Case No: HQ 14 X 01162
[2018] EWHC 4095 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/04/2018

Before:

THE HONOURABLE MR JUSTICE WARBY

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Between:

GEORGE GALLOWAY	**Claimant**
- and -	
AISHA ALI-KHAN	**Defendant**

- -
- -

Mr A. Speker (instructed by **Brett Wilson LLP**) for the **Applicant**
Mr J. Bunting for the **Respondent**

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APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

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1st Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

The Honourable Mr Justice Warby:

1. Miss Ali-Khan, you can stay seated for the present.

2. You are here to be sentenced for acts of contempt of court, which you admitted at a hearing before me on 22nd March. You then admitted 26 breaches of undertakings given by you to the court in the following circumstances.

3. You brought a claim against George Galloway, for whom you used to work. That claim was settled and, on 20th June 2016, you gave undertakings to the court, as it happens to me, not to make any further public statement about the litigation or any public statement defaming or disparaging Mr Galloway. He gave similar undertakings to you. You were accused of acting in breach of those undertakings and another order was made, this time by Sir David Eady, on 27th October 2017 in which there were recorded further undertakings that you gave to the court on that occasion. The undertakings were six in number. They included the following:

   (i) Not to publish in any way, including online, any reference, whether express or implied, to Mr Galloway.

   (ii) Not to re-publish, including but not limited to by re-tweeting on Twitter or sharing on Facebook, any statement made by a third party which referred to the defendant …

   (vi) To comply with the undertaking I gave to the court and recorded within the order of Warby J dated 20th June 2016.

4. The schedule in which those undertakings were written down included acknowledgements by you that you understood the terms of the undertakings and the potential consequences of not complying with them. You further acknowledged that you had been advised to seek independent legal advice in respect of the potential consequences of failing to comply with the terms of the order and its schedule.

5. You then acted in breach of those undertakings, as I have said on no less than 26 occasions. The details are set out in an annex, which will be attached to the public notice that follows this hearing. I do not need to go through them all now, but it is relevant to note that they span the period between 14th October 2017 and 31st January 2018.

6. When complaint was made, you were given an opportunity to explain, to apologise, to withdraw, and to give assurances. But your conduct was evasive and you tried to get round the contempt proceedings. You claimed, it may be truthfully, that you were abroad and could not deal with the complaint. You made no attempt to apologise or to put things right in any other way until it became obvious that you would be unable to evade the proceedings, whereupon you came to court and frankly admitted guilt of the contempts alleged against you.

7. As I explained in the judgment I gave on that occasion, I took care to ensure that your admissions were informed in the sense that you had had a good opportunity to assess what it was that was alleged against you and to understand what you were doing by admitting the breach.

8. The maximum sentence for contempt of court is two years' immediate imprisonment and I cannot go beyond that even if I thought that it was appropriate, which I do not. Lesser punishment can be imposed but the alternative options available to me are limited. I can impose a suspended sentence of imprisonment or a fine, or I can make a costs order and make no further order or I can make a combination of those orders. I have no power to make some of the orders which a criminal court could make, such as a community order with a curfew requirement or a requirement for unpaid work, for example.

9. I need to assess the seriousness of your offending, which means I need to consider the harm caused and culpability on your part and to place your offending in an appropriate position on the scale having regard to aggravating and mitigating factors to do with the offending, and mitigating factors to do with your personal situation. I need to take account of your admissions.

10. It is important to consider whether the offending crosses the custody threshold and, if it does, whether any custodial sentence can be suspended. I need to bear in mind that in this context, unlike perhaps in criminal proceedings, the overall purpose or one of the main purposes of contempt proceedings is to ensure compliance with the orders or, in this case, undertakings to the court.

11. You are aged 37, and have put in an affidavit explaining in detail your personal background, the background to this offending and the reasons why it might be harsh to impose a sentence of immediate imprisonment. As for the offending itself, you accept, through counsel, that there are a number of aggravating factors, that these include the large number of breaches, the length of the period of breach, the number and the timing of the breaches and to your previous record, to which I will return. You have however taken steps to do what you say, through your counsel, is to purge your contempt. You have removed the offending tweets, you have pinned to your Twitter page an apology acknowledging your error, and there are mitigating factors that your counsel has skilfully explained and elaborated on in submissions today. You have undertaken not to further breach any order of the court, and have pointed out that you have not breached your undertakings since this application was threatened in early February. There is a considerable body of evidence about your mental health, both in the past and at present, and the treatment that you are receiving for it.

12. I do not attach any weight to what is said about the context of the contempt of court in paragraph 11.4 of your counsel's skeleton argument, save to say that it goes some way towards explaining the circumstances and, in particular, your emotional state at the time that you committed these contempts. I accept that these offences of contempt occurred against the background of a very long line of difficult experiences, as discussed in paragraph 11.5 of the skeleton argument, into which I do not need to go further or indeed to remark upon. Importantly, I have taken carefully into consideration your responsibilities in the community, and in particular within the family. You have an elder sister who requires assistance and a son, aged 14, who lives with you part of the time and some of the time with his father. I also note that it has been pointed out that the breaches have not in fact had the severe impact on Mr Galloway himself that might in some circumstances have been expected. I give appropriate weight to that.

13. I have mentioned an important feature of the case, which is that this is not the first time that you have committed contempt of court. You have set out the details, frankly,

yourself in your first affidavit. The first occasion when you were sentenced for contempt was on 31st March 2014. The breach on that occasion lay in failing to serve an affidavit, which a court had ordered you to serve, confirming the destruction of certain photographs. You were sentenced to immediate imprisonment and served some time at Her Majesty's Prison Holloway. The Court of Appeal reduced the sentence to one of 28 days' imprisonment.

14. Then, and importantly for present purposes, in November 2017 you were involved in further contempt proceedings arising out of the criminal trial of a person you had known. You felt a close connection with the trial, you say, sharing political sympathies with the defendant. You felt that the prosecution was unfair and, as a result, you posted a number of tweets about comments made by a judge, which had not been made in open court. You were then brought before Leeds Crown Court to face an allegation of contempt of court. Mitigation was advanced by your barrister on your behalf. The judge, HHJ Marson, held that but for the mitigation he would have sent you directly to prison. In the event, he imposed a sentence of two months' imprisonment, suspended for twelve months. In doing so, HHJ Marson QC said as follows:

> "I accept that you are remorseful for what took place but there needs to be a reminder to you of the need to be careful and, therefore, the sentence is two months' imprisonment, suspended for twelve months. If in the next twelve months you commit any offence, you will be liable to serve that sentence plus something on top for the new offence."

15. If a suspended sentence is imposed in criminal proceedings before a Crown Court and the individual concerned subsequently commits another offence, the law requires the court to activate the suspended sentence, in whole or in part, unless it considers it to be unjust to do so. That is provided for by the Criminal Justice Act 2003. There has been discussion between counsel and the Bench today about whether that principle applies in the present circumstances. Counsel are agreed, and I accept, that those provisions of the criminal law are not applicable in this case. The guiding principles are to be found in the Court of Appeal decision in *Villiers v Villiers* [1994] 1 WLR 493 where Sir Thomas Bingham MR, said this at page 498C:

> "It emerges quite clearly from [cases on this subject] that the court does have the power expressed in the rules of the Supreme Court to suspend sentences for contempt; and that in exercising that power the court is not constrained by the limitations which are imposed on the imposition of suspended sentences on the commission of criminal offences. In other words, limitations as to the imprisonment of young offenders and first offenders do not apply. ...
>
> … however ... the court is not obliged to activate a suspended sentence upon mere proof of breach of the suspensory condition. The judge has a discretion, taking into account both the past and the current situation and the gravity of the breach, either to activate the original sentence or to impose a reduced sentence or

> a fine or not to punish them at all. In other words, there is nothing automatic about the activation of a suspended sentence and it involves an exercise of judicial judgment on the occasion when the issue of activation arises."

16. The history that I have recited is obviously an aggravating feature of the case when it comes to sentence for the present contempt. Fifteen of the 26 breaches were committed after the imposition of the suspended sentence. Counsel, Mr Bunting, has submitted on your behalf that this latest offending was not a breach of the conditions on which the sentence was suspended by HHJ Marson QC. He has argued that this contempt was not an offence within the meaning of the judge's sentencing remarks. He submits that those sentencing remarks were aimed at a sentence which would be activated if and only if a contempt of court of a similar kind to that that led to the sentence was committed, during the operational period of the sentence.

17. I do not accept that submission. The conditions were formulated in such a way that the conduct in which you have engaged represents a breach of the conditions. I therefore have power to activate. But I look at the overall picture, and I will impose a sentence which in my judgment matches the overall picture. I will not do that by activating any part of the suspended sentence from November 2017. I will treat the breach of that sentence – the fact that the contempts were committed during its operational period - as an aggravating feature of significance for the exercise of my sentencing powers in respect of today's contempts.

18. There is another factor, which is that there is a claim for costs of these proceedings. It is conceded that an order for costs is inevitable. The sum claimed is £37,925.29. That is a very large sum. I say nothing about whether it is proportionate or reasonable but it is a large sum and it is said that your means are very limited and there is evidence to support that. You have undertaken to verify by way of affidavit the evidence that has been put before me, and I can see on that basis that you would find it hard to pay that sum.

19. The offending here was in my judgment so serious that it crosses the custody threshold. By that, I mean that a custodial sentence is inevitable. That is not because the harm was particularly serious but because this was a deliberate, flagrant, persistent and inexcusable breach of promises you had made to the court, in the full understanding of what it was you were doing. You knew on both occasions what you were doing. You knew what would happen or could happen when you broke those promises, and you did. You carried on despite warnings and the court cannot easily allow a litigant to behave like that and escape lightly. The civil litigation process depends very heavily on the trust the court places on litigants to abide by promises they make to the court. It is always made clear how heavy a responsibility a promise or undertaking imposes on a litigant, and that was done in this case.

20. Your offending is aggravated by the obstinate and evasive way you responded when the complaint was made and, as I have mentioned, by your previous record. Your record does suggest, clearly, that you have not been deterred by the fact of contempt proceedings or findings of contempt, or by sanctions, including a sentence of immediate imprisonment. In mitigation, so far as the latest acts of contempt are concerned, there

is not a great deal to be said but clearly the personal mitigation I have mentioned is there and I take full account of it.

21. Having considered all those factors the sentence I would have imposed if there had been a contested trial on the matter is one of four and a half months' imprisonment, or 18 weeks. The most significant mitigating factor today is you have admitted your guilt but you did not do that at the first opportunity, you wriggled and tried to evade the issue. I give you credit for your late admission but I cannot give you more than 15 per cent. That therefore reduces the appropriate sentence to one of 15 weeks. I have power to suspend the sentence. It is possible that the mitigating factors I have mentioned would have led me to suspend the sentence if it was not for the aggravating features that I have set out and, in particular, the suspended sentence and your acting in breach of it. What I will do is to make a further reduction in the sentence to take account of the costs order that I am going to make, by concession, which has a punitive aspect of its own; I must therefore take account of that in applying the principle of totality - that is to say the principle that the overall sentence imposed on any one occasion is not to be more than what is just and proportionate for all of the offending being considered.

22. Miss Ali-Khan, would you stand up please? With regret, the sentence will be one of immediate imprisonment of a period of twelve weeks. In addition, I order you to pay the applicant's costs of the application to be assessed on the standard basis. Unless you are released earlier on home detention curfew or some other early release scheme, you will serve half of that period in custody, that is to say six weeks. You will then be released from custody and you will be on licence and liable to be recalled to serve the remainder of the sentence in custody if you breach the terms of your licence.

23. The suspended sentence order imposed by HHJ Marson remains in force until the end of the twelve months from the date in which it was applied.