



Neutral Citation Number: [2024] EWHC 690 (KB)

Case No: KB-2023-BHM-000156

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

Birmingham Civil Justice Centre
33 Bull Street
Birmingham
B4 6DS
Date: 26/03/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

PAUL BUSH **Claimant**
- and -
CHIEF CONSTABLE OF
NORTHAMPTONSHIRE POLICE **Defendant**

The Claimant appeared in person

Cecily White (instructed by **East Midlands Police Legal Services**) for the **Defendant**

Hearing date: 19 March 2024

Approved Judgment

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

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Mr Justice Julian Knowles:

Introduction

1. This is an application by the Claimant, Paul Bush, to commit the Chief Constable of Northamptonshire Police for contempt of court. It is brought under CPR Part 81. By CPR r 81.3(5)(b), my permission is required to bring the application. The application was issued in the County Court but has been transferred to this Court. My powers in relation to contempt of court include the power to commit the Defendant to prison for a period of up to two years: Contempt of Court Act 1981, s 14.
2. At the conclusion of the hearing on 19 March 2024 I indicated that permission would be refused. I gave brief reasons, but said I would put my fuller reasons into writing, which I now do.

Background

3. The Claimant has sued the Defendant in the County Court for misfeasance in public office (Case J24YJ401). The Claimant alleges that an officer with the Defendant's force, DS Jenkins, phoned him on 7 December 2021 and made malicious threats. The phone call arose out of correspondence which the Claimant had been sending to Northamptonshire Police and, in particular, a civilian member of staff. That correspondence arose out of a criminal matter being investigated by Northamptonshire Police in relation to a third party in which the Claimant had involved himself. For the avoidance of doubt, he is not the person being investigated. I need not set out any further details.
4. That there was a call between DS Jenkins and the Claimant is not disputed. What was said during the call is disputed, but I do not have to decide that dispute. DS Jenkins denies being threatening towards the Claimant.
5. The application before me relates to evidence put forward by DS Jenkins and another officer, DS Newitt, on behalf of the Chief Constable in response to the Claimant's misfeasance claim.
6. In short, DS Jenkins made a witness statement (verified by a statement of truth) containing his account of the conversation which exhibited an email he sent the same day to colleagues with his account of the conversation. The email was exhibited as being a near contemporaneous account of the conversation. During subsequent exchanges between the Claimant and Northamptonshire Police, including following a complaint by the Claimant to the Professional Standards Department, and a subject access request by the Claimant under data protection legislation, different versions of the same email were disclosed to the Claimant. These differences led the Claimant to assert that no email was ever sent by DS Jenkins on 7 December 2021, and thus that his witness statement was untrue and his signing the statement of truth was thus a contempt of court. It is not in dispute that knowingly signing a false statement of truth is a contempt of court: see eg *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin).

7. DS Newitt made a statement in the misfeasance proceedings saying she had been present in the room with DS Jenkins when the call was made, and corroborating his account. The Claimant says he has evidence that this claim was not true, and thus that DS Newitt has also committed a contempt of court by making and signing a false witness statement.

Preliminary issue: the Chief Constable as Defendant

8. As is clear from this account of the facts, and as the Claimant freely accepted in his submissions to me, the Chief Constable is not personally accused of any wrongdoing by the Claimant. The Claimant's case against him (and this is in his Amended Particular of Claim produced following a court order requiring him to clarify his case against the Chief Constable) is that he is vicariously liable for his officers' actions, by reason of s 88 of the Police Act 1996, as amended, which provides in relevant part:

“Liability for wrongful acts of constables.

(1) The chief officer of police for a police area shall be liable in respect of any unlawful conduct of constables under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of torts committed by his servants in the course of their employment, and accordingly shall, in the case of a tort, be treated for all purposes as a joint tortfeasor.

(2) There shall be paid out of the police fund -

(a) any damages or costs awarded against the chief officer of police in any proceedings brought against him by virtue of this section and any costs incurred by him in any such proceedings so far as not recovered by him in the proceedings; and

(b) any sum required in connection with the settlement of any claim made against the chief officer of police by virtue of this section, if the settlement is approved by the local policing body.

(3) Any proceedings in respect of a claim made by virtue of this section shall be brought against the chief officer of police for the time being or, in the case of a vacancy in that office, against the person for the time being performing the functions of the chief officer of police; and references in subsections (1) and (2) to the chief officer of police shall be construed accordingly.”

9. Beyond noting in her Skeleton Argument at [28(a)] that the Claimant's application ‘... does not relate to the Defendant (the Chief Constable himself)’, Ms White did not address this issue. I would have been assisted by submissions on the point.
10. That said, I am nonetheless clear that s 88 cannot operate so as to render a Chief Constable liable for a contempt of court not committed personally by him or her, thus exposing him or her to be exposed to risk of committal to prison on a vicarious basis.
11. It is obvious that s 88 is concerned with civil liability only. In its original form, s 88(1) read:

“The chief officer of police for a police area shall be liable in respect of torts committed by constables under his direction and control in the performance or purported performance of their functions in like manner as a master is liable in respect of torts committed by his servants in the course of their employment, and accordingly shall in respect of any such tort be treated for all purposes as a joint tortfeasor.”

12. The section was amended by the Police Reform Act 2002 to substitute ‘any unlawful conduct’ for ‘torts’ but I do not consider this introduced vicarious liability for criminal or quasi-criminal proceedings like contempt of court (as to their nature, see *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC (QB) 2537, [37]).
13. While the general rule in English criminal law is that there is no vicarious liability for criminal conduct for those not engaged in joint wrongdoing, it is not wholly unknown for there to be vicarious criminal liability on one person for the actions of another. But this is typically in the regulatory context, for example, where statutory provisions can make a corporate employer criminally responsible for the actions of its employee. However, clear words need to be used. Section 88 lacks such words.
14. The result contended for (in writing) by the Claimant would be all the more startling because of s 88(3), which provides for proceedings to be brought against the Chief Constable *for the time being*; in other words, if the Claimant were right, a Chief Constable who was not even in office when the contempt was committed could nonetheless be sent to prison for it.
15. In fairness to the Claimant, he readily accepted this when I put it to him and he had the chance to reflect upon it. In fact, there was an order made on 28 April 2023 by HHJ Kelly requiring the Claimant to specifically particularise his case against the Defendant. He did not do so, beyond asserting that liability was based on s 88.
16. It follows that permission must be refused on that straightforward basis. However, because it seems to me that the Claimant’s application would have been bound to fail even had he correctly named DS Jenkins and DS Newitt as Defendants, I go on to consider matters on that premise.

Merits as against the two officers

17. In cases concerning a private party seeking permission to bring a contempt application for the making of a false statement of truth, the test for granting permission is well-established: see eg *Stobart Group Ltd v Elliott* [2014] EWCA Civ 564, [44] (citations omitted):
 - a. Permission should not be granted unless a strong *prima facie* case has been shown against the alleged contemnor;
 - b. Before permission is given the court should be satisfied that
 - (i) the public interest requires the committal proceedings to be brought;
 - (ii) The proposed committal proceedings are proportionate; and

- (iii) The proposed committal proceedings are in accordance with the overriding objective in the CPR;
- c. 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;
- d. 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.
18. I am not satisfied that the Claimant has established an arguable basis for any of these elements, and for that reason also I would have refused permission even if the correct Defendants had been named.
19. The Claimant's application is supported by a statement from him dated 12 April 2023. As I have said, in summary the Claimant alleges that: (a) DS Jenkins provided false evidence in his witness statement about the email sent on 7 December 2021; (b) DS Newitt has given false evidence in her witness statement about the phone call on 7 December 2021.
20. The Claimant complains that the email 'contains a number of elements that give rise to a reasonable suspicion that it is false evidence in particular that: (a) there are three forms of the email with significant variations between them; (b) the variations relate to the text and headings of the email. He states that there are two different email addresses belonging to the email sender (DS Jenkins) who appears to have sent an email from two different email addresses at the same time. He also alleges that the emails contain different text style and content; (c) the email contains 'information purporting to be metadata which does not conform to that expected in email communications.'
21. Three versions of the email appear in the enclosures to the contempt application. The email is an internal email sent on 7 December 2021 by DS Jenkins to colleagues within the police, including the Professional Standards Department (PSD) explaining that DS Jenkins had called the Claimant that day, with DS Newitt reviewing the call, because the Claimant had taken it upon himself to act on behalf of the third party in a police investigation (see above).
22. DS Jenkins explained that he had advised the OIC not to engage with the Claimant and that contact should be with the third party's solicitor. DS Jenkins went on to query how the Claimant had got the details of the police staff member to whom he had been writing, but who had had no involvement in the case.

23. The first version of the email in the papers is taken from a letter sent to the Claimant by the PSD dated 24 February 2023. A version of the email was copied and pasted into the letter from the PSD, omitting some (small) sections of the original email, ie, it did not reproduce the email verbatim.
24. The two other versions of the email are identical save that: (a) the sender email address is shown as ‘Thomas.Jenkins@northants.police.uk’ in one version but as ‘[redacted]@northants.pnn.police.uk’ in the other, in one version the letters ‘pnn’ appear in one but not the other. Also, there is more redaction in one version than in the other.
25. The allegation against DS Newitt is that she has given false evidence about witnessing the phone call, because a police Senior Information Assurance Researcher has since confirmed there is no record of any call from a police phone to the Claimant’s telephone number at the relevant time.
26. The Defendant’s response to the contempt application is the witness statement from Malcolm Turner dated 20 September 2023. He is the Head of Legal Services at East Midlands Police Legal Services, which is a policing collaboration of the five police forces of the East Midlands Policing Region, of which Northamptonshire is one.
27. I am satisfied that Mr Turner’s evidence demonstrates that the Claimant does not have a prima facie case of contempt of court against the two officers, let alone a sufficiently strong one to allow permission to be granted. That is for the following reasons.
28. Mr Turner has explained that the letter from the PSD on 24 February 2023 removed any expressions of opinion by DS Jenkins from the text of the email in order to present a factual account of the telephone conversation with the Claimant. The Defendant accepts that this should have been made clear within the body of the covering letter.
29. Further, he says that the letters ‘pnn’ were dropped from the email sender address in 2021 - 2023 when the police force migrated its email service: [14]-[15] of his statement. This was explained to the Claimant in correspondence in May 2023. Mr Turner provides other details of what was sent to the Claimant; I need not set out the detail.
30. In conclusion, Mr Turner said at [19]:

“There has been no attempt by the Defendant, his officers and staff to mislead either the court or the Claimant in respect of the e-mail itself, or any reference to it in correspondence.”
31. In considering the other matters such as the public interest, etc, the starting point is that the Claimant’s allegations against DS Jenkins and DS Newitt have very little or no evidence to support them.
32. In my judgment, there is no public interest in contempt proceedings being brought. The Claimant’s allegations are, in substance, attacks on the credibility of DS Jenkins and DS Newitt which can be considered in the County Court action.

33. For essentially the same reasons, these proceedings are not proportionate to the matters in issue nor in accordance with the overriding objective in the CPR. They are essentially parasitic on, and a repetition of, parts of the Claimant's misfeasance case. As I have said, the proper forum for considering the Claimant's attacks on DS Jenkins' and DS Newitt's evidence is in that action.
34. This application under CPR Part 81 by the Claimant is therefore dismissed. Furthermore, it is totally without merit.