Neutral Citation Number: [2024] EWHC 787 (KB)

Case No: KB-2023-002898

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9th April 2024

Before :

THE HONOURABLE MR JUSTICE MORRIS

- -

Between :

(1) THE ALL ENGLAND LAWN TENNIS CLUB (CHAMPIONSHIPS) LIMITED
(2) THE ALL ENGLAND LAWN TENNIS GROUND PLC **Claimants**

- and -

OLIVER HARDIMAN **Defendant**

- -
- -

Edward Rowntree (instructed by **Armstrong Teasdale Limited**) for the **Claimants**
Kevin Saunders (instructed by **Janes Solicitors**) for the **Defendant**

Hearing dates: 27 March 2024

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Approved Judgment

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Mr Justice Morris:

Introduction

1. This is an application made by The All England Lawn Tennis Club (Championships) Limited ("the First Claimant") and The All England Lawn Tennis Ground plc ("the Second Claimant") (and together referred to as "the Claimants") for an order for committal of Mr Oliver Hardiman ("the Defendant") for contempt of court for breaching the terms of an order made by Mr Justice Bourne on 12 July 2023 (as amended under the slip rule on 13 July 2023) ("the Order").

2. These proceedings and the Order arise out of the Defendant's admitted activities in buying and selling tickets for the Wimbledon Championships 2023, in breach of the terms and conditions of those tickets.

3. The application came before me on 21 February 2024 and was adjourned until 27 March 2024 so as to give the Defendant an opportunity to provide a further witness statement. At the close of the hearing on that day, I reserved judgment until today. This judgment will be handed down in written form following today's hearing.

Factual background

4. The Claimants are, respectively, the organiser of the annual Wimbledon Lawn Tennis Championships and the owner of the premises at Wimbledon where the Championships take place.

5. The Defendant is a ticket tout. In the past he has been made the subject of an injunction in proceedings brought by Chelsea Football Club to restrain sale of football tickets. He also has two convictions – in 2009 and recently on 26 January 2024 - for unauthorised sale of football tickets contrary to section 166(1) Criminal Justice and Public Order Act 1994.

6. The First Claimant is responsible for issuing and allocating tickets to the Championships. All tickets to the Championships (other than debenture tickets) are issued and supplied by the First Claimant and its authorised agents, subject to certain terms and conditions. Those terms and conditions include provisions that tickets shall not be re-sold or transferred in breach thereof and shall become void if obtained through being re-sold or transferred in breach of the conditions. These tickets are referred to as Non-Transferable Wimbledon Tickets or "NTWTs".

7. Further factual background relating to Wimbledon ticketing policy and conditions is set out at paragraphs 15 to 32 of the first witness statement of Emma Shaw of the Claimants' solicitors dated 12 July 2023 made in support of the original application for the Order. At paragraphs 33 to 49 of that statement, Ms Shaw explains the history of enforcement of those conditions, sales on the

internet and how tickets for the 2023 Championships could be purchased, including in particular from the daily queue at the Championships themselves.

8. On 11 July 2023, in the course of the 2023 Championships, the Defendant was discovered to have been dealing in NTWTs in breach of the conditions. In summary, agents acting on behalf of the First Claimant discovered the Defendant to have been involved in the purchase and/or procurement of NTWTs from the Wimbledon queue as well as the onward sale of those tickets in the area of the Wimbledon and beyond. The details are set out in paragraphs 50 to 73 of Ms Shaw's first statement.

9. On 12 July 2023 the Claimants issued these proceedings seeking damages and an account of profits as well as permanent injunctions. On the same day the Claimants applied ex parte for urgent interim relief. This was granted by the Order.

The Order of 12 July 2023

10. By the Order, Mr Justice Bourne granted the Claimants an interim injunction against the Defendant. Amongst its provisions, by paragraph 2, the Order required the Defendant not to trade unlawfully in the Claimants' non-transferable tickets to the Wimbledon Tennis Championships for 2023; secondly, by paragraph 3(c), the Defendant was required, *within 24 hours of service of the Order*, to provide detailed information to the Claimants (including details of every transaction in which the Defendant had been involved in both buying and selling 2023 NTWTs, including the identity of every party with whom the transaction was made and full details of when and where the transaction took place); and thirdly, by paragraph 4, the Defendant was ordered not to be within a particular vicinity of the Claimants' premises during the duration of the rest of 2023 Championships, in the period ending at 9pm on 16 July 2023 ("the vicinity ban"). The Defendant has at no time sought to challenge or vary the terms of the Order.

11. The Claimants maintain that the Defendant has breached the second and third aspects of the Order. The Defendant has failed to comply with the requirement to provide the information; and on 14 July 2023 the Defendant was present within the area specified by the vicinity ban.

12. In relation to paragraph 3(c), paragraph 3(d) of the Order provided as follows:

> "If the provision of any of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but must set this out fully in the witness statement. The Defendant is recommended to take legal advice before refusing to provide any information referred to in this Order. Wrongful refusal to provide the information is contempt of court and may render the

> Defendant liable to be imprisoned, fined or have his assets seized."

13. In the course of the hearings on 21 February and 27 March, I raised the question whether, given the terms of paragraph 3(c) the Defendant, was and is under any continuing obligation, beyond the 24 hours provided for, pursuant to the Order to provide the information there stated. I return to this issue below.

Service and notice of the injunction

14. By the Order Mr Justice Bourne dispensed with personal service and permitted the Claimants to serve the Order on the Defendant by email to a personal email address of the Defendant. This is an email address which the Defendant had previously provided to the Claimants' solicitors in the course of acting in the proceedings brought by Chelsea FC.

15. On 12 July 2023 at 714pm and again at 819pm the Claimants served the original Order, and then on 13 July 2023 at 123pm the Claimants served the amended Order, upon the Defendant by email to the personal email address specified in the Order. For present purposes, it is common ground that the deadline for service of the witness statement required by paragraph 3(c) of the Order was 123pm on 14 July 2023.

16. On 14 July 2023 Ms Shaw became aware that the Defendant had been seen within the area covered by the vicinity ban in paragraph 4 of the Order. At 1017am on that day Ms Shaw met the Defendant at Wimbledon as he exited the ticket purchase tent for NTWTs. Ms Shaw then served the Order and supporting documents on the Defendant physically.

17. On 15 July 2023 at 201pm the Defendant responded by email to the Claimants' solicitors' email of 12 July 2023 at 714pm, stating that he did not understand what he was meant to do. Ms Shaw replied, advising him to read the Order and to take urgent legal advice. The next day, 16 July 2023, the Defendant responded to Ms Shaw saying that he did not have money for legal advice and he would represent himself.

18. The Defendant, in his witness statement served in advance of the 21 February 2024 hearing (see paragraph 28 below), stated that he did not check the relevant email account at all times, and that he first became aware of the injunction Order when he was personally served with it on 14 July 2023 by Ms Shaw at the Wimbledon Championships. He went on to state that this is not a case where he is denying that he ever received the email attaching the injunction order nor is he contending that he did not have access to the relevant email account at the material times. Rather he says that he did not check that account until after 14 July 2023. He adds that, had the Order come to his attention before entering the prohibited area, he would not have breached paragraph 4 of the Order and points to the fact that since being personally

served on 14 July 2023, he had not entered the prohibited area on any further occasion.

Events after 15 July 2023

19. Between 17 and 24 July 2023 there were a number of telephone calls between the Defendant and James Thorndyke a partner at the Claimants' solicitors. In his affidavit (see paragraph 25 below), Mr Thorndyke states that on 24 July 2023, the Defendant called him and in the course of that conversation told him that he was not prepared to give the information ordered because it would incriminate him. After Mr Thorndyke referred him to the terms of the Order dealing with self-incrimination, the Defendant informed Mr Thorndyke that he was unlikely to provide any information to satisfy the requirements of the Order and that he understood and accepted that he might be in breach of the Order. He said he had been to prison before and whilst he did not wish to go to prison again, he was prepared to do so.

20. Later that day, at 541pm, the Defendant sent an email to Mr Thorndyke in purported compliance with the requirements of paragraph 3(c) of the Order. In that email, the Defendant confirmed that on 3 to 4 occasions he had sold Wimbledon tickets that were purchased by him from the queue and that he could only remember the facts of one transaction where he had sold five tickets to someone called Kelsey Cadden for £300 per ticket. Those tickets were purchased from the queue. He added that he could not afford legal representation, as he did not have the funds and had responded to the Claimants' solicitors to the best of his ability.

21. It is accepted that the contents of this email did not provide the information required by the terms of paragraph 3(c) of the Order (leaving to one side the issue of whether, at that time, there was a continuing obligation to comply with paragraph 3(c)).

22. On 25 July 2023 the Claimants' solicitors wrote to the Defendant setting out why his email of 24 July 2023 did not comply with paragraph 3(c). There was no reply from the Defendant to that email.

23. On 27 September 2023 the Claimants' solicitors served the claim form and particulars of claim on the Defendant. On 5 October 2023 the Defendant wrote to the Claimants' solicitors saying he did not have the money for legal representation nor for any fine he might incur. He said he would wait for the court to summon him to court.

24. On 3 November 2023 the Claimants' solicitors again wrote to the Defendant to afford him a further opportunity to comply and attached a list of questions for him to address regarding the evidence obtained against him. The Defendant failed to address the questions and instead suggested that the Claimants' solicitors should get the Court to summon him.

The application to commit

25. On 12 December 2023 the Claimants applied to commit the Defendant for contempt of court. The application was supported by the first affidavit of Ms Shaw and the first affidavit of Mr Thorndyke. On 20 December 2023 the Claimants applied for judgment in default against the Defendant.

26. On 23 January 2024 Mr Justice Lavender granted judgment in default. By that judgment the Court granted a final injunction prohibiting the Defendant from buying and selling NTWTs in the future and from ever entering the prohibited area during any future Championships. Mr Justice Lavender adjourned the application to commit for contempt to enable the Defendant to obtain legal advice. The application was then fixed to be heard on 21 February 2024.

27. The Defendant subsequently obtained such legal advice and served a witness statement dated 16 February 2024.

The Defendant's witness statement 16 February 2024

28. In his witness statement dated 16 February 2024, the Defendant started by accepting that he had breached the Order in the manner alleged and offered no defence to the allegations of contempt. In relation to paragraph 3(c) of the Order, he stated as follows:

> "Unfortunately, and with the greatest amount of respect to the Court, I am not in a position where I can take the steps required of me to purge my contempt at this stage and provide the information required pursuant to paragraph 3 of the Order.
>
> As far as I am concerned, this is my problem and it is between me, the Claimant and the Court. I am concerned about bringing 3rd parties into this, which is what I would have to do to comply. I understand that this means that I will not be able to fully mitigate my contempt and will have to take whatever sanction comes my way, but in my mind, the alternative is worse."

29. The Defendant concluded his witness statement in the following terms:

> "Apology
>
> I do want to make it clear to the Court and the Claimant that I wholeheartedly apologise for my non-compliance with the Order. No disrespect was or is intended. I

> appreciate the seriousness of Court Orders and why it is important that they are complied with. The fact that I still do not feel like I am able to provide the information required by the Order does not detract from that."

There was a certain tension in this. In my judgment this expression of remorse is tempered by the Defendant's continued refusal to purge the contempt.

30. Earlier in his witness statement, the Defendant referred to the injunction made against him in respect of Chelsea FC, stating that there had been no suggestion or allegation that he had breached that injunction. As pointed out by Ms Shaw in her fourth witness statement in response to the Defendant's witness statement, this appears to be, at best, misleading in circumstances where his recent conviction in January 2024 arose from his conduct in selling tickets in breach of that injunction.

The 21 February hearing itself

31. At the outset of the February hearing, Mr Saunders on the Defendant's behalf indicated that, on reflection, the Defendant wished to purge his contempt and asked for time in which to provide relevant information. At that hearing the Defendant admitted that he was in contempt of court by disobeying and breaching paragraphs 3(c) and 4 of the Order.

Order of 21 February 2024

32. As a result by order dated 21 February 2024 ("the February Order"), and with the Claimants' agreement, the hearing was adjourned until 27 March 2024. By paragraph 1 of the February Order, the Defendant was required to file and serve a witness statement in compliance with paragraph 3(c) of the Order by 4pm on 20 March 2024.

Witness statement of Marc Livingston

33. On 20 March 2024, Marc Livingston, solicitor acting for the Defendant, filed and served a witness statement. No witness statement from the Defendant was, nor has since been, served.

34. In that witness statement Mr Livingston explained developments since the 21 February hearing.

35. First he referred to and exhibited press reports of the hearing on 21 February 2024 – namely a newspaper report in The Times (in online and paper versions) and an online report on Bloomberg. In those reports, the Defendant was described variously as a "tout supergrass", a "supergrass" and a "turncoat". This, Mr Livingston said, "has had an extremely detrimental effect upon the Defendant". He then exhibited a number of screen shots and voice notes which evidence allegedly threatening and abusive remarks made by others, following

publication of the press reports. These are unattributed, but include generalised abusive comments directed towards the Defendant and to his partner, including "Can't believe you've gone grass better keep your mouth shut in court otherwise it's on you and your bird defo". Some of the Defendant's responses to these remarks were in similarly foul language, and suggested that he, the Defendant, might come after them in return**.**

36. As a result, Mr Livingston prepared a statement on the Defendant's behalf for publication on his firm's website, complaining about irresponsible reporting of the proceedings and stating that the Defendant had not been identified as a grass or supergrass in the course of the proceedings. The Defendant himself then attempted to disseminate that statement to a WhatsApp group with 350 members, in order to distance himself from the contents of The Times article.

37. Mr Livingston then concluded that:

> "In the circumstances, I have been unable to take any constructive instructions from my client that would allow him to prepare any further statement in these proceedings"

38. I note that the Defendant himself has not been prepared to give evidence, explaining the nature and detail of any abuse he has received nor why he has now changed his mind again about providing the information sought. In my judgment, it would have been possible for him to have done so, without disclosing the names of individuals.

Contempt of Court: finding

The relevant legal principles

39. A person is guilty of contempt by breach of a court order only if all the following factors are proved to the criminal standard:

(a) having received notice of the order (being an unambiguous order) the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order;

(b) he intended to do the act or intentionally failed to do the act as the case may be;

(c) he had knowledge of all the facts which would make the carrying out of the prohibited act, or the omission to do the required act, a breach of the order.

40. The test under the first factor is one of "notice" and not "actual knowledge" (although actual knowledge or lack of actual knowledge may go to sanction). Further the act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court order is relevant to penalty. It is

not necessary for the defendant to know that what was being done was a breach of the order.

The facts

41. The procedural requirements set out at CPR 81.4(2) have been complied with.

42. In this case there are two distinct allegations of contempt; namely that the Defendant breached each of paragraph 3(c) and paragraph 4 of the Order, by failing to comply with their terms.

43. By his witness statement the Defendant accepts that he has acted in breach of the Order in two respects. First he failed to file or serve a witness statement as required by the terms of paragraph 3 (c) (i) (ii) and (iii) of the Order. Secondly on 14 July 2023 he was present within the area covered by the vicinity ban in paragraph 4 of the Order.

44. As regards the nature of the obligation under paragraph 3(c), the issue is whether after the expiry of the 24 hour period specified in paragraph 3(c), the Defendant was under a continuing obligation to provide the information in question and/or he was in continuing breach; or whether failure to comply within the 24 hour period constituted a one-off breach amounting to a single act of contempt.

45. In this regard I have been referred in particular to the decision of Nugee LJ in *Kea Investments Ltd v Eric Watson* [2020] EWHC 2599 (Ch) at §§71 and 72. (I have also considered *McKay v All England Lawn Tennis Club* [2020] EWCA Civ 695 at §§21, 25, 79 and 80 and 119.)

46. Mandatory injunctions in general require a specified time in which to comply with the order and are to be constructed strictly, given the potentially penal consequences of non-compliance. Paragraph 3(c) cannot be construed in its terms as imposing a continuing obligation beyond the 24 hour time limit.

47. In my judgment, whilst the point is not entirely free from doubt, I accept the detailed analysis of Nugee LJ in the *Kea Investment* case. Strictly, therefore, where the Defendant was in breach of paragraph 3(c) by failing to comply with its terms by 123pm on 14 July, he was thereby in contempt of court. However, thereafter there was no continuing obligation to provide the information, and his continued failure to comply with the mandatory order after that deadline did not amount to a continuing contempt.

48. However, since that deadline, the Defendant has to date chosen not to purge that act of contempt by providing the information required. I address below whether the distinction between a continuing breach of a continuing obligation on the one hand, and a failure to purge the one-off act of contempt, on the other, makes any significant relevant difference to the outcome in this case.

49. By his counsel, at the hearing on 21 February 2024 the Defendant admitted that he is in contempt of court (and as recorded in the February Order).

50. In these circumstances, I am satisfied to the criminal standard that:

    (1) The Defendant received notice of the Order by way of service by email.

    (2) Secondly, by entering the area covered by the vicinity ban the Defendant did an act prohibited by the Order.

    (3) Thirdly by not serving a witness statement with the information required by paragraph 3(c) of the Order, the Defendant failed to do an act required by the Order within the time set by the order, namely by failing to serve the relevant witness statement by 123pm on 14 July 2023. Nor did the Defendant comply with paragraph 3(d) of the Order, in so far as any issue of privilege against self-incrimination might have arisen.

    (4) Fourthly, the Defendant intended to enter the area covered by the vicinity ban and intended not to provide the information required by paragraph 3(c) of the Order.

51. In those circumstances I find that the Defendant is guilty of contempt of court by breach of the Order.

Sentence

52. I turn then to consider the issue of sentence.

The relevant principles

53. There are a substantial number of authorities relating to the relevant principles to be applied when considering sentence for contempt of court. They were recently summarised by Leach J in *Solicitors Regulation Authority v Khan* [2022] EWHC 45 (Ch) at §§52 to 54. I also take account of my own judgment in the case of *Hassan Khan v Al Rawas* [2021] EWHC 3229 (QB) at §§19 to 30 where I identified the relevant case law. See also *Breen v Esso Petroleum Company Limited* [2022] EWCA Civ 1405 at §6.

54. From these cases (and the authorities there cited) I derive the following principles relevant to the present case.

    (1) The object of the penalty is both to punish the contemnor and deter others and to serve a coercive function by providing an incentive for future compliance as the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt.

    (2) In all cases it is necessary to consider (a) whether the conduct is so serious that a sentence of imprisonment is necessary; (b) what is the

shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.

(3) There are no formal sentencing guidelines for sentence in committal proceedings.

(4) Sentences are fact specific.

(5) The court should bear in mind the desirability of keeping offenders and in particular first-time offenders out of prison.

(6) Imprisonment is only appropriate where there is "serious, contumacious flouting of orders of the court".

(7) Consideration of the seriousness of the contempt involves consideration of both the degree of culpability on the part of the contemnor and the degree of harm caused; that is, principally, harm to the administration of justice.

(8) A breach of a court order is always serious because it undermines the administration of justice and usually merits an immediate sentence of imprisonment of a not insubstantial amount.

(9) It is good practice, for the court's sentence to include elements of both purposes (punishment and compliance as in (1) above) to make clear what period of committal is regarded as appropriate for punishment alone i.e. what period would be regarded as just if the contemnor were promptly to comply with the order in question.

(10) Factors which may make the contempt more or less serious include the following:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has cooperated;

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.

(11) Committal may be suspended: see CPR Part 81.9(2). Suspension may be appropriate (a) as a first step with a view to securing compliance with the Court's orders and/or (b) in view of cogent personal mitigation. In the latter case, a serious effect on others may justify suspension.

(12) The court may impose a fine. If a fine is appropriate punishment it is wrong to impose a custodial sentence because the contemnor could not pay the fine.

(13) The Court will also take into account the contemnor's character and antecedents and personal circumstances.

(14) Where there are multiple acts of contempt the Court may pass a single sentence for the totality of the contempt or impose separate sentences for each which may then be fixed to run concurrently or consecutively up to a total of two years. On either approach, the total sentence should reflect all the offending behaviour and be just and proportionate.

55. Additionally, where the contemnor accepts the breach he or she is, in the normal course, entitled to a reduction in the sanction on account of such an admission: see CPR 81.4(2)(q). Whether or not the amount of reduction should be calibrated along the lines of the approach in the Guidelines on Reduction in Sentence for a Guilty Plea in not entirely clear on the authorities: see *National Highways Ltd v. Springorum & ors* [2022] EWHC 205 (QB) at §§35 and 36 and Breen *v Esso*, supra at §6.

Sentence in this case

The Claimants' submissions

56. Whilst ultimately neutral, Mr Rowntree draws attention to the following.

57. The Defendant was at all times fully aware that his actions were unlawful. Yet he carried on regardless. The Defendant's conduct was part of a concerted attempt by a large number of individuals to flout, entirely deliberately, the proper measures put in place by the Claimants to protect the provision of tickets to the Championships. As regards prejudice to the Claimants, the provision of information about others is an essential part of their legitimate policy of eradicating unlawful ticket sales.

58. The Defendant's refusal to purge his contempt by providing the information required shows that, first, he knows the information that the Court has required him to provide. Secondly his attempt last year to provide information was little more than a half-hearted attempt to fob off both the Court and the Claimants.

Moreover his agreement at the February hearing to a further order to provide the information indicates that there is such further information he can provide.

59. As regards knowledge of the Order, the Defendant has provided no evidence to support his assertion that he did not see it on 12 and 13 July nor before 15 July.

60. Mr Rowntree refers the Court to two previous cases involving the failure by a ticket tout to provide information required by orders very similar to paragraph 3(c) of the Order, and in which immediate custodial sentences of between 21 and 26 weeks were imposed: see *Chelsea FC Ltd v Corrigan* [2019] EWHC 2659 (QB) upheld [2019] Costs LR 2095; and *McKay v AELTC* supra. He also refers to *Chelsea FC Ltd v Nichols* [2020] EWHC 454 (QB) and 827 (QB), another ticket tout case, where immediate imprisonment of 26 weeks was imposed.

61. There is very limited mitigation and no apology or remorse has been expressed. There is no suggestion that a prison sentence would cause either him or his partner any difficulties, despite their medical conditions. The Defendant's assertion of contrition in his witness statement is nothing more than "crocodile tears" in the light of his continued and wilful refusal to comply with the Order in circumstances where he is plainly able to do so.

62. As regards Mr Livingston's statement, the Claimants do not accept that the exhibited messages are complete or genuine and in any event it was clear from his own February witness statement that the Defendant knew that if he provided the information required by the Order, people around him might react in that way. The press reports have not substantially altered that position.

63. The custody threshold has been passed. The Defendant stands in the face of the Court, continuing to refuse to purge his contempt by providing the information initially required by paragraph 3(c) of the Order. This is both knowing and contumacious. In the circumstances the only appropriate course of action is an immediate custodial sentence.

The Defendant's submissions

64. First, the Defendant is a registered carer for his partner who suffers from multiple sclerosis and he himself suffers from an underlying liver condition that requires regular medical appointments.

65. Secondly, the Defendant's breaches of the Order have not given rise to serious prejudice to the Claimants.

66. Thirdly, the breach of the vicinity ban was perpetrated without actual knowledge of the Order. He first became aware of the Order when personally served on 14 July 2023 at which point he had already breached that ban. This is supported by the fact that thereafter he complied with the vicinity ban. His culpability for this breach is limited. Moreover as regards paragraph 3(c), there

was no continuing breach of the Order. He has purged his contempt to an extent by the information he provided in July 2023.

67. Fourthly as regards co-operation, the Defendant has complied with the prohibitory aspect of the Order. As regards the mandatory element, he has cooperated to an extent in the email dated 24 July 2023. At the 21 February hearing, he admitted the contempt and it was acknowledged that breach of the Order constitutes harm to the administration of justice. In his own witness statement, the Defendant has apologised and acknowledged the seriousness of the Order. The authenticity of this appears from his willingness at the previous hearing to purge his contempt. The Defendant takes responsibility for his actions and omissions.

68. Fifthly, the press reporting of the Defendant as a "supergrass" and a "turncoat" was reckless, sensationalist and inaccurate. As a matter of fact, those terms were not mentioned at the 21 February hearing. Accordingly in the light of events since the February hearing, these proceedings have already met the punitive, deterrent and coercive objectives of a sentence for contempt. As regards the coercive element, the proceedings have compelled the Defendant to express a genuine willingness to purge his contempt. As regards deterrence, the risk of a prison sentence has been widely disseminated by the press reports. Moreover the Defendant has been punished by being characterised in the national press as a supergrass and being vilified and marginalised "by the community in which he has previously traded tickets". His characterisation as a supergrass in the national press had caused him disproportionate harm, given his former willingness to purge his contempt. Whilst in February he indicated a genuine willingness to purge his contempt, he has not now provided a witness statement due to third party pressure arising from the sensationalist characterisation of him in the national press. Mr Saunders submitted that it was this "reckless" press coverage which had caused the Defendant to be unwilling now to purge his contempt.

69. Mr Saunders submits that in all the circumstances the appropriate sentence is a fine. Alternatively if the custody threshold is passed then, the order for committal should be suspended in view of the Defendant's mitigation. In this regard the Court should consider the case of *R v Ali* [2023] EWCA Crim 232 when considering custodial sentences in the context of the current very high prison population.

Discussion

70. I address the two distinct acts of contempt in turn.

71. As regards the vicinity ban, the position as to whether the Defendant had actual knowledge earlier than 1007am on 14 July 2024 is not entirely clear. First, there is authority that the burden is on the Defendant to prove on the balance of probabilities that he did not have knowledge (see *NHL v Kirin* [2023] EWHC

3000 (KB) at §§11(ii) and 31-38). However I did not hear argument on this point. Secondly the Defendant's evidence was not tested in cross-examination. Nevertheless I am prepared to give the Defendant the benefit of the doubt and to accept his witness statement evidence (see paragraph 18 above) and find, on balance, that he did not have actual knowledge of the ban before that time. Moreover, and in any event, this was a continuing obligation, which the Defendant did not breach again. On this basis, his admitted contempt arising from earlier notice of the ban is of low culpability and does not warrant a separate penalty.

72. I turn to the breach of paragraph 3(c) of the Order and the failure to provide, by 123pm on 14 July, the required information, namely full details of his purchasing and sale of NTWTs for the 2023 Championships. As explained in paragraph 47 above, this was a once and for all breach and thus a one-off contempt.

73. First, a breach of such a court order is serious and usually warrants an immediate custodial sentence. In this case, the Defendant's culpability is high. He deliberately and intentionally refused to provide the information and to obey an order of the Court. His intent is confirmed by his subsequent conduct in refusing to purge his contempt and in his further failure to comply with the Court's further order of 21 February 2024 (see paragraph 32 above). As such, the harm is principally to the administration of justice. In my judgment, in this case, the fact that this was not a continuing breach of the order makes little difference to the seriousness of the contempt.

74. As regards prejudice to the Claimants, in principle, the information of the type sought supports the Claimants' overall policy of preventing unauthorised ticket sales. However, as far as this case is concerned, there is little evidence before me of the practical use of such information in tracking down or preventing such sales. I note that in *McKay* the Court of Appeal (at §108) described a similar failure to provide such information as a contempt of a "very limited nature". In any event, I regard prejudice to a claimant as a relatively secondary consideration when set against the importance of upholding court orders and the harm to the administration of justice.

75. The Defendant has co-operated to some extent. He admitted the breaches and the contempt, at the first opportunity following legal advice and to that extent is entitled to a reduction in his sentence. He has also apologised in his witness statement. However, that has to be seen in the context of his continuing refusal to provide the information, by way of purging his contempt and his refusal to comply with the February Order.

76. In these circumstances, in principle, the contempt passes the custody threshold. I do not consider that a fine is a sufficient sanction (see *Corrigan* at §18). I turn therefore to consider whether there are mitigating factors which would

lead me to impose a suspended sentence of imprisonment (other than a sentence suspended for a short time to allow for purging of the contempt).

77. As regard the issue of pressure, I accept, first, that, in principle threats of violence amounting to duress, or pressure more generally, can provide some mitigation when the Court consider the appropriate sanction for contempt: see paragraph 54(10)(b) above and *Coca-Cola v Gilbey* [1996] FSR 23 at 29 and at 31-32.

78. Secondly, however, in this case, the evidence of such pressure since the February hearing is not strong. There is no direct evidence of such pressure; rather it is left implicit in the evidence of the Defendant's solicitor and in the Defendant's own earlier statement. I am not satisfied on the facts that the evidence produced is sufficient to establish a threat of direct violence towards the Defendant or his partner. As I have pointed out, the Defendant himself has chosen not to give evidence as to the nature of any threats or as to the reasons for his change of heart since the February hearing in not being prepared to provide the information, and despite the terms of the February Order which required him to do so. Moreover the terms of the Defendant's own responses to the online abuse do not suggest that he would easily bow to any pressure.

79. Thirdly, whilst Mr Saunders complains (with some justification) about some of the language used in the press reports of the 21 February hearing, I accept Mr Rowntree's submission that little has changed as a result of those press reports. The Defendant has always known, and indeed asserted, that he would risk the opprobrium of others if he provided the information covered by paragraph 3(c). There was always the prospect of press coverage of the proceedings. The Times and others were properly entitled to report on the 21 February hearing and, even if the particular terms of which the Defendant complains had not been used, the case would have been in the public domain by dint of that reporting. I do not accept Mr Saunders' submission that the manner of the press coverage of the 21 February hearing has put the Defendant in any worse position. The fact of the press coverage cannot be a legitimate ground of complaint by the Defendant.

80. Fourthly, I reject the submission that the press coverage and the opprobrium he has received from "others in the community in which he has previously traded tickets" has met the objectives of a sanction for contempt. (Mr Saunders accepted that the ticket trading of those "others" was equally likely to be unlawful). It is antithetical to the need for compliance with orders of this Court to place reliance, by way of mitigation or excuse, on the conduct of those responsible for vilification and threats. The message cannot be that the Court will step back from imposing the sanction which it would otherwise have imposed by reason of abuse and threats from third parties; or that a person subject to a Court order can be excused from compliance by reason of such abuse and threats. The Defendant had a choice to comply with a Court order or submit to threats of consequences if he did comply.

81. I conclude therefore that neither the terms of the press reporting of 21 February hearing nor any abuse the Defendant may have received since then is good reason to suspend a custodial sentence.

82. As regards the Defendant's personal mitigation, whilst I take account of his partner's multiple sclerosis and his own medical condition, there is no evidence before me, and Mr Saunders has properly not suggested, that custody will have a detrimental effect on their medical conditions. No other personal mitigation is put forward.

83. I have also considered the approach to sentencing as set out in the Court of Appeal Criminal Division in *R v Ali* at §§18-22, where the current very high prison population can be an "additional factor" to support a decision to suspend a sentence of short duration. However, unlike the position in that case, in the present case there are no independent exceptional circumstances to support a suspension of the sentence.

84. I conclude therefore that there are no grounds for suspending the sentence for a substantial period.

Conclusion

85. For these reasons, I conclude that an immediate custodial sentence is the appropriate sanction in this case. I take a starting point of 6 months imprisonment. I reduce this to 4 months imprisonment to take account of the Defendant's admission of the breaches and certain other limited mitigating factors. The sentence for contempt for breach of paragraph 3(c) of the order of Mr Justice Bourne is 4 months imprisonment. For the contempt for breach of paragraph 4 of that order, there is no separate penalty.

86. I will give however give the Defendant one final short opportunity to reconsider his position and to purge his contempt by producing a witness statement which complies with paragraph 3(c) of the Order. This means, unless such a witness statement is produced, the matter will come back to court and the sentence of imprisonment will take effect on that date.

87. I will now hear counsel on the appropriate terms of the order to be made, including the date for the matter to return to court, and any other matters.