Neutral Citation Number: [2018] EWCA Crim 1856

Case No: 201802593 A2,
201802867 C4, 201802865 C4
& 201802864 C4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT CANTERBURY
AND CROWN COURT AT LEEDS
Her Honour Judge Norton and His Honour Judge Marson QC
S20170102 & S20180448

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/08/2018

Before:

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON
LORD CHIEF JUSTICE OF ENGLAND AND WALES
and
THE HONOURABLE MR JUSTICE TURNER
and
THE HONOURABLE MRS JUSTICE MCGOWAN

- -

IN RE:

STEPHEN YAXLEY-LENNON **Appellant**
(aka TOMMY ROBINSON)

- -
- -

Jeremy Dein QC and Kerrie Ann Rowan (instructed by **Carson Kaye Solicitors**)
for the **Appellant**
Louis Mably QC as Advocate to the Court

Hearing dates: 18 July 2018

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Approved Judgment

The Lord Burnett of Maldon CJ:

1. To secure a fair trial for some accused of crime it is from time to time necessary for judges to make an order under section 4(2) of the Contempt of Court Act 1981 ("the 1981 Act") postponing the reporting of the proceedings before them. In doing so they must balance the interests of justice in securing a fair trial to an accused together with other interests, including free speech and open justice. Such orders are not lightly made and are subject to the application of strict rules most recently discussed in *R v Sarker* [2018] EWCA Crim 1341 between paragraphs [20] and [36].

2. The appellant, Stephen Yaxley-Lennon, who uses the pseudonym Tommy Robinson for political purposes, was committed to prison for a total of 13 months on 25 May 2018 for breach of an order made under section 4(2) of the 1981 Act. The order had been made by His Honour Judge Marson QC in at Leeds Crown Court in a trial proceeding before him. In doing so the judge activated a suspended committal order of three months detention imposed by Her Honour Judge Norton at Canterbury Crown Court on 22 May 2017 for contempt of court. That arose from his filming in the precincts of the court.

3. The appellant initially appealed in time against only the sentence imposed in Leeds, but in due course expanded the appeal to seek extensions of time to appeal against the findings of contempt in both Leeds and Canterbury, despite his having accepted on both occasions that he was in contempt of court, and also against the sentence imposed in Canterbury. He contends that both sets of proceedings against him were unfair and, in particular, failed to comply with the requirements of the Criminal Procedure Rules ["the Rules"] governing applications to commit for contempt of court. He suggests that the sentences individually and cumulatively were too long.

4. On his behalf, Mr Dein QC points out that the records of proceedings in both Crown Courts treat the sentence as if it were one of imprisonment made under the Criminal Justice Act 2003 following conviction for a criminal offence with the consequences that entails. Those include the regime under which the prisoner is held in prison and release provisions. Those committed for contempt are entitled to be released having served half of the sentence and, by contrast with those sentenced for criminal offences, without condition or licence: section 258 of the Criminal Justice Act 2003. The court records are also inaccurate in referring to "conviction" as if the contempts were criminal offences. We accept that they should refer to findings of contempt and that the contemnor was committed to prison for the period in question (or record the suspended committal order). These criticisms, whilst justified, are of form not substance. A victim surcharge was also imposed which has no application to findings of contempt.

5. Appeals to this Court against any order or decision of a court in the exercise of its jurisdiction to punish for contempt of court are brought under section 13(2) of the Administration of Justice Act 1960. Leave is not required, but the appeal must be brought within 28 days (section 18A of the Criminal Appeal Act 1968) unless time is extended by the court. The challenge to the Leeds finding of contempt is 20 days out of time. With respect to all issues arising from the Canterbury committal, the applications are over a year out of time. The approach to an extension of time to bring an appeal under section 13(2) should be no less rigorous that when considering a similar question in a criminal appeal.

The issues on the findings of committal

6. Part 48 of the Rules governs the procedure to be followed by the Crown Court when it deals with the conduct of a person alleged to have acted in contempt of court. The appellant contends that both the Crown Court in Canterbury and the Crown Court in Leeds proceeded in breach of the provisions of Part 48 of the Rules.

7. First, the appellant's central position is that any failure to comply with the provisions of Part 48 is fatal to a finding of contempt, whether or not there has been an admission, and irrespective of its impact on the fairness of the proceedings. A technical or objectively inconsequential failure to comply with the Rules has the same effect as one that goes to the heart of the matter. In the alternative, he contends that even if the Court were to take a less absolutist approach to the consequences of failure to comply with Part 48 of the Rules then, on the facts underlying this appeal, the proper remedy remains to reverse the decisions of the Courts below.

8. Secondly, the appellant argues that neither court should have proceeded to deal with the alleged contempts in the way they did, that is summarily. The sentence of committal in Leeds was pronounced within five hours of the alleged contempt having occurred; in Canterbury there was an adjournment for two weeks, but still the matter was dealt with summarily rather than being referred to the Attorney General.

9. Thirdly, the appellant contends that at Leeds he was punished for matters falling outside the scope of his material contempt. The contempt related to the postponement of reporting order made under section 4(2) of the 1981 Act. The judge referred to conduct which did not fall within the scope of the section 4(2) order when sentencing and failed, in the course of the proceedings, to identify specifically or put to the appellant the conduct which he was treating as a contempt of court.

10. We are grateful to Mr Dein QC for the full arguments advanced in support of the appeal both in writing and orally; and to Mr Mably QC for his comprehensive arguments as Advocate to the Court. For the reasons which follow, we have concluded that the appellant has no legitimate complaint about what occurred in Canterbury Crown Court. However, we are satisfied that the finding of contempt made in Leeds following a fundamentally flawed process, in what we recognise were difficult and unusual circumstances, cannot stand. We will direct that the matter be reheard before a different judge.

The Facts

Canterbury Crown Court

11. On 8 May 2017, the appellant attended Canterbury Crown Court during the trial of four defendants for rape. The jury had already been sent out to consider their verdicts. There, he carried out filming on the steps of the court and then inside the court building. He did not enter the courtroom itself. He filmed two pieces to camera during the course of which he commented on the trial which he described as being of "Muslim child rapists". His interest in that trial, and indeed the one in Leeds, was apparently sparked by the ethnicity or religion of the defendants by contrast with the alleged victims. He published the footage he had taken on the internet. By his own admission, he had intended to film the defendants but, in the meantime, his activities had been brought to

the trial judge's attention. She took immediate steps to ensure that the defendants were escorted out of the building by another exit. On learning this, the appellant referred in his recordings to "going round their house" with the intention of capturing the defendants on camera there. Notices throughout the court building had made it clear that filming or taking photographs at court amounted to an offence and might also amount to a contempt of court. Furthermore, the appellant had been told by security staff to stop filming and that if he continued he might be committing an offence or be in contempt of court.

12. He was arrested at his home on 10 May 2017 and appeared later that day back at Canterbury Crown Court. Contempt proceedings were initiated against him but were adjourned until 22 May 2017 on which occasion he was represented by both leading and junior counsel. The judge emphasised that the contempt hearing was not about free speech, legitimate journalism or whether one political viewpoint was right or better than another. It was about ensuring that a trial could be carried out justly and fairly. The appellant had used pejorative language in his broadcast which prejudged the outcome of the case and could have had the effect of substantially derailing the trial. The appellant apologised to the court. The contempt, however, arose from filming in the precincts of the court. The judge considered that the seriousness of the contempt called for a custodial sentence. She committed the appellant to a period of three months' imprisonment but suspended for eighteen months. She took into account the risks that the appellant might face if required to serve a term of immediate custody, given his well-known views which are deeply offensive to many. The judge made it clear that if he were to embark upon similar conduct in future it was likely that he would face immediate custody.

13. As we have noted, the proceedings resulted in the generation of documents which were appropriate to a criminal conviction but not for a finding of contempt. They comprised a certificate of conviction for "taping a court record without permission" and the recording of a sentence of three months' imprisonment suspended for eighteen months. Neither was accurate.

Leeds Crown Court

14. On the morning of 25 May 2018, the appellant attended Leeds Crown Court. He recorded a video of himself standing outside the court building which he livestreamed on the internet via Facebook. The recording, which lasted for about an hour and a half, concerned a trial which was the subject of a postponement order under section 4(2) of the Contempt of Court Act 1981. This order, the validity of which is not in dispute, prohibited the publication of any report of the proceedings until after the conclusion of that trial and of a related trial which was yet to take place. It was made on 19 March 2018 and stated:

> "Since it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in these proceedings, the publication of any report of these proceedings shall be postponed until after the conclusion of this trial and all related trials."

15. The reference to "these proceedings" was probably more narrowly drawn than intended, because the concern of the judge was to protect the integrity of two subsequent trials,

the fairness of which would be prejudiced by contemporary reporting of the earlier trials.

16. The jurors had retired to consider their verdicts.

17. The appellant recorded the video close to the entrance used by the defendants and jurors. In it he referred to the trial, the identity of the defendants, the charges against them and to charges which had not been proceeded with against some of the defendants. He had confronted some of the defendants as they arrived at court. The judge was alerted to what the appellant was doing and, shortly after 10.00, the appellant was brought into court. The judge referred to the "ban on publication" and then viewed part of the recording in the presence of the appellant. The appellant offered to delete the video from Facebook. The judge required this to be done because he was understandably concerned that should the jurors come across it the trial might be derailed, quite apart from its potential impact on the trial yet to start. The judge's initial action was both necessary and commendable.

18. The judge informed the appellant that he was going to pursue proceedings for contempt of court and would try to find him a lawyer to represent him later that day. He adjourned at 11.45. Proceedings resumed at 12.18. Over the next four minutes the judge identified for the benefit of counsel, the appellant having been formally identified, his concerns about the appellant's conduct. He explained that he was conducting the second of three trials involving a total of 28 Asian men, with the third expected to start in September. He had made an order "prohibiting the publication of anything relating to these trials". During his livestreaming the appellant had referred to the supposed religion of the defendants, the ethnicity of the alleged victims, the costs of the prosecutions and questioned why publication was prohibited. The judge said he considered it a seriously aggravating factor that the appellant was encouraging others to share the video. "So that is the nature of the contempt", he said.

19. Counsel indicted that he had seen part of the video and said "I anticipate that the instructions I have … will form mitigation … as opposed to a defence to the contempt." There was then a reference to the suspended committal order in force.

20. The court reassembled at 1.10 for one minute when the judge made an order postponing all reporting of the contempt proceedings until the conclusion of the trial and adjourned the matter at counsel's request until 14.00. That hearing began with reference to the appellant's antecedents and was followed by mitigation. At no stage were particulars of the alleged contempt put to the appellant for him to accept or deny them. Through counsel, the appellant expressed deep regret for the "breach of integrity of the court system" which his actions had caused. In mitigation it was emphasised that the appellant had known there was a reporting restriction but had believed that he was not falling foul of the order by what he had done. Indeed, when he first arrived at court that morning he had asked to read the order. In the course of his broadcast the appellant refers to the order and appears to be trying to abide by its terms. Counsel referred to the appellant's wife and three young children. Some further detailed mitigation was advanced, as it had been in Canterbury, as to the dangers the appellant might face if committed to immediate custody.

21. Counsel reminded that the judge that the appellant had throughout referred to alleged offences and that the defendants in the trial might be not guilty. The judge was not

impressed by that argument because the appellant had confronted the defendants as they arrived at the court. Indeed, the opening sequence of the video shows the defendants, in robust terms, refusing to engage with the appellant.

22. Counsel suggested that in referring to the defendants and the charges, the appellant had been reading from a local newspaper report, still freely available online, which predated the reporting restriction, and which identified the defendants and the charges they faced. Counsel went on to acknowledge that what the appellant did in challenging the defendants was provocative and unpalatable. Counsel concluded his mitigation by emphasising that the appellant had not adopted an "I don't care" attitude to the order and did not consciously intend to breach it. He was deeply remorseful.

23. In considering the appropriate punishment, the judge proceeded on the basis that the appellant had admitted his contempt. He continued:

> "This morning, well knowing that the jury in this trial were in retirement and well knowing that there was a prohibition on publication because you referred to it in your video, you stood outside this building where jurors pass in order to get into it and defendants arrive. Over a prolonged period, because this is a long video, you are referring to this case, the previous case and to the subsequent case and, whilst I accept that there are on a number of occasions times when you refer to the defendants being not guilty until the jury say so, the vast majority of what you were saying, particularly at the beginning at the part I saw, was reference to cases like this, to Asian men, to the grooming of 11-year-old girls and the number of cases like this. No one could possibly conclude that that was likely to be anything other than highly prejudicial to the defendants in the present trial. …
>
> If the jurors in my present trial get to know of this video, I will no doubt be faced with an application to discharge the jury."

24. The judge continued by explaining the consequences of that for the alleged victims and the public purse. He explained that publication was being postponed, not prevented, to ensure that all the trials were fair. He repeated that he regarded the encouragement of others to share the video as an aggravating factor and that there had been hundreds of thousands of hits. "It is entirely prejudicial." He regarded custody as inevitable, despite the mitigation, and identified 15 months' as the appropriate starting point for the Leeds contempt which he reduced to 10 months on account of the immediate acceptance of guilt before activating the three months which had been suspended in Canterbury.

25. In our judgment, it is clear from the breadth of these remarks that the judge had regard to matters beyond the breach of the section 4(2) postponement of reporting order. The passage we have quoted from his sentencing remarks shows a wider concern that the appellant's broadcast was prejudicial to the interests of justice in the trial just coming to an end. His reference to a possible application to discharge the jury could not have stemmed from the appellant repeating anything the jury had heard in the course of the trial, but rather from other prejudicial matter. The more generally prejudicial remarks included generically derogative remarks on the ethnic and religious backgrounds of the defendants.

The Law

26. The law of contempt exists to protect the course of proceedings from interference, to safeguard the fairness and integrity of proceedings and to ensure that orders of the court are obeyed. It comes in many forms, both statutory and under the common law. Courts may themselves initiate proceedings for contempt in some circumstances when it is necessary to do so to protect the interests of justice in extant proceedings before that court. But the more general practice is for the Attorney General to be invited to initiate proceedings to safeguard the public course of justice. The enforcement of orders made in private proceedings is generally a matter for the parties.

Contempt proceedings initiated by the court

27. It has long been the case that that a judge may, but not must, deal with a contempt committed in the face of the court summarily, albeit after ensuring a fair hearing. So too may a judge deal summarily with a contempt which amounts to an interference in the course of the proceedings he or she is conducting. The power to punish such contempt arises under the common law in addition to statute. Its purpose is to equip the court with the means to protect its processes and penalise those who seek to impede or subvert them. Common examples include noisy and intemperate interruptions from the public gallery and witnesses improperly refusing to answer questions during the course of giving oral evidence. Because of the need to respond quickly and decisively in such cases, the court is empowered to act summarily and, if necessary, impose of a term of immediate imprisonment. However, this jurisdiction should be exercised sparingly. As Lawton LJ observed in *Balogh v St Albans Crown Court* [1975] Q.B. 73 at page 93:

> "In my judgment this summary and draconian jurisdiction should only be used for the purpose of ensuring that a trial in progress or about to start can be brought to a proper and dignified end without disturbance and with a fair chance of a just verdict or judgment."

28. Even in cases where a court considers it necessary to proceed summarily to deal with a contempt it is often wise, having sorted out the immediate concern, to adjourn the contempt hearing to a later date and sometimes before a different judge. That avoids any question of the judge being judge in his own cause. In most cases concerning an interference with the public course of justice, the judge will refer the matter to the Attorney General.

29. Procedural fairness has always been a requirement in contempt proceedings, including the need to particularise the alleged contempt at the outset. An alleged contemnor must know what it is he has done which is said to amount to a contempt of court so that he can decide whether to accept responsibility or contest the allegation. Whilst that is a common law requirement, it chimes with article 6(3) of the European Convention on Human Rights which requires, amongst much else, that anyone charged with a criminal offence must "(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; and (b) to have adequate time and the facilities for the preparation of his defence."

30. Such safeguards are now to be found in Part 48 of the Rules.

Contempt under section 1 and 2 of the Contempt of Court Act 1981

31. Sections 1 and 2 of the Contempt of Court Act 1981 provide, in so far as is material:

> "1 The strict liability rule.
>
> In this Act "the strict liability rule" means the rule of law whereby conduct may be treated as a contempt of court as tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.
>
> 2 Limitation of scope of strict liability.
>
> (1) The strict liability rule applies only in relation to publications, and for this purpose "publication" includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public.
>
> (2) The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced."

32. Section 7 of the 1981 Act provides:

> "Consent required for institution of proceedings
>
> 7. Proceedings for a contempt of court under the strict liability rule (other than Scottish proceedings) shall not be instituted except by or with the consent of the Attorney General or on the motion of a court having jurisdiction to deal with it."

33. Although section 7 of the 1981 Act gave the court jurisdiction to deal with contempts of this nature of its own motion, the almost invariable course would be for the matter to be referred to the Attorney General. There is a strong hint in the sentencing remarks of the judge in Leeds of concerns about the appellant's broadcast which might more readily have been dealt with under these provisions.

Conduct calculated to interfere with the course of justice

34. The strict liability rule created by the 1981 Act defined and confined a species of contempt of court with a long history in the common law, namely conduct calculated to interfere with the course of justice in proceedings. Some of these might be prosecuted on the court's own motion (contempt in the face of the court being the most obvious example) but as the guardian of the integrity of the administration of justice the Attorney General has often been asked to consider bringing proceedings for contempt.

Section 41 of the Criminal Justice Act 1925

35. Section 41 Criminal Justice Act 1925 provides:

> "Prohibition on taking photographs, &c., in court.
>
> (1) No person shall—
>
> (a) take or attempt to take in any court any photograph, or with a view to publication make or attempt to make in any court any portrait or sketch, of any person, being a judge of the court or a juror or a witness in or a party to any proceedings before the court, whether civil or criminal; or
>
> (b) publish any photograph, portrait or sketch taken or made in contravention of the foregoing provisions of this section or any reproduction thereof;
>
> and if any person acts in contravention of this section he shall, on summary conviction, be liable in respect of each offence to a fine…"

The penalty on summary conviction is a fine not exceeding level 3 on the standard scale.

36. The offence under section 41 of the 1925 Act can be charged as a criminal offence in accordance with the Director's Guidance on Charging, or the underlying behaviour can be dealt with by the court as a contempt in accordance with the summary procedure under Part 48 of the Rules. An example of the latter is *R v Vincent D* [2004] EWCA Crim 1271 where at paragraph [15] Aikens J set out the vice of recording in court buildings. Alternatively, an application could be made to the High Court by the Attorney General.

37. The judge at Canterbury made specific reference to section 41 in her sentencing remarks.

Postponement orders under section 4(2) of the Contempt of Court Act 1981

38. Section 4 of the 1981 Act provides, as material

> "Contemporary reports of proceedings.
>
> (1) Subject to this section a person is not guilty of contempt of court under the strict liability rule in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.
>
> (2) In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

39. Thus, section 4(2) of the 1981 Act provides for an exception to the general rule permitting a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith.

40. This provision is aimed at postponement, not prohibition, of publication of what has happened during court proceedings. It is most frequently deployed where subsequent related trials might be prejudiced by reports of the evidence, argument or outcome of earlier trials. Once all the trials have concluded, the period of postponement will come to an end and full publication can follow without risking adverse consequences to the fairness of the proceedings.

Procedure

41. Where a court decides to deal with an alleged contempt touching a Crown Court trial of its own motion the procedure to be followed is set out under Part 48 of the Rules which provides, as material:

> "CONTEMPT OF COURT BY OBSTRUCTION, DISRUPTION, ETC.
>
> **Initial procedure on obstruction, disruption, etc.**
>
> 48.5.(1) This rule applies where the court observes, or someone reports to the court—
>
> (a) in the Court of Appeal or the Crown Court, obstructive, disruptive, insulting or intimidating conduct, in the courtroom or in its vicinity, or otherwise immediately affecting the proceedings;
>
> (b) in the Crown Court, a contravention of—
>
> …(e) any …conduct with which the court can deal as, or as if it were, a criminal contempt of court…"
>
> (2) Unless the respondent's behaviour makes it impracticable to do so, the court must—
>
> (a) explain, in terms the respondent can understand (with help, if necessary)—
>
> (i) the conduct that is in question,
>
> (ii) that the court can impose imprisonment, or a fine, or both, for such conduct,
>
> (iii) (where relevant) that the court has power to order the respondent's immediate temporary detention, if in the court's opinion that is required,
>
> (iv) that the respondent may explain the conduct,

(v) that the respondent may apologise, if he or she so wishes, and that this may persuade the court to take no further action, and

(vi) that the respondent may take legal advice; and

(b) allow the respondent a reasonable opportunity to reflect, take advice, explain and, if he or she so wishes, apologise.

(3) The court may then—

(a) take no further action in respect of that conduct;

(b) enquire into the conduct there and then; or

(c) postpone that enquiry…"

Postponement of enquiry

48.7.(1) This rule applies where the Court of Appeal or the Crown Court postpones the enquiry.

(2) The court must arrange for the preparation of a written statement containing such particulars of the conduct in question as to make clear what the respondent appears to have done.

(3) The court officer must serve on the respondent—

(a) that written statement;

(b) notice of where and when the postponed enquiry will take place; and

(c) a notice that—

(i) reminds the respondent that the court can impose imprisonment, or a fine, or both, for contempt of court, and

(ii) warns the respondent that the court may pursue the postponed enquiry in the respondent's absence, if the respondent does not attend.

Procedure on enquiry

48.8.(1) At an enquiry, the court must—

(a) ensure that the respondent understands (with help, if necessary) what is alleged, if the enquiry has been postponed from a previous occasion;

(b) explain what the procedure at the enquiry will be; and

(c) ask whether the respondent admits the conduct in question.

> (2) If the respondent admits the conduct, the court need not receive evidence.
>
> (3) If the respondent does not admit the conduct, the court must consider—
>
> (a) any statement served under rule 48.7;
>
> (b) any other evidence of the conduct;
>
> (c) any evidence introduced by the respondent; and
>
> (d) any representations by the respondent about the conduct.
>
> (4) If the respondent admits the conduct, or the court finds it proved, the court must—
>
> (a) before imposing any punishment for contempt of court, give the respondent an opportunity to make representations relevant to punishment;
>
> (b) explain, in terms the respondent can understand (with help, if necessary)—
>
> (i) the reasons for its decision, including its findings of fact, and
>
> (ii) the punishment it imposes, and its effect; and
>
> (c) ...
>
> (5) The court that conducts an enquiry—
>
> (a) need not include the same member or members as the court that observed the conduct; but
>
> (b) may do so, unless that would be unfair to the respondent."

42. The reference to "criminal contempt" in rule 48.5(b)(e) recognises the distinction between criminal and civil contempts of court. It is unnecessary for the purposes of this judgment to explore the detail of the distinction. It is sufficient to note that criminal contempts are those which broadly involve acts that threaten the administration of justice. Civil contempts involve disobedience to court orders or undertakings by a person involved in proceedings. The categorisation does not depend upon the type of proceedings in which the issue arises.

43. For much of the twentieth century, the courts took a rather mechanistic view of the consequences of any failure to comply with the rules relating to the procedure to be followed in cases of alleged contempt. Such rules existed in civil and family proceedings long before they were introduced into the Criminal Procedure Rules. However, in *M. v. P. (Contempt of Court: Committal Order)* [1993] Fam. 167, the Court of Appeal sought to clarify the nature of the balance which must be struck where the

relevant rules have not been followed to the letter. Lord Donaldson identified the following principle at pages 178-9:

> "In all contempt cases, justice requires the court to take account of the interests of at least three categories of person, namely, (a) the contemnor (b) the 'victim' of the contempt and (c) other users of the court for whom the maintenance of the authority of the court is of supreme importance. The interests of the alleged contemnor require that he should have the right to be informed of the charges which he has to meet, to be advised and represented if he so wishes (subject to his being eligible for legal aid or otherwise able to finance his defence), to be given a full and fair opportunity of meeting those charges and, if found guilty of contempt of court, to be informed in sufficiently clear terms of what has been found against him. In all these cases the court has been concerned to ensure that these fundamental requirements are met in the way in which, particularly in the case of the county courts, they are intended to be and should be met. However, we have tended to overlook the fact that they may in some circumstance be met in other ways. Whilst this court should always be quick to identify and condemn any departure from the proper procedures, the interests of the victim and of maintaining the authority of the courts require that in deciding what use to make of its powers under section 13(3) of the Act of 1960, this court should ask itself whether, notwithstanding such a departure, the contemnor has suffered any injustice. It does not follow that he has. Nor does it follow that the proper course is to quash the order. If he has not suffered any injustice, the committal order should stand, subject if necessary, to variation of the order to take account of any technical or procedural defects. In other cases it may be possible to do justice between the parties by exercising the court's power under section 13(3) by making 'such other order may be just.' If the circumstances are such that justice requires the committal order to be quashed amongst the options available is that of ordering a retrial …"

44. This passage was cited with approval by the Court of Appeal in *Nicholls v Nicholls* [1997] 1 W.L.R. 314 in which Lord Woolf MR observed at page 327:

> "The guidance which can be provided for future cases is as follows.
>
> (1) As committal orders involve the liberty of the subject it is particularly important that the relevant rules are duly complied with. It remains the responsibility of the judge when signing the committal order to ensure that it is properly drawn and that it adequately particularises the breaches which have been proved and for which the sentence has been imposed.
>
> (2) As long as the contemnor had a fair trial and the order has been made on valid grounds the existence of a defect either in

> the application to commit or in the committal order served will not result in the order being set aside except in so far as the interests of justice require this to be done.
>
> (3) Interests of justice will not require an order to be set aside where there is no prejudice caused as a result of errors in the application to commit or in the order to commit. When necessary the order can be amended.
>
> (4) When considering whether to set aside the order, the court should have regard to the interests of any other party and the need to uphold the reputation of the justice system.
>
> (5) If there has been a procedural irregularity or some other defect in the conduct of the proceedings which has occasioned injustice, the court will consider exercising its power to order a new trial unless there are circumstances which indicate that it would not be just to do so."

45. It is this guidance which has been adopted and applied by the courts consistently over the last twenty years and, most recently, in *Fort Locks Self Storage Limited v William Deakin* [2017] EWCA Civ 404.

46. The appellant, however, contends that this is not the correct approach to the application of Part 48 of the Rules, any breach of which, it is argued, is fatal to the subsequent committal. In support of this proposition, he relies on the authority of *In re West* [2015] 1 WLR 109, a case in which a barrister was found to have acted in contempt of court in refusing unreasonably to attend a hearing in a criminal case when he had been ordered so to do. His punishment was a fine of £500.

47. The Court of Appeal overturned the finding of contempt because the alleged contemnor had not been served with a notice in advance of the hearing as required by the Rules. Sir Brian Leveson P observed at paragraphs [34] and [35]:

> "34. While Mr West was thus made aware in advance of the hearing that contempt of court would be considered, the notices provided clearly fell short of the procedural requirements set out in the Crim PR. In the normal course, compliance with the strict provisions of the Crim PR can be waived by the parties or the court; in cases of alleged contempt, however, we have no doubt that strict observance of the provisions is essential. As Mr Cox observed, the contempt jurisdiction is a powerful tool which can directly impact on the liberty of the subject. Compliance with the Crim PR allows the "charge" to be fully formulated and beyond doubt; it provides a structure which forms the four corners of what is in issue and it avoids the very criticism that Mr Cox did advance in this case.
>
> 35 In the circumstances, given the significance of the jurisdiction of contempt of court, we have come to the conclusion that this failure of process invalidates the conclusion that the judge

> reached. We recognise that it is likely to have made little difference but we are not prepared to assert that; it is far more important to underline the vital importance, where issues of contempt arise in circumstances of this nature, of following the approach laid down by the Crim PR."

48. Notwithstanding this emphatic reminder of the particular importance of following the correct procedure in cases of alleged contempt, we are satisfied that the court in *West* did not intend to herald a departure from the approach set out in *Nicholls*. The inadequacy of the notice had not formed any part of the grounds of appeal raised on behalf of the contemnor in *West.* He sought to challenge the substance of the finding against him and there does not appear to have been any reference to authority on the point. The issue was raised by the court. Nonetheless, the language of the President does not support the proposition that any and every breach of the rules invalidates a finding of contempt; rather that was the position "in the circumstances of that case".

49. There is no justification for adopting a different approach to a failure to comply with the requirements of Part 48 of Criminal Procedure Rules from a failure to comply with parallel rules in the civil and family jurisdictions. They aim to achieve the similar outcome of fairness in the context of a process which can lead to a loss of liberty. Accordingly, we are satisfied that the approach to failures to follow rules of procedure identified in *Nicholls* should be applied to this and all cases subject to Part 48 of the Rules.

Discussion

50. It is now necessary to apply the legal principles set out above to the proceedings in Canterbury and Leeds respectively.

Canterbury

51. The appellant contends, accurately, that he was not served with a written statement containing the particulars required by Rule 48.7. We note, however, that he was served with four witness statements, two of which had been made by members of the court security staff and two by members of the police force. Each related to the appellant's activities on the day of the alleged contempt.

52. No complaint was made at the adjourned hearing by the appellant's legal team that there was any lack of clarity about the nature of the allegations which he faced. Indeed, from late disclosure made to this Court four days after the hearing of this appeal, it has now come to light that a deliberate tactical decision was made by the appellant's legal advisers at Canterbury to be complicit in the court's failure to comply with Rule 48. Privilege has been waived in respect of the advice on appeal provided by junior counsel in the aftermath of the contempt hearing. It reveals the following:

> "Other criticisms
>
> 26. Part 48 of the Criminal Procedure Rules applies to all contempt proceedings in the criminal courts. Rules 48.5 – 48.8 apply. The judge acknowledged in the first hearing that these paragraphs applied, yet they were not properly followed.

> 27. Rule 48.7 in particular is important:
>
> 48.7 The court must arrange for the preparation of a written statement containing such particulars of the conduct in question as to make clear what the respondent appears to have done.
>
> 28. This rule clearly intends that a separate written statement akin to a charge sheet be prepared. Statements of witnesses such as were served before the hearing are not sufficient. And even if they are, it is not clear what "the conduct" is.
>
> Our approach in the Crown Court
>
> 29. Part of the responsibility for the vagueness of the allegations lies with us, and was deliberate. We knew that spelling out the allegations clearly would not be entirely straightforward for the judge, and that she might not have had the opportunity to give sufficient thought to the details of the contempt hearing.
>
> 30. By the end of the discussion and argument I suspect the judge still felt a certain unease about nailing her colours to the mast. That unease was maintained by the tactical approach we took. On one view, her passing a suspended sentence reflected that.
>
> 31. If we had been more insistent that she properly spell out the specific actions that she proposed to find as contempt, she probably would have done so – and we would have been in a worse position as her sense of unease would have subsided."

53. In this context, we must emphasise the obligations imposed upon each participant in a case to be found in Rule 1.2(1)(c):

> "At once inform the court and all parties of any significant failure (whether or not that participant is responsible for that failure) to take any procedural step required by these Rules, any practice direction or any direction of the court. A failure is significant if it might hinder the court in furthering the overriding objective."

54. It lies ill in the mouth of an appellant to complain of the failure of the court below to follow the appropriate procedural steps when that failure was fully appreciated at the time and remained deliberately uncorrected for tactical reasons and collateral advantage. We ought to record that counsel representing the appellant on this appeal were unaware of this advice at the time of making their oral submissions and was disclosed promptly when it came to their attention.

55. Even without taking that advice into account, we are satisfied that there had been no real prejudice to the appellant in the failure to particularise the Canterbury contempt as

required by the rules. There was no doubt about the conduct which was said to amount to contempt. The appellant unequivocally accepted the conduct concerned and that it amounted to contempt of court in circumstances where he was advised by leading and junior counsel who had ample time, with the appellant, to consider all the evidence. In the circumstances we are satisfied that, by reference to the *Nicholls* approach, there is no justification to interfere with the finding of contempt under this ground, even if the challenge had been brought in time.

56. The next criticism is that the judge failed to make plain in her remarks whether she was exercising powers under section 41 of the Criminal Justice Act 1925 or her inherent jurisdiction in respect of criminal contempt. The matter did not (indeed could not) proceed in the Crown Court as a summary prosecution for a breach of section 41, despite the judge's discussion of the provision. The judge was not sitting as a District Judge (Magistrates Court). On the contrary, the judge expressly stated, "I do find clear evidence of contempt of court in this case". Conduct in breach of section 41 and acts of criminal common law contempt are not mutually exclusive. The fact that the Judge supplemented her finding of criminal contempt with observations to the effect that the appellant would also be guilty of an offence under section 41 does not, therefore, invalidate her conclusions.

57. The appellant takes issue with the judge's choice of language when passing the suspended committal order. It is pointed out on behalf of the appellant that the judge wrongly purported to pass a "sentence" of three months' imprisonment suspended for a period of eighteen months. However, it is also conceded, realistically, that a court has power to suspend a committal to prison for contempt under its inherent jurisdiction. We have no doubt that this is what the court was seeking to achieve and was understood to have achieved by those representing the appellant at the time, who raised no issue. A suspended committal order was particularly apt in this case because, by contrast with most people subject to contempt proceedings, this appellant had no interest in a single set of proceedings but rather was pursuing a campaign. Many who commit contempt of court present no future risk of contempt. This appellant did; and the transcript of the video from Leeds shows he was alive to the risks from his point of view of offending again. The suggestion that the appellant had not been adequately informed that if he acted in contempt of court on a future occasion within eighteen months he would risk the implementation of the suspended period of imprisonment is belied by what he said in his broadcast outside Leeds Crown Court:

> "I have to be super careful you see, because when I was coming to these court cases part of what the police did was they dawn raided me and they put me under a contempt of court charge which could mean that I could face prison or I'm on a suspended sentence because they don't want people reporting…" And later: "…I'm on a suspended sentence, suspended prison sentence which was supposed to prevent me or deter me from reporting on these sort of cases."

58. Against this background we are satisfied that the judge's choice of the terminology of criminal sentencing caused no discernible prejudice to the appellant. Furthermore, the appellant fully appreciated that the suspended committal was liable to be implemented in the event that he committed any further contempt of court. We can see no justification in the complaint that a suspended committal order of three months was too severe.

59. It follows that we are not satisfied that the criticisms of the procedure followed at Canterbury Crown Court or the level of punishment imposed have substance. In the absence of substantive merit, we decline to extend time save only for the purpose of directing that the Certificate of Conviction at Canterbury Crown Court be amended to reflect that on 22 May 2017 the appellant was found to be in contempt of court and that the court ordered his committal to prison for three months but suspended for 18 months.

Leeds

60. A central criticism advanced on behalf of the appellant of the proceedings in Leeds is that the judge was wrong to proceed to deal with the contempt as quickly as he did. We consider that there is merit in this point. In contrast to the procedure followed in Canterbury, where the appellant had over a week to secure representation and to prepare his response to the allegations against him, the appellant at Leeds was commencing a term of imprisonment of thirteen months within five hours of the conduct complained of. Such haste gave rise to a real risk that procedural safeguards would be overlooked, the nature of the contempt alleged would remain inadequately scrutinised and that points of significant mitigation would be missed. Those risks materialised.

61. The judge was right to take immediate steps to mitigate the impact of the appellant's reporting activities by arranging to have him delete his broadcast from Facebook and from the devices of those with whom it had been shared. That done he ought to have taken stock of the procedure to be followed. The transcript shows that no sooner had the judge seen part, but not all, of the footage in the presence of the unrepresented appellant, he decided on his own motion to pursue proceedings for contempt of court and to do so immediately. He appeared to give no consideration to the option of referring the matter to the Attorney General with a view to the instigation of contempt proceedings, nor to an adjournment to enable the matter to proceed at a more measured pace.

62. We recognise that the judge was placed in an invidious position because he was concerned about the integrity of the trial which was almost at its end. The three trials, of which this was the second, were exceptionally difficult and sensitive. Having decided to suspend the deliberations of the jury, it is understandable that he may have felt under some pressure to resolve the issue of the appellant's contempt expeditiously. However, once it had become apparent that the appellant was co-operating in removing the material from the internet, there was no reason why the jury could not have been permitted to resume their deliberations. If there was any doubt about the intentions of the appellant, the judge could have sought an undertaking from or ordered, the appellant not to comment further on the trial or approach the court until the trial (or trials) had concluded.

63. We have set out the chronology of what occurred in paragraphs 14 et seq above. The judge's explanation of the alleged contempt occupied part of a four-minute hearing. He linked the contempt to his order "prohibiting publication of anything relating to these trials", a description which overstates the breadth of the order made earlier under section 4(2) of the 1981 Act. In that short hearing, general particulars only of the contempt were given. By contrast, were a motion brought by the Attorney General suggesting that a publication breached a section 4(2) order (or indeed was in breach of the strict liability rule) the passages said to amount to contempt would be specifically identified.

64. In this case, no particulars of the scope of the alleged contempt were ever formulated, let alone in writing, or put to the appellant. With respect to all those involved in the hearing, there was some muddle over the nature of the contempt being considered, not only in the short exchanges which represented such formulation as there was, but also in the sentencing remarks. It is tolerably clear from the transcript that the thrust of the complaint against the appellant was that he had acted in breach of the section 4(2) postponement order. During the course of his submissions Mr Dein QC accepted that the transcript of his client's broadcast suggested that he had indeed acted in breach of this order in several respects. It is entirely unclear what aspects of the video the appellant, through his counsel, was accepting amounted to contempt in that regard. However, in his sentencing remarks the judge made specific reference to the appellant's generic comments during the course of his broadcast about his perception of the role of religion and ethnicity in offending of the nature alleged in the case in progress. Doubtless, these comments were, at least potentially, capable of amounting to a free-standing contempt of court but they were not in any sense a report on the proceedings themselves. We have observed already the judge's concern that he might face an application to discharge the jury. That cannot have related to the publication of a report of what had occurred before them.

65. Mr Mably QC suggested that the judge may merely have been referring to these general prejudicial comments as an aggravating feature of the more limited section 4(2) contempt. This is a possible, but speculative, inference but would amount to the judge taking into account a finding of contempt of a different sort which had never been canvassed, let alone put, to the appellant. But, in our view, it is clear from the remarks of the judge that he was concerned with, and sentenced for, comments made by the appellant which could not have been covered by the section 4(2) order.

66. In our judgment the failure to follow the requirements of Part 48 of the Rules was much more than a technical failure. In contempt proceedings, touching as they do on the liberty of the subject, there is a need for the contempt in question to be identified with precision and the conduct of the alleged contemnor identified with sufficient particularity to enable him, with the assistance of legal advice, to respond to what is a criminal charge, in all but name. In this case there was no clarity at all about what the appellant was admitting and for what parts of his broadcast he was considered by the judge to be guilty of contempt of court for breach of the section 4(2) order. The confusion was apparent in the mitigation which opened with these words:

> "Of necessity, the exercise in a civilised society of freedom of speech means that individuals … are allowed to engage in behaviour which the majority may find to be offensive and unpalatable, and there may be many who ... have found that which [the appellant] says and does unpalatable, offensive and unpleasant. But … the issue here is, in some respects, an aspect of a civilised society which is even more important and that is the integrity of the court system. [He] now … feels deep regret for the breach of that integrity that his action this morning caused."

67. The breach of an order under section 4(2) of the 1981 Act is concerned with the reporting of what has occurred in court covered by the order. It had nothing to do with any otherwise offensive remarks made by the appellant. These opening remarks of

counsel illustrate what we perceive to have been a common misunderstanding in the very short contempt proceedings of what was in scope, and what was not.

68. A further difficulty arises from the limited opportunity available to the appellant's counsel to investigate matters relevant to mitigation at Leeds Crown Court. Had this been a criminal case, the Court would have been obliged, unless it thought it unnecessary, to obtain and consider a pre-sentence report pursuant to section 156(3) of the Criminal Justice Act 2003. We have little doubt that if a pre-committal report had been requested by the judge it would have been provided. It would be unusual, to say the least, for a man with three young children to be sent to prison at a first hearing without some independent inquiry into his family's circumstances.

69. It is not surprising that the mitigation put forward by counsel was not particularly detailed. Taking into account the constraints under which he was working, short of asking for a much longer adjournment such as the one which had been granted in Canterbury, he could have done little else. In particular, the level of detail which could be provided to the court concerning the potential impact of a custodial term or its duration upon the appellant's wife and children was very limited indeed. Furthermore, there was no opportunity to obtain support from third parties in the form of character references or the like. Of course, a sense of proportion must be retained. Sudden outbursts of misconduct in the face of the court leading to a very short period of detention will not normally merit such circumspection. However, the imposition of a custodial term of considerable length should not usually follow so swiftly upon the heels of the conduct complained of. There is much more material before us which might have an impact on the length of sentence; but in view of our intended course of sending this matter back for a rehearing, as we have foreshadowed, it is unnecessary to refer to it.

70. As with Canterbury, the formal record of the contempt proceedings wrongly suggests that the appellant had been convicted of a criminal offence, rather than found to have been in contempt of court.

71. The order drawn by the court says on its face that it is an "Order for Imprisonment - Made under the Criminal Justice Act 2003". The term of thirteen months is described as a "sentence" and the suspended order of committal made at Canterbury Crown Court is identified as a "suspended sentence". None of this is correct, for reasons we have already given.

72. Although this is a matter of form capable of correction it does have serious consequences. Such errors should not be allowed to occur again. Judges making findings of contempt and sentencing in consequence should check an order or record going out in the court's name for accuracy.

73. Rule 7 (3) of the Prison Rules 1999 provides:

> "Classification of prisoners
>
> 7.(3) Prisoners committed or attached for contempt of court, or for failing to do or abstain from doing anything required to be done or left undone:

> (a) shall be treated as a separate class for the purposes of this rule;
>
> (b) notwithstanding anything in this rule, may be permitted to associate with any other class of prisoners if they are willing to do so; and
>
> (c) shall have the same privileges as an unconvicted prisoner under rules 20(5), 23(1) and 35(1)."

74. Accordingly, the classification of the appellant as a convicted prisoner has had the effect of depriving him of privileges relating to: visits by his doctor or dentist, the freedom to choose what clothes to wear and the absence of restrictions on prison visits and the sending and receipt of letters.

75. We have noted already that under section 258 Criminal Justice Act 2003 a person committed to prison for contempt is entitled to be released unconditionally after serving one half of the term for which he was committed. A convicted prisoner, in contrast, will be subject to release on licence with the attendant risk of recall.

76. Finally, in this regard, the judge imposed a victim surcharge which, pursuant to The Criminal Justice Act 2003 (Surcharge) (Amendment) Order 2016, is payable only in the event of the passing of a "sentence of imprisonment" and not upon a committal for contempt.

77. In summary, the finding of contempt made in Leeds must be quashed because:

    (i) It was inappropriate to proceed immediately on the motion of the court to deal with the alleged contempt after immediate steps had been taken to remove the offending video from the internet. An adjournment was necessary to enable the matter to proceed on a fully informed basis; in any event

    (ii) The failure to comply with Part 48 of the Rules resulted in there being no clear statement, orally or in writing, of the conduct said to comprise a contempt for contravening the section 4(2) order in place;

    (iii) It was unclear what conduct was said to comprise a breach of that order and the appellant was sentenced on the basis of conduct which fell outside the scope of that order;

    (iv) The haste with which the contempt proceedings were conducted led to an inability of counsel to mitigate fully on the appellant's behalf.

78. The finding of contempt must be quashed and all the consequential orders will fall away. We canvassed with counsel what should happen were we minded to allow the appeal against the finding of contempt made in Leeds Crown Court. Mr Dein QC submitted that since the appellant has served the equivalent of four months' imprisonment the matter should not be remitted. We are unable to agree. First, the alleged contempt was serious and the sentence might be longer than that already served

if a finding is again made against the appellant, particularly having regard to the suspended committal order made at Canterbury. Secondly, and in any event, a determination of the underlying contempt allegations in the circumstances of this case is in the public interest.

79. We leave this part of the appeal with some general observations. The transcript suggests that not only were the relevant parts of the Rules overlooked but that no reference was made to the valuable commentaries in either *Blackstone* or *Archbold* on the law relating to contempt of court as it applies in these circumstances, or the relevant procedural aspects. No doubt that was the result of the speed at which matters were taken. It is relatively unusual for those engaged in Crown Court proceedings to have to consider in detail questions of contempt. There is much material readily to hand to enable all concerned to navigate these unfamiliar waters and whenever the circumstances allow the short amount of time needed for review of that material, should be taken.

Assessing the appropriate level of punishment

80. The sentence appeal does not arise as a result of our conclusion on the finding of contempt. Nonetheless, we shall say a few words about the approach to sentence in cases of this sort. The maximum sentence available for the breach of a section 4(2) order is two years' imprisonment. In the short time available to counsel in Leeds he located one authority, *Attorney General v Harkins* [2013] EWHC 1455 (Admin), but it does not lay down any general principles. Of greater assistance would have been *R v Montgomery* [1995] 2 Cr. App. R. 23, in which the Court of Appeal at paragraphs 28D to 29A, laid down guidance in respect of the matters likely to influence the level of punishment appropriate in cases of contempt of court. The particular facts of that case concerned the refusal of a witness to give evidence but the factors material to punishment can readily be adapted and applied to cases involving breach of reporting restrictions. They would usually include:

(a) the effect or potential consequences of the breach upon the trial or trials and upon those participating in them;

(b) the scale of the breach, with particular reference to the numbers of people to whom the report was made, over what period and the medium or media through which it was made;

(c) the gravity of the offences being tried in the trial or trials to which the reporting restrictions applied;

(d) the contemnor's level of culpability and his or her reasons for acting in breach of the reporting restrictions;

(e) whether or not the contempt was aggravated by subsequent defiance or lack of remorse;

(f) the scale of sentences in similar cases, albeit each case must turn on its own facts;

(g) the antecedents, personal circumstances and characteristics of the contemnor;

(h) whether or not a special deterrent was needed in the particular circumstances of the case.

81. Additionally, cases involving a breach of a section 4(2) postponement order will often give rise the following potential consequences:

(a) Trials may have to be abandoned irretrievably;

(b) Juries may have to be discharged and retrials ordered with all the consequent delays and expense;

(c) Witnesses, some of them perhaps vulnerable, may have to face the ordeal of giving evidence for a second time;

(d) The trial judge's decision upon how to manage the trial in response to the contempt may form the subject matter of an appeal which, whether or not successful, will generate additional anxiety, delay and expense.

82. More generally, although there are no authoritative statutory guidelines relating to punishment for contempt because such punishment does not relate to criminal proceedings, we would, by analogy, draw specific attention to the need to give consideration to the twin elements of culpability and harm as identified in the Sentencing Council Guideline of 2004 relating to "Overarching Principles: Seriousness."

Conclusion

83. For the reasons we have given, we are satisfied that the decision at Leeds Crown Court to proceed to committal to prison so promptly and without due regard for Part 48 of the Rules gave rise to unfairness. There was no clarity about what parts of the video were relied upon as amounting to contempt, what parts the appellant accepted through his counsel amounted to contempt and for what conduct he was sentenced. Indeed, we would emphasise that, save for those cases involving obstructive, disruptive, insulting or intimidating conduct in the courtroom or its vicinity or otherwise immediately affecting the proceedings, the judge, having taken such steps as are necessary to bring the misconduct to an end and mitigate its consequences, should usually resist the temptation to initiate contempt proceedings on his or her own motion. In the circumstances of this case, whilst the judge was entitled to deal with the contempt himself, the urgency went out of the matter when the appellant agreed to take down the video from Facebook. There should have been an adjournment to enable the particulars of contempt to be properly formulated and for a hearing at a more measured pace, as had happened in Canterbury. The judge might have referred the matter to the Attorney General to consider whether to institute proceedings. That course would have avoided the risk of sacrificing fairness on the altar of celerity.

84. Even in those cases in which a summary determination is appropriate, whether immediate or delayed, care must be taken to apply Part 48 of the Rules.

85. We therefore extend time to appeal against the substantive committal order of 25 May 2018. We allow the appeal and remit the matter to be heard before a different judge. There is no requirement that it be heard in Leeds (the Crown Court is a single court sitting in many places). We invite the Attorney General to nominate an advocate to appear at the fresh hearing. It is important that the case is presented by someone other than a judge, having taken proper steps to set out the offending conduct, by reference to the video in question. It is apparent that, outside references to the section 4(2) order,

there were aspects of the video which the judge considered amounted to criminal contempt and thus capable of being dealt with by the court of its own motion. Whether those fall within the scope of the alleged contempt will be a matter for the court to determine with the assistance of counsel in the context of a process that follows Part 48 of the Rules.

86. The power to order a re-hearing is found in section 13(3) of the 1960 Act which empowers the court to "make such other order as maybe just" when reversing a finding of committal. Sub section (3) goes on to deal with the question of bail pending appeal. It is silent about bail pending a re-hearing, just as it is silent about a re-hearing itself. It has long been assumed that there is power to grant bail pending a re-hearing: see for example *R v Jales* [2007] EWCA Crim 393 at paragraph [8]. Whether or not there is an inherent power, in our view the language of section 13(3) is wide enough to enable this court to do what is necessary in support of the re-hearing. It is that power under which we act rather than the bail Act 1976. The appellant will be granted bail pending the rehearing. The bail will be conditional. We order that he is not to approach within 400 metres of Leeds Crown Court. The rehearing will be conducted by the Recorder of London at the Central Criminal Court as soon as reasonably possible.

87. We refuse an extension of time to appeal against both the finding of contempt and the sentence of committal imposed in Canterbury Crown Court; but we direct that the court record is corrected as set out in paragraph [59] above.