

Case No: QB-2022-000680

Neutral Citation Number: [2022] EWHC 3458 (KB)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

The Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 4 November 2022

BEFORE:

MR JUSTICE CHAMBERLAIN

BETWEEN:

HM SOLICITOR GENERAL

Claimant

- and -

KATARZYNA PACZKOWSKA

Defendant

MS HARDCASTLE appeared on behalf of the Claimant.
MS PACZKOWSKA appeared in person.

JUDGMENT
(Approved)

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1. MR JUSTICE CHAMBERLAIN: These are contempt proceedings brought by the Solicitor General against Ms Katarzyna Paczkowska, pursuant to CPR Part 81. Because they relate to an alleged interference with the administration of justice, otherwise than in existing High Court or County Court proceedings, permission to make a contempt application was required. See CPR rule 81.3(5)(a). I gave that permission after a hearing on 10 May 2022, at which Ms Paczkowska failed to appear. I set down the full hearing of the contempt application for 27 May 2022.
2. On that date, Ms Paczkowska did appear and said that she wished to be represented. I adjourned the final hearing again, this time to 21 July 2022, and made an order indicating that once Ms Paczkowska had identified a solicitor, I would be prepared to make a representation order in her favour.
3. Prior to the hearing on 21 July 2022, it became clear that Ms Paczkowska had still been unable to secure representation. I asked Ms Hardcastle who appears for the Solicitor General, whether the efforts she had made to do so was reasonable. The answer was yes, so the hearing was adjourned again, with no opposition from the Solicitor General, and the Solicitor General suggested the names of various representatives who might be able to help. I inquired as to whether the Solicitor General was prepared to appoint an advocate to the court, to which the answer was no.
4. After much email correspondence, it became clear that Ms Paczkowska does not now wish to be represented, though she has asked for the appointment of an advocate to the court to assist on the law. I directed that the final hearing take place on 1 November 2022. Ms Paczkowska did not attend on that occasion, but sent an email to the court timed at 10.15 a.m., fifteen minutes before the start of the hearing, indicating that she had been in A&E since 3.00 a.m. with chest pains. I noted that this was not sufficient to justify an adjournment on medical grounds, because it did not comply with the requirements set out in the case law and summarised in my decision in *The All England Lawn Tennis Club (Championships) Ltd & Anor v McKay* [2019] EWHC 2973 (QB) at paragraph 29. However, I considered it appropriate to allow one further opportunity for Ms Paczkowska to attend or file adequate medical evidence to justify an adjournment and so, adjourned the hearing to today, 4 November.

5. The order was served on Ms Paczkowska by email on the same day, 1 November, and she replied on that day saying that chest pain was very difficult to diagnose, and she could not convince the doctor to carry out an ultrasound or CT scan of her heart. However, she was under enormous stress, in part, because the court had not determined her applications to record the committal proceedings and/or for a transcript, and will be unable to attend, in part, because of the expense of getting here from Manchester. I responded by email through my Clerk to the effect that the evidence provided did not satisfy the requirements outlined in the order I had made, did not say that she was unfit to attend court and did not explain why or give any prognosis. Without evidence complying with these requirements, the hearing will proceed on 4 November.
6. Further representations were made on 3 November, attaching some medical evidence, but that did not establish that Ms Paczkowska was suffering from any cardiac condition. On the contrary, a letter dated 10 October 2022 from the cardiorespiratory department at North Manchester General Hospital indicated a likely diagnosis of non-cardiac chest pain which is likely exacerbated by anxiety. My Clerk replied on my behalf to the effect that the hearing would continue and in the event, Ms Paczkowska has attended today.
7. There is no advocate to the court, but I did direct the Solicitor General to set out the applicable law in a note for Ms Paczkowska's benefit. Ms Paczkowska has herself filed a note in which she sets out the applicable law as she understands it. Ms Paczkowska has also had the opportunity to place before the court a great deal of material which she says is relevant. I will come in due course to refer to some of that material.
8. Having now heard from Ms Paczkowska on three occasions, it is clear to me that she is an educated and articulate woman, who speaks excellent English. Every effort has been made by me and by the Solicitor General to enable her to obtain publicly funded representation. It may be that her inability to do so at earlier stages, is connected to the arguments she wishes to make, some of which are unorthodox, but I have made clear that I am not entitled to ask what passed between her and the lawyers with whom she made inquiries, and do not wish to be told about that. I am, however, satisfied that whatever the position at an earlier stage, she does not now wish to be represented. The time has come to determine the application. Given the efforts made to permit

Ms Paczkowska to obtain representation and the measures taken to ensure that she understands the law, I am satisfied that this can be done consistently with her rights to a fair trial under Article 6 of the European Convention of Human Rights and Common Law.

BACKGROUND

9. On 18 June 2021, Judge Barry Clerk, President of the Employment Tribunal submitted a bundle of materials to the Attorney General's office. The bundle included a covering note dated 3 June 2021, provided by Regional Employment Judge Franey. He explained that in proceedings before the Employment Appeal Tribunal in April 2021, it had emerged that Ms Paczkowska had made unauthorised recordings of proceedings in the Employment Tribunal in September 2018. The note further explained as follows –
 - (a) In an order dated 16 April 2021, his Honour Judge Auerbach noted that the defendant had recorded the proceedings before the Employment Tribunal in September 2018, and had sought to rely on a typed transcript of that recording in her appeal to the Employment Appeal Tribunal, and that this appeared to contravene the Contempt of Court Act, 1981, there being no suggestion that she had obtained permission to make the recording.
 - (b) On 4 May 2021, Judge Franey wrote to Ms Paczkowska seeking assurance that the audio recordings mentioned in Judge Auerbach's order had been deleted, and that the transcript of proceedings would not be published or further relied on.
 - (c) No such assurance was received, so Judge Franey wrote for a second time on 26 May 2021, repeating his earlier requests, and noting that the next step in the event of her continued non-compliance would be for him to refer the matter to the Attorney General's office.
 - (d) No adequate response was received to that request and, accordingly, the matter was referred to the Attorney General's office in June 2021.
 - (e) The bundle submitted by Judge Clerk included screenshots of Ms Paczkowska' Twitter feed, linking to the unauthorised recordings and transcripts.

10. The following additional facts appear from the affidavits made for the purposes of these proceedings by Ms Georgina Kenlock of the Government Legal Department, and by Mr Shyam Kapila of the Attorney General's Office –
- (a) On 29 April 2021, Ms Paczkowska tweeted that she had made recordings of the Employment Tribunal proceedings, and included a link to a publicly accessible website, on which the audio recordings and transcript were available to download.
- (b) From 29 April 2021 until at least 6 August 2021, the unauthorised recordings and the transcript remained readily available to access and download from the same publicly accessible website.
- (c) The website on which the audio recordings and transcript were made available and the Twitter account on which they were publicised are all controlled by Ms Paczkowska.
11. As noted above, the matter was referred to Attorney General's office on 18 June 2021. On 5 August 2021, the Government Legal Department wrote to Ms Paczkowska, inviting her to make representations in respect of the alleged contempt's. On 6 August 2021, Ms Paczkowska tweeted a link to a copy of the Government's legal department's letter, making clear both that it had been received and further, that it was a Twitter account controlled by her. On 20 August 2021, the Government Legal Department received an email from Ms Paczkowska, but it contained no relevant representations as to the question of proceedings by way of application for committal. Ms Paczkowska was personally served with the present application on 17 May 2022.

THE LAW

12. Section 9(1) of the Contempt of Court Act, 1981 (The 1981 Act) provides that it is a contempt of court –

"(a) to use in court or bring into court for use any tape recorder or other instrument for recording sound, except with the leave of the court.

(b) to publish a recording of legal proceedings made by means of any such instrument or any recording derived or indirectly from it, by playing it in the hearing of the public or any section of the public, or to

dispose of it or any recordings so derived with a view to such publication."

(Quote unchecked)

13. Section 19 of the same Act provides that "court includes any tribunal or body exercising the judicial power of the state. This includes the Employment Tribunals".
14. I have carefully considered Ms Paczkowska's submission of law as set out in her note for this hearing, and as further elaborated in her oral submissions before me. Her submissions included reliance on a Law Commission report on the strict liability rule in contempt of court. I am satisfied that this relates to a different species of contempt, namely that which applies under section 1 of the 1981 Act. To establish the contempt's alleged under section 9, the Solicitor General must prove to the criminal standard that Ms Paczkowska deliberately –
 - (a) used a tape recorder or other instrument for recording sound and,
 - (b) disposed of the recording with a view to publication.
15. There is no other mental element, and it is no defence that the individual did not intend to interfere with the administration of justice, or did not know that recording or publication was prohibited. (See by analogy the *Solicitor General v Cox* [2016] EWHC 1241 (QB) [2016] 2 Cr App R 15 paragraphs 66 to 80 in the judgment of Males J and *The Attorney General's Office v Andrew Pritchard* [2020] EWHC 607 (QB) at paragraph 8 in the judgment of Dingemans Lord Justice)

THE SOLICITOR GENERAL'S CASE

16. As to the first alleged contempt, the Solicitor General submits as follows –
 - (a) it is obvious from the audio files of the recordings and the transcript of the recording prepared by Ms Paczkowska that a recording device was brought into the Employment Tribunal at Alexandra House, Manchester in September 2018, and used in proceedings there.

(b) Ms Paczkowska has not disputed that she made the unauthorised recordings, nor that she prepared the transcript.

(c) On the contrary, Ms Paczkowska has positively sought to rely on her conduct, and attempted to justify it in correspondence with the court on multiple occasions. (See for example her replies to Judge Franey of 18 and 26 May 2021, and her email to the Attorney General's office of 16 April 2022.

(d) Screenshots establish that Ms Paczkowska posted the recordings and transcript on her website.

(e) The screenshots show that Ms Paczkowska publicised her actions on her own Twitter account, for example, in a tweet on 29 April 2021 under the headline, "Public hearing recording here!"

(f) It is plain that this conduct was deliberate. No specific intent is required for the purposes of a breach of section 9(1) of the 1981 Act, but in any event, recording was prohibited by signage at Alexandra House in the reception areas on the walls, in the waiting rooms and on the doors of the hearing rooms. I note at this stage that Ms Paczkowska denies that there were signs on the doors of the hearing rooms and, in any event, indicates that if there were such signs, they were not evident to her and she did not see them.

17. In respect of the second alleged contempt, breach of section 9(1)(b) of the 1981 Act, the Solicitor General submits that the evidence establishes beyond reasonable doubt that the defendant deliberately disposed of the recordings and transcript, with a view of them being publicly accessible –

(a) The recordings were available for download on Ms Paczkowska's publicly available website between at least 29 April and 6 August 2021.

(b) The recordings and extracts of the transcript were publicised on the defendant's Twitter account.

(c) The defendant does not dispute that she published the unauthorised recordings.

(d) The defendant has not attempted in correspondence to justify or defend such conduct.

(e) While no specific intent is required for the purposes of establishing a contempt, one can clearly be inferred from the fact of the warning which the defendant had received from Judge Auerbach in his order dated 16 April 2021, and the defendant's conduct **prima facie** amounted to a contempt of court, contrary to the 1981 Act.

THE ORAL EVIDENCE AND SUBMISSIONS AT THE HEARING

18. At the hearing, Ms Paczkowska addressed me at some length, and also asked questions of Mr Kapila, who gave evidence under oath. I explained to Ms Paczkowska that she did not have to say whether she had done the things alleged against her, it was up to her. She said that she did not admit the contempt's alleged, and it was for the Solicitor General to prove them. She went on to say that Judge Franey's statement about signage in court related to a period after 2018, when the covert recordings are said to have been made. Furthermore, Judge Auerbach did not appear to be offended by the use of the transcripts. The contempt proceedings were initiated at the instance of the respondent to the Employment Tribunal proceedings, who was annoyed because errors had been found in the Employment Tribunal's judgment in its favour.

19. Ms Paczkowska brought with her audio recordings of various interviews and talks given by judges and barristers, which were designed (as I understood it) to illustrate the following points –
 1. That the absence of official recording for proceedings in Employment Tribunals was problematic.

 2. That it was good practice for judgments in such proceedings to be given within twenty-eight days or, at worst, within three months, whereas the judgment in her case had taken much longer than that.

 3. That judges should be prepared to reform the law in cases which come before them and,

4. The judiciary was institutionally racist.
20. I listened with care to Ms Paczkowska's submissions, though I pointed out that some of them seemed to go beyond the issues I have to decide today. The issues before me at this stage are limited to the question whether the contempt's alleged are proved.
21. In response to questions from Ms Paczkowska, Mr Kapila made clear that he was not present at the hearing before the Employment Tribunal, and had taken no steps further to validate the information received from the Employment Tribunal. She pointed out that she had made a complaint to the Attorney General about perjury by a witness in the Employment Tribunal proceedings, and asked why that had not been taken forward. Mr Kapila said that where members of the public made allegations of that kind, it was usual to refer them to the judge who had dealt with the proceedings.

FINDINGS

22. The materials relied upon before me established to my satisfaction, to the criminal standard, the facts constituting the first alleged contempt. That is that Ms Paczkowska did make these recordings as alleged. The evidence is, indeed, overwhelming. It includes the fact that as shown by the decision of Judge Auerbach, she sought to rely on those recordings before the Employment Tribunal. The fact that Mr Kapila did not have personal knowledge of the matters referred to, did not mean those matters lacked evidential significance. In any event, there is evidence that the recordings were later posted on Ms Paczkowska's personal website. They could not have been so posted, unless they had first been made. There is no evidence that the Employment Tribunal ever gave permission for the recording to be made, and Ms Paczkowska has not submitted that it did. The first alleged contempt is therefore proved.
23. I am not in a position to find to the criminal standard that Ms Paczkowska knew at the time she made the recording that recording was prohibited, save with the permission of the Tribunal. Although Judge Franey says there were signs to this effect, the evidence is not sufficiently specific to gainsay Ms Paczkowska's own case that she did not see those signs. That case is not, however, an answer to the allegation because it is not necessary to prove knowledge that recording was prohibited in order to show a breach of section 9(1) of the 1981 Act.

24. As to the second contempt, this is also proved to the criminal standard. The material exhibited by Mr Kapila shows Ms Paczkowska did post the recording on her personal website, and that it remained there after she had received Judge Auerbach's order and after Judge Franey had written to her twice. Judge Franey's letters invited to confirm that the recordings would not be published. It must have been obvious to her from this point onwards that publication would constitute a contempt. Nonetheless, the recordings remained on her public website for more than three months thereafter. There is no evidence from Ms Paczkowska to the contrary. This was a deliberate contempt, and it was continue after Ms Paczkowska had been made aware in clear terms that what she was doing constituted a contempt of court.
25. As to Ms Paczkowska' motivation, I find that the recordings were initially made because Ms Paczkowska genuinely considered herself to be at a disadvantage in the Employment Tribunal proceedings, as a person for whom English is her second language, and as an unrepresented litigant. As to the posting of the recordings, this was done because of a genuine sense that she had been wronged by the respondent and treated unfairly by the Employment Tribunal. These findings do not qualify in any way my conclusion that I am sure she committed the contempt's alleged, but will be relevant at the next stage.

SANCTION

26. In deciding upon the appropriate sanction, I have borne in mind the case law drawn to my attention by the Solicitor General, in particular, the Supreme Court's decision in *Attorney General v Crosland* [2021] UKSC 15, [2021] 4 WLR 103, at paragraph 44, citing *Liverpool Victoria Insurance Company Ltd v Carr* [2019] EWCA Civ 392, [1991] 1 WLR 3833, at paragraphs 57 to 71. I have also considered the case of *Attorney General v Prichard* [2020] EWHC 607 (QB) where a sentence of four weeks' imprisonment, suspended for one year, was imposed for repeated covert recording by a solicitor's clerk.
27. In terms of culpability, this is a case at the upper end of seriousness for this type of contempt. Although I have not found that the first contempt was committed at a time when Ms Paczkowska knew that recording was prohibited, it is plain, and I have found,

that the second contempt was continued after the point when it had been made clear to Ms Paczkowska that posting the recordings would constitute a contempt. None of the matters relied upon by Ms Paczkowska constitutes a justification or excuse for her conduct.

28. The second contempt is particularly serious, because it continued for so long, and because the advertisement of the recordings by a post on Twitter carried the risk that the recordings would become widely and quickly disseminated. As to harm, it is right to note that the contempts found proved do not appear to have had any actual, as opposed to potential, impact on the integrity of the Employment Tribunal proceedings, a point which Ms Hardcastle very fairly made in her written submissions before me. It is also right to say, as Ms Hardcastle also noted, that the proceedings were not of a particularly sensitive nature, there being no reporting restrictions or anonymity order in place.

29. I have given careful consideration to whether this case can properly be dealt with by way of a fine. In my judgment, it cannot. Deliberate defiance of the Employment Tribunal sustained over such a long period is conduct so serious that only a term of imprisonment will suffice. The appropriate term in this case is one of three months' imprisonment. However, for three reasons, I have decided that immediate custody is not warranted in this case, and therefore the term will be suspended for one year.

First, the recordings have now been taken down from the public website, and there is no evidence or indication that they have been reposted since August 2021.

Second, there is no evidence of any intention to repeat the conduct, the subject of this application.

Third, although the medical evidence submitted to date has not been sufficient to justify adjournments of these proceedings, there is evidence that Ms Paczkowska suffers from anxiety and, indeed, that has been evident from my interaction with her at this and previous hearings.

30. Ms Paczkowska's conduct of these proceedings and her submissions before me also bear some of the hallmarks of obsessive behaviour. I am satisfied that the important public interest served by section 9 of the 1981 Act are properly vindicated by a suspended sentence in this case.
31. Ms Paczkowska, for these contempts the sanction I impose is a sentence of imprisonment of three months, suspended for one year. If within that year you commit any further contempt, you must understand that the sentence is likely to be activated and you would then be sent immediately to prison.

COSTS

32. The Solicitor General has applied for the costs in these proceedings in the sum of £8,591. I have considered, first, the question of principle whether the Solicitor General should have his costs. In my judgment, he should. Although these proceedings have been protracted and have involved many more hearings than would normally be the case, none of that can be put down to the fault of the Solicitor General. Some of the adjournments have been adjournments at Ms Paczkowska's instance or request and some have been occasioned by her desire at an earlier stage in these proceedings to seek legal representation. Ultimately, she decided that she did not wish to be represented.
33. I am satisfied that the Solicitor General's conduct of these proceedings cannot be impugned or criticised in any way, and I am satisfied that, in principle, the Solicitor General should have his costs of these proceedings. As to the amounts, the sum of £8,591 claimed in the schedule of costs, which does not include any additional amount payable in respect of the adjournment on 1 November is, in my view, a reasonable and proportionate sum, given what was involved in these proceedings and given the very large quantity of material which Ms Paczkowska has put before the court and has therefore had to be responded to and dealt with by the Solicitor General.
34. I therefore order Ms Paczkowska to pay the costs of these proceedings in the sum of £8,591, inclusive of VAT, within fourteen days of today.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge