks the committal to prison of the Defendant, DLO, for contempt of court. This is his second such application. This application is dated 25 January 2024 but has been amended following directions by Sir Jonathan Cohen when he listed the hearing of permission to make the application for contempt before me for two hours on 17 April 2024. This judgment follows that hearing which was held in open court. EBK was unrepresented. DLO appeared at court and was represented by Mr Foster who confirmed at the outset of the hearing that the Defendant had been properly served with the application and associated documentation. EBK had prepared a helpful bundle for the hearing which included a lengthy Affidavit with appendices. For the reasons given in this judgment I refuse permission to EBK to bring these committal proceedings.

Background

2. EBK and DLO are parents of a child, N, now nearly seven years old. DLO also has two older children who are under 18 and who live with her. The parties separated in or around November 2017 after which there were protracted proceedings in the Family Court concerning child arrangements orders (“CAO proceedings”). In the course of the proceedings, DLO made allegations including of domestic abuse against EBK. Certain findings were made which do not need to be aired in this judgment. Those proceedings, then under case number HD20P00013, were concluded by District Judge Uppal on 9 March 2022 in the Family Court in Huddersfield when he made a child arrangements order by which N would live with her mother and her father but with more time spent with her mother. DJ Uppal made Children Act 1989 s91(14) orders to last until March 2026 against both parties, preventing further applications in respect of N without permission.
3. On 11 August 2020, whilst these CAO proceedings were ongoing, DLO wrote a letter to a Member of Parliament in which she repeated allegations of domestic abuse against EBK. She also referred to there having been proceedings in the Family Court and she told the MP that within those proceedings a non-molestation order had been made, that EBK had been ordered to undertake a Domestic Abuse Perpetrators Programme (“DAPP”), that following interventions by EBK the judge had then “dismissed CAFCASS without replacement and has since been making decisions entirely on his own”, that EBK had made various claims about his employment (with the military) which she claimed were untrue, and that the Family Court had not had contact with the Ministry of Defence. The Claimant was a serviceman and the MOD was his employer. The Defendant ended the letter:

“It has taken a great deal of strength to write this letter, and ask for your help. I would be grateful of your assistance in escalating this to the police, the military (as he is bringing them into disrepute) and the Family Court, and finally get the much needed protection and justice we desperately need.”
4. I have evidence to show that the MP forwarded this letter to West Yorkshire Police but I have not seen any response by the MP to DLO. At this stage I have no evidence at all from the Defendant. Her Counsel provided a short position statement which focused on

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legal issues. The Defendant accepts that she wrote the letter to the MP on 11 August 2020. As I reminded DLO at the outset of the hearing, she is not obliged to say anything or to give evidence. For the benefit of the Claimant, I stress that nothing can be read into the absence of evidence from the Defendant.

5. West Yorkshire Police officers visited DLO within a few days and she provided them with a number of documents from the CAO proceedings as well as repeating her allegations about EBK's abuse to them. On 25 August 2020, a police officer of West Yorkshire Police wrote to a Warrant Officer at the Ministry of Defence referring to DLO's allegations and "hundreds of emails" from EBK. The officer informed the MOD that the police "would be seeking a charge of controlling and coercive behaviour/harassment." The following day EBK was arrested. He remained on bail for well over a year. As I understand it there were no subsequent criminal proceedings and bail was later discharged.
6. Clearly, EBK's arrest had an effect on the course of the CAO proceedings. At least one substantive hearing was adjourned. His arrest and bail were a restriction on his liberty. The letter to his employer (written by the police not by the Defendant) was liable to cause him difficulty or harm. In addition, I understand that the CAF/CASS officer who had been involved in the CAO proceedings had made communications with EBK's employer also.
7. EBK only found out about DLO's letter to the MP at the end of 2023. However, well before then he knew about her allegations to the police, his arrest and bail restrictions, the effect on the CAO proceedings, and the letter to his employer from West Yorkshire Police.
8. These events have given rise to a number of pieces of litigation or threatened litigation:
 - i) In the (then) ongoing CAO proceedings, DLO sought to suspend direct contact between EBK and N due in part to concerns about EBK "following his arrest". That application was refused and HHJ Lynch dismissed an appeal against that refusal. Meanwhile EBK sought enforcement of the Court's previous contact order. The proceedings continued to final orders in March 2022.
 - ii) On 23 November 2021, EBK's solicitors wrote a "Preliminary Notice of Intention to Commence Judicial Review Proceedings" to the Chief Constable of West Yorkshire Police which concerned alleged police failures in respect of their bail decisions, enquiries, and investigations. I have no evidence that any judicial review claim was in fact brought.
 - iii) EBK sued the Chief Constable of West Yorkshire Police in the High Court for defamation and misuse of private information. An anonymity order was made in those proceedings. On 25 July 2022 Mr Justice Johnson handed down judgment on preliminary issues - *TJM v Chief Constable of West Yorkshire Police* [2022] EWHC 2658 (KB) - following which the police conceded liability and the parties to that litigation agreed a settlement by which substantial damages were paid to EBK and an open acknowledgement and apology were made.

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- iv) EBK brought contempt of court proceedings against DLO in December 2022 for breach of the Administration of Justice Act 1960 (“AJA 1960”) s12 by showing documents to officers of West Yorkshire Police which were from the CAO proceedings. These documents were provided to officers between the letter to the MP and EBK’s arrest. Those proceedings came before Mr Justice Mostyn who gave a detailed judgment on 5 May 2023 – *EBK v DLO* [2023] EWHC 1074 (Fam). I refer to that judgment in full for the background, the details of what documentation was provided to the police, Mostyn J’s analysis of the application of AJA 1960 s12 and the Family Procedure Rules, his recitation of the law as to permission to make a contempt application, and his decision to refuse EBK permission to make the committal application. I shall return to parts of that judgment shortly.
- v) At the hearing before me, EBK produced a response from the legal department at West Yorkshire Police, dated 26 October 2023, to his Letter of Claim dated 27 September 2023 in which he gave notice of a claim for wrongful arrest on 26 August 2020 and false imprisonment. He told me at the hearing that he had subsequently submitted his claim but it had not yet been issued by the Court.
9. In addition, as touched on in his Affidavit and explained by EBK during the hearing before me, the Claimant also sued CAFCASS for defamation in respect of communications by their officer who had been involved in the CAO proceedings when she had written to his employer. That claim was settled with the payment of damages. EBK states in his Affidavit that this settlement had happened before DLO wrote her letter to the MP.

The Alleged Contempt of Court

10. In his Contempt Application, EBK states that the nature of the contempt is:

“Breach of the rules of privacy in children proceedings – the Defendant breached her duty not to disclose or publish the court information relating to care numbers LS17P01886 and HD20P00013 relating to the parties’ child in breach of section 12, 12(1) and 12(4) of the administration of justice act 1960 (Contempt).”

There are two case numbers but it appears that there was a single set of CAO proceedings which moved from Leeds to Huddersfield whereupon a second case number was allocated.

11. AJA 1960 s12 provides:

“Publication of information relating to proceedings in private.

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

(a) where the proceedings—

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

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

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

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

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

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

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

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

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

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

12. As EBK confirmed in court, he relies on the content of DLO’s letter to the MP dated 11 August 2020 as constituting the contempt of court and not any other communication. More detail of the alleged breach of AJA 1960 s12 can be found in EBK’s Affidavit in support of the application, where he refers at page 12 to what he terms “materially false family court information in the letter”. He says that the Defendant disclosed “materially false” information to the MP:

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- i) By failing to inform the MP that the CAFCASS officer had been removed from the proceedings in the light of what had been acknowledged to be defamatory communications with the Claimant's employer.
 - ii) By stating that the CAFCASS officer had not been replaced when in fact the Family Court Judge had given permission for an Independent Social Worker to report.
 - iii) By distorting the facts concerning EBK's non-acceptance onto a DAPP.
13. EBK contends that the letter was an interference with the administration of justice, setting out his case at paragraph 28 of his Affidavit. He says that DLO asked the MP to intervene in the CAO proceedings, that it is likely that the MP did intervene, and that in fact there was a change of District Judge hearing the case.
 14. EBK seeks permission to make a contempt application. He told me during the hearing that if DLO is found guilty of contempt he would invite the court to pass a suspended prison sentence against her. When facing an application that would potentially jeopardise a Defendant's freedom, it is very important that the Defendant should know exactly what she is alleged to have done that is alleged to amount to a contempt of court. The Claimant has not clearly set out the alleged contempt but he is not legally represented and so I sought to explore further with him at the hearing what his allegations were insofar as they could amount to a contempt of court. I am afraid that at the end of submissions and those discussions I still find it difficult to articulate precisely what allegations of contempt the Claimant seeks to make.
 15. The letter to the MP of 11 August 2020 does not name N or her school. It does name EBK and it has DLO's address at the head of the letter. It refers to Family Court proceedings but not the location of the court nor any case number. The judge is not named nor are any witnesses including the CAFCASS officer. No documents were attached. It does refer to "Family Court proceedings", to EBK having been made subject to a non-molestation order and a direction to undergo a DAPP, to the CAFCASS officer having been "dismissed" without replacement and it includes a complaint that the judge has since then been "making decisions entirely on his own". DLO made extensive allegations to the MP about EBK's abuse of her, including by emails, threats of litigation, and his conduct in the CAO proceedings.
 16. EBK relies on breaches of AJA 1960 s12 as constituting contempt of court. His complaint is with the letter of 11 August 2020 to the MP: all the alleged breaches are said to be within that letter. The CAO proceedings in which the parties were engaged were Children Act proceedings and concerned the upbringing of a child, and they were held in private. Mr Foster for the Defendant rightly accepts that a letter to an MP can constitute publication for the purposes of AJA 1960 s12 (see paragraph [82] of the judgment *Munby J in Re B* [2004] EWHC 411 (Fam)). AJA 1960 s12 could therefore apply. However, much of the letter to the MP concerns DLO's allegations of abuse by EBK which he disputes. However, AJA 1960 s12 does not prevent a person from making allegations of abuse, including criminal behaviour, to an MP, to the police, or to others solely on the ground that the person has made some or all of those allegations in proceedings to which AJA 1960 s12 applies. The fact that the Defendant made allegations of abuse to the MP which she had also made in court does not, without more,

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amount to breach of AJA 1960 s12. Furthermore, the Claimant cannot reasonably contend that it was a contempt of court *not* to publish information relating to the proceedings. If an imbalanced account is given of the proceedings, that might go to the seriousness of any contempt, but the fact that information in relation to the proceedings was not published cannot of itself be a contempt of court.

17. EBK made it clear that he does not allege in this application that DLO provided any documents from the CAO proceedings to the MP.
18. Hence, at the risk of going too far in assisting the Claimant to make out a case for contempt, it seems to me that the allegations of contempt that he seeks to make, which could feasibly be said to be breaches of AJA 1960 s12, and which might be considered by the court, are publication of information relating to the CAO proceedings held in private, namely:
 - i) That a non-molestation order had been made against EBK;
 - ii) That a DAPP had been made against EBK;
 - iii) That the Court had “dismissed CAFCASS”;
 - iv) That the Court had allowed EBK to have direct contact with N without any form of rehabilitation.
 - v) That EKB had made untrue claims in the proceedings about his employment and that there had been no communication between the Family Court at the Ministry of Defence.
19. The Claimant contends that the Defendant was very experienced in family proceedings and had access to advice from others well versed in such proceedings. There were warnings on the orders (albeit the warnings are not to disclose in public the names of the family and the child and do not refer to any prohibition on disclosure of wider information). He contends that therefore the Defendant knew, or did not care whether, she was publishing information relating to the CAO proceedings and was thereby breaching AJA 1960 s12 and interfering with the administration of justice. The Claimant’s case is that the consequences of these alleged breaches of AJA 1960 s12 were very serious and that the Defendant’s intention in committing the breaches was to interfere with the administration of justice, in particular the CAO proceedings.
20. As noted, the Defendant is not obliged to respond, and has not responded, to the allegations.

What does AJA 1960 s12 prevent?

21. In *In the Matter of B* [2004] EWHC 411 (Fam) Munby J analysed the caselaw as to what AJA 1960 s12 does and does not prevent, summarising at [82]:
 - “v) Section 12 does not of itself prohibit the publication of:
 - a) the fact, if it be the case, that a child is a ward of court and is the subject of wardship proceedings or that a child is the subject

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of residence or other proceedings under the Children Act 1989 or of proceedings relating wholly or mainly to his maintenance or upbringing;

b) the name, address or photograph of such a child;

c) the name, address or photograph of the parties (or, if the child is a party, the other parties) to such proceedings;

d) the date, time or place of a past or future hearing of such proceedings;

e) the nature of the dispute in such proceedings;

f) anything which has been seen or heard by a person conducting himself lawfully in the public corridor or other public precincts outside the court in which the hearing in private is taking place;

g) the name, address or photograph of the witnesses who have given evidence in such proceedings;

h) the party on whose behalf such a witness has given evidence; and

i) the text or summary of the whole or part of any order made in such proceedings.

vi) Section 12 prohibits the publication of:

a) accounts of what has gone on in front of the judge sitting in private;

b) documents such as affidavits, witness statements, reports, position statements, skeleton arguments or other documents filed in the proceedings, transcripts or notes of the evidence or submissions, and transcripts or notes of the judgment (this list is not necessarily exhaustive);

c) extracts or quotations from such documents;

d) summaries of such documents.

These prohibitions apply whether or not the information or the document being published has been anonymised.”

22. The Claimant does not allege in this application that the Defendant disclosed or published any documents from the CAO proceedings, extracts or quotations from such documents, or the summaries of such documents. In effect, what he alleges is that DLO provided an account to the MP of what had gone on in front of the judge sitting in private in the CAO proceedings.

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23. Children Act 1989 s97(2) makes it an offence to publish any material which is intended or likely to identify any child as being involved in any proceedings before a family court in which any power under that Act may be exercised by the court with respect to that child. I have noted that DLO did not identify the child by name or school but her letter would have created a risk of jigsaw identification had the MP had some determination to find out more.
24. AJA 1960 s12(2) itself provides that the publication of the summary of an order within applicable proceedings shall not be a contempt unless expressly prohibited by the court.

Permission – The Principles

25. The parties agree that permission is required for the Claimant to make his application to commit the Defendant to prison for contempt of court. As to the need for permission, I can do little better than refer to Mostyn J's judgment in *EBK v DLO* (above) at paragraphs [66] to [75]. In short,
- i) Breaches of s12 are to be seen as acts of interference with the administration of justice.
 - ii) FPR r 37.3(5)(a) provides that permission to make a contempt application is required where the application is made in relation to the interference with the due administration of justice except in relation to existing High Court or family court proceedings.
 - iii) The proceedings are only "existing", if they exist at the time that the application is made (whether or not they existed when the alleged contempt took place).
26. There is no dispute that the Claimant's application is made in relation to the interference with the due administration of justice in relation to proceedings that were concluded in March 2022 and which did not exist at the time of this application. Hence permission is required.
27. Mostyn J set out at paragraph [72] what the claimant must establish on an application for permission, albeit he tailored the requirements to the particular application before him. He relied as I do on the judgement of Gloster LJ in *Tinker & Anor v Elliott* [2014] EWCA Civ 564. At paragraph [44] Gloster LJ endorsed the first instance judge's summary of the law on permission as it applied to the making of a false statement which had been endorsed with a declaration of truth. The judge's summary had been as follows:

"23. The approach to be adopted on applications for permission has been considered in a number of authorities. The principles that emerge are the following:

- i) In order for an allegation of contempt to succeed it must be shown that " in addition to knowing that what you are saying is false, you had to have known that what you are saying was likely to interfere with the course of justice" - see *Edward Nield v. Loveday* [2011] EWHC 2324 (Admin);

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ii) The burden of proof is on the party alleging the contempt who must prove each element identified above beyond reasonable doubt - see *Edward Nield v. Loveday* (ante);

iii) A statement made by someone who effectively does not care whether it is true or false is liable as if that person knew what was being said was false - see *Berry Piling Systems Limited v. Sheer Projects Limited* [2013] EWHC 347 (TCC), Paragraph 28 - but carelessness will not be sufficient - see *Berry Piling Systems Limited v. Sheer Projects Limited* (ante), Paragraph 30(c);

iv) Permission should not be granted unless a strong prima facie case has been shown against the alleged contemnor- see *Malgar Limited v. RE Leach (Engineering) Limited* [1999] EWHC 843 (Ch), *Kirk v. Walton* [2008] EWHC 1780 (QB), Cox J at paragraph 29 and *Berry Piling Systems Limited v. Sheer Projects Limited* (ante) at Paragraph 30(a);

v) Before permission is given the court should be satisfied that

a) the public interest requires the committal proceedings to be brought;

b) The proposed committal proceedings are proportionate; and

c) The proposed committal proceedings are in accordance with the overriding objective -

- see *Kirk v. Walton* (ante) at paragraph 29;

vi) In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective - see - *Berry Piling Systems Limited v. Sheer Projects Limited* (ante) at Paragraph 30(d);

vii) In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bringing home to the profession and through the profession to witnesses the dangers of knowingly making false statements - see *KJM Superbikes Limited v. Hinton* [2008] EWCA Civ 1280, Moore-Bick LJ at Paragraphs 16 and 23; and

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viii) In determining a permission application, care should be taken to avoid prejudicing the outcome of the application if permission is to be given by avoiding saying more about the merits of the complaint than is necessary to resolve the permission application - see *KJM Superbikes Limited v. Hinton* (ante) at Paragraph 20."

28. Applying those principles to the present application it seems to me that the first matter that the Claimant has to establish is a strong prima facie case that the Defendant published an account of what had gone on in front of the judge in the Family Court sitting in private and that she knew that by doing so she was likely to interfere with the administration of justice, or did not care whether her letter interfered with the administration of justice. I then need to consider issues of the public interest, proportionality, and fairness and the overriding objective, including those specific matters referred in the extract above.

Permission – Decision

29. It is not for the court at this stage to determine the merits of the application, but regard has to be had as to the prima facie strength of the Claimant's case on contempt of court. There is no dispute that the Defendant wrote the letter to the MP on 11 August 2020. I have the full letter. I have already said that it is not easy precisely to articulate the Claimant's case as to how the Defendant breached AJA 1960 s12 but I have tried to do so and in essence it is that in her letter of 11 August 2020 DLO gave the MP, and therefore published, accounts of what had gone on in front of a judge sitting in private.
30. I have noted that the Defendant's letter did not provide the MP with any details of the court, case number, or judge. She did not quote or summarise any evidence given in court. She did refer to a non-molestation order, and a direction for a DAPP, having been made as well as the CAFCASS officer having been "dismissed", and CAOs having been made by the court, but arguably AJA 1960 s12(2) would protect her from those disclosures being a contempt of court because they merely summarise orders made. DLO told the MP that EBK had misled others about his employment and that there had been no contact between the Family Court and the Ministry of Defence, but that is not obviously an account of what had gone on in front of the judge sitting in private. The MP would certainly not have known what had actually happened in court in any detail.
31. Furthermore, although the Defendant beseeched the MP to assist her in escalating her complaints against the Claimant to the Family Court, it is not at all obvious to me that this was a request to interfere with the judicial process or the administration of justice, or that the Defendant did not care whether it was or not. She was seeking the MP's assistance and support having suffered, on her account, serious and continuing abuse. Certainly, there is no evidence that the MP contacted the court. EBK has provided no evidence of such contact but he has in fact produced evidence to show that it is unlikely there was such contact. He has included within his Affidavit letters to him from the same MP in which the MP states that:

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- i) “As a Member of Parliament I am strictly prohibited from intervening in legal cases. My only advice to you would be to seek legal advice which you clearly have already.” (letter to EBK dated 9 August 2022).
- ii) He is “strictly prohibited” as an MP from intervening in a legal process (letter to EBK dated 9 January 2023 in response to EBK providing the MP with information about his libel case).

If that was the MP’s unguarded response to EBK it is highly unlikely that he sought to intervene in ongoing legal proceedings following receipt of DLO’s letter.

- 32. I note that there was a change of judge hearing the CAO proceedings in 2021 but that the judge who had been conducting the proceedings retired as a salaried judge that year. Hence a change of judge is not at all suspicious. It provides no evidence to support the Claimant’s case that there was a change of judge as a result of actions taken in response to the letter to the MP.
- 33. The Defendant’s letter to the MP does not ask him to contact the judge and, in any event, the MP would not know whom to contact since the Defendant had not given him the judge’s name, the case number, nor even the location of the court in which the case was being heard – hardly the actions of a person seeking the direct interference of the MP in the judicial proceedings.
- 34. I have no evidence of any follow up correspondence between the Defendant and the MP.
- 35. The Claimant complained strongly in his submissions to me that the letter to the MP was the source of many of his difficulties including his arrest and the defamatory letter sent by the police to his employer. It might be said that when the MP passed the letter on to the police they sprang into action, but their decision to write to the Ministry of Defence on 25 August 2020 and to arrest the Defendant the following day surely arose from the provision to them of documents and information by the Defendant herself, not from the letter she had written to the MP as such. More clearly, the parts of the letter to the MP that referred to the family proceedings cannot possibly themselves have triggered the MP to send the letter to the police and then the police decision to arrest the Claimant – it was the allegations of abuse that must have prompted action. Hence, the letter to the MP does not obviously have the appearance of an intentional attempt to interfere with the administration of justice, nor that the Defendant was without care about whether it did so, nor that it (the letter itself as opposed to other matters which occurred subsequently) in fact led to that outcome.
- 36. The Claimant relies on the Police’s response to his pre-action Letter of Claim in relation to allegations of wrongful arrest and false imprisonment. I hesitate to quote from that letter which relates to proceedings that may yet have to be determined by another court, but the letter quite clearly demonstrates that DLO provided her complaints and documents to the police herself prior to the decision to arrest EBK. The letter in response encloses documents and the MP letter is the first on the list. EBK appears to think that this means it was regarded by the Police the most important document but that is an unreasonable inference. It was the first in time. In any event, for the purposes of a committal application, it is not the fact that DLO alleged abuse by EBK in her MP

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letter that is relevant, but rather whether she gave any information about what had gone on in front of the judge in private family proceedings.

37. In my judgement, this is not a case in which it can be said that there is a strong prima facie case of contempt has been shown against the Defendant. Indeed, the case appears to me, without having heard any evidence from the Defendant, to be problematic.
38. The events leading up to and surrounding EBK's arrest on 26 August 2020 have been the subject of other litigation. They have been considered in the CAO proceedings. They have resulted in proceedings against the police which resulted in the payment of damages and a formal apology in the Kings Bench Division. They have resulted in a claim being brought for wrongful arrest and false imprisonment. Finally, they have resulted in a previous application for the Defendant's committal for contempt of court for which Mostyn J refused permission. The Claimant wishes the Court to revisit the events of August 2020 once more. He only became aware of the letter to the MP in December 2023 but the important events of that week have been given detailed consideration in previous litigation and there is now fresh litigation with the Claimant's claim for damages for wrongful arrest and false imprisonment. The Claimant has enjoyed redress for the damage caused to him in relation to his employment and reputation and is seeking redress in another court for the loss of his liberty. Those claims for damages were not and are not directed against the Defendant, but the earlier committal application was.
39. The earlier allegation that the Defendant disclosed or published multiple documents in breach of AJA 1960 s12 is very arguably a much more serious allegation than the one now made against her. The information disclosed from private proceedings was clearly much more extensive, and the effect on the decision-making of the police much more obvious than the fact that the Defendant had earlier written to her MP. Yet, Mostyn J refused permission to the Claimant to make that application for committal for contempt. He did so even though he effectively found that the Defendant had indeed committed a contempt of court. The grounds for Mostyn J's refusal of permission included that the proceedings would be disproportionate, would involve re-litigation of issues already litigated in a separate jurisdiction, would give rise to unjustifiable expense of time and money, and that the Claimant had already received substantial redress by way of compensation and vindication to his reputation.
40. The case for giving permission in the present application is even weaker:
 - i) Eleven months have passed since Mostyn J's decision, and over three and a half years since the alleged contempt by way of the letter to the MP on 11 August 2020.
 - ii) The Claimant has instigated yet further litigation arising from his arrest.
 - iii) In contrast to Mostyn J's finding of contempt, there is not a strong prima facie case of contempt of court by the Defendant in relation to the current application.
 - iv) The nature of the contempt alleged, which comprises short and imprecise references to decisions of the Family Court, is much less serious than the nature of the contempt alleged before Mostyn J which involved the provision of multiple documents from the same case to an unauthorised person.

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- v) Whereas the contempt found by Mostyn J had a clear causal connection with the Claimant's arrest, the parts of the MP letter referring to the CAO proceedings were arguably immaterial in triggering police enquiries and cannot have been grounds in themselves for the Claimant's arrest. Before making the arrest, the police had documents from the Defendant and had spoken directly with her. The police arrested the Claimant for what he had allegedly done to the Defendant irrespective of what was or was not said in private family proceedings in court.
41. Mr Foster referred to the criminal concept of "autrefois acquit". Perhaps it might more properly be "autrefois convict" in this case since the Defendant was found to have been in contempt of court by Mostyn J but, in any event, with respect, I do not find the analogy helpful. Nevertheless, the point he makes which does have force, is that by seeking to make this application, the Claimant is simply seeking to re-instate matters that have already been addressed by the court. The letter of 11 August 2020 may not have been specifically scrutinised by the court in previous proceedings, but the bulk of the matters referred to in the letter, the material events of that time, and the consequences for the Claimant, certainly have been.
42. EKB has prepared his documentation and made his submissions with care and no little skill. I am sure that he is sincere in his sense of grievance. However, this application has the flavour of being an oppressive use of litigation. He told me that he has recently been given permission to bring a further CAO application before the Family Court in which he seeks an order that N spends "at least" 50% of her time living with him. The unsettling impression is that he is seeking to use this contempt application to undermine DLO's standing before the family court. It is clear to me that continuation of this application will be a further drain on her resources, including her emotional resources, just when she now faces further proceedings in the Family Court.
43. During EKB's submissions it became clear to me that he has two motives in seeking permission to make his committal application. One is to set the record straight. He has discovered in December 2023 that DLO gave an account about him that he wants to correct. He continues to be dogged and single-minded in his determination to put the record and other people right. Committal proceedings for breach of AJA 1960 s12 do not seem to me to be the appropriate mechanism for doing so. In any event, he has already received redress and vindication in respect of the same allegations through other means albeit from someone other than the Defendant. His second motivation is to seek to prevent the Defendant from repeating allegations of abuse against him. That is why he told the Court very specifically that he would like the court to impose a sanction of a suspended sentence of imprisonment, if contempt were proved. Such a sanction would create a threat of incarceration hanging over DLO as the new CAO proceedings get under way.
44. I have concluded that permission to make the committal application must be refused:
- i) There is not a strong prima facie case against the Defendant. Indeed, it is not clear to me that the letter to the MP on 11 August 2020 can arguably be said to constitute a breach of AJA 1960 s12 or that it was intended to or was liable to interfere with the administration of justice.

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- ii) The time and costs to the court and to the Defendant of allowing the Claimant to make this application would be disproportionate to the seriousness of the alleged contempt and its consequences, in particular given that over three and a half years have passed since the alleged contempt was committed.
 - iii) The events of which the alleged contempt was a part have been repeatedly litigated and considered by the courts.
 - iv) The making of this contempt application would bring no benefit to the Claimant, no benefit to the child, nor any benefit to the court. The need to protect the integrity of the court is important but the alleged contempt does not come close to undermining that integrity. Litigants must not publish what goes on in front of a judge in private family proceedings, but if the Defendant did that – which is not obvious to me – then she gave the MP very little information about what had happened before the judge, as opposed to giving a great deal of information about EBK’s conduct more generally, as she alleged it to have been. The parts of the letter alleged to have breached AJA 1960 s12 did not have any adverse effect on the ability of the court to conduct the CAO proceedings and no adverse effect on the child. I stress that the Claimant’s arrest, which did very arguably have an effect on the proceedings and the child, was not caused by the letter, certainly not those parts that arguably provided information about what had gone on in front of the judge. I can see no public interest served by permitting this application to be made.
 - v) It would be unfair on the Defendant to permit the application for committal to be made. Not only has a long time passed since the events she would have to address, but she has already faced the prospect of committal proceedings arising out of very similar and closely related matters. She had to secure representation and go to court. She has been through this already and it would be unfair to allow the Claimant to make her go through it again so long after the events in question. The court should not allow applications to commit to be used oppressively or unfairly to browbeat a party to family proceedings.
 - vi) The Claimant has a grossly inflated view of the impact of the letter to the MP. What really counted at the time was the information DLO gave to the police about the Claimant’s alleged conduct and the documents she gave them. The fact that she may have told her MP something about what had gone on before the judge was not material to the decision to arrest EBK. He was not arrested for what had, or had not, been said in court.
 - vii) Mostyn J noted that EBK himself had been said by a judge in the CAO proceedings to have committed a contempt of court (recorded in the order following the hearing on 26 August 2020). This related to information and documents from the CAO proceedings provided by EBK to his mother who had made an application to the court. It is relevant to take into account this conduct although I do not give it as much weight as the other factors.
45. For the reasons given above I refuse permission to the Claimant to bring this application for committal. There are some further matters for me to address:

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- i) EBK has applied to rely on some evidence in the committal proceedings whilst withholding it from the Defendant. I have been provided with that evidence by him. The Defendant has not seen it. As I said in open court, I do not regard that evidence as being relevant to the decision on permission. It does not go to the issues addressed above. I have disregarded it entirely and do not believe it is necessary to give a ruling on the admissibility of the evidence or its being withheld from a Defendant to committal proceedings.
- ii) Mostyn J addressed the issue of anonymisation in committal proceedings. I have considered similar issues in relation to committal proceedings in the Court of Protection in *Esper v NHS NW London ICB* [2023] EWCOP 29. In the present case, the parties have been anonymised in the published judgments of Mostyn J and Johnson J. There are ongoing family proceedings to be held in private involving their daughter, N. Permission has been refused to bring these committal proceedings and no finding of contempt has been made – indeed I have doubted whether a finding could be made. The Defendant has not sought to put her account in relation to the allegations of contempt and I have decided the issue of permission on the evidence provided by the Claimant. I have referred to the effect on the Defendant of the Claimant making this application. *Practice Guidance (Senior Courts: Committal for Contempt of Court: Open Court)* [2015] 1 WLR 2195 applies but it does not mandate the naming of the defendant in a judgment nor notification to the national media in the event of no finding of contempt. FPR r 37.8(5) applies and I am satisfied that non-disclosure of the Defendant's name is necessary to secure the proper administration of justice and in order to protect the interests of that party. I so find because of the repeat nature of this application, because permission has been refused, and because there are ongoing family proceedings to be held in private. There are also good reasons to anonymise the Claimant because of his involvement in the military. He suggested that that need for anonymity for himself might soon fall away but it is a current factor. Also, his identification could lead to the identification of N in a published judgement. After circulation of the draft of this judgment the Claimant sought to argue for the lifting of anonymity, suggesting that there was a strong public interest in publishing the name of the Defendant. I disagree. The Article 8 rights of the Defendant outweigh the Article 10 rights of others to freedom of expression when it comes to the issue of whether the anonymity of the Defendant should be preserved. Anonymity of the Defendant is required to protect her privacy when the committal application has been brought by her former partner, arising out of events that occurred over three years ago, in the context of other litigation including ongoing CAO proceedings, and when permission to make the committal application has been refused. Since EBK's anonymity has been protected previously for reasons of his occupation, and I understand that need is ongoing at the time of this judgment, I shall also order that his anonymity shall be preserved, having conducted the same balancing exercise. In short, I am satisfied that anonymity of both parties and of N should be preserved.
- iii) Although these contempt proceedings do not concern the welfare of the parties' child, N, it was noticeable at the hearing how little reference there was to N. I hope that the parties will be able to focus on N's best interests rather than settling scores in the forthcoming applications in the Family Court.