IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

**[2019] EWHC 241 (QB)**

Nos. HQ00X04986
HQ00X04737

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 31 January 2019

Before:

THE LORD CHIEF JUSTICE, LORD BURNETT OF MALDON

MR JUSTICE WARBY

B E T W E E N :

JON VENABLES
ROBERT THOMPSON — Claimants

- and -

NEWS GROUP NEWSPAPERS LIMITED
ASSOCIATED NEWSPAPERS LIMITED
MGN LIMITED — Defendants

A N D B E T W E E N :

HER MAJESTY'S ATTORNEY GENERAL — Applicant

- and -

RICHARD McKEAG
NATALIE BARKER — Respondents

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**J U D G M E N T**

**A P P E A R A N C E S**

Mr J. HALL QC and MS K. HARDCASTLE appeared on behalf of the Applicant.

Mr K. MONTEITH appeared on behalf of the First Respondent.

Mr M. FORTUNE appeared on behalf of the Second Respondent.

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THE LORD CHIEF JUSTICE :

1 This is an application by Her Majesty's Attorney General to commit the respondents, Richard McKeag and Natalie Barker, to prison for their contempt of court for breach of an injunction granted to protect the identities of the killers of James Bulger. The respondents admit the contempts particularised in the application notices. We are concerned solely with penalty. For reasons which we will touch upon, Mr McKeag is not present in court, but the admission having been made and full mitigation advanced, by consent we proceed to deal with his contempt.

2 On 12 February 1993, James Bulger, a two-year-old toddler, was murdered by Jon Venables and Robert Thompson. The haunting images of James Bulger being led away to his death by two children, themselves aged only 10½, will remain forever in the minds of anyone who saw them then or who has seen them since. The murder shocked the nation, and indeed resulted in much soul-searching. How was it that two boys still at primary school could be capable of such a wicked crime? They were prosecuted for the murder in the Crown Court at Preston before Morland J and a jury and were convicted on 23 November 1993. The judge sentenced them to indefinite detention at Her Majesty's pleasure, as he was obliged by law to do.

3 The criminal age of responsibility in England and Wales was then, and remains, 10, rather younger than nearly anywhere else in the Western world. For example, almost any other country in Europe, these appalling events could not have led to a prosecution. Venables and Thompson would have been dealt with in the care environment, as indeed they would have been if they had been six months or more younger.

4 At trial Venables and Thompson benefited from the presumption in favour of anonymity, which the law confers on all children who are defendants in criminal proceedings. Reporting restrictions were imposed pursuant to section 39 of the Children and Young Person's Act 1993, but after conviction the restrictions were lifted. Their names have been public knowledge ever since, together with photographs taken of them after their arrest. The essential reason for lifting anonymity was that details of the boys' background and upbringing were capable of supporting informed public debate about crimes committed by young children. But the judge was acutely aware of the public interest in the rehabilitation of the boys and of ensuring that they had a good opportunity of rehabilitation. For those reasons, he imposed wide-ranging injunctions restricting the disclosure of other information about the two offenders.

5 By the time they were 18, Venables and Thompson were being considered for release on licence. Yet there had been a sustained level of hostile publicity during the intervening seven years. The two had been the target of hate mail, containing death threats that were taken seriously by the authorities. There was a real concern that on release there would be a risk of physical harm or even death if they could be identified. A plan was developed to provide protection by equipping both boys with new identities, but it was clear that the elaborate (and no doubt expensive) precautions would be compromised if their current appearances or names could be publicised. This was only the second time that such a precaution had been considered necessary for a child murderer.

6 It was in those circumstance that an application for injunctions was made before the President of the Family Division, Dame Elizabeth Butler-Sloss, over five days in November 2000. Various media organisations were the defendants. Dame Elizabeth heard evidence and argument on behalf of the applicants, the newspapers, and the Attorney General

representing the public interest. On 8 January 2001 she granted the injunctions for reasons set out in a judgment reported at [2001] Fam 430.

**The injunctions**

7 Injunctions have been in place ever since and have been modified on occasion. The injunctions prohibit, with some specified exceptions, the publication or solicitation of three main categories of information. First, images or voice recordings made or taken on or after 18 February 1993, or any description which purports to be of the physical appearance of Venables or Thompson, their voices or accents at any time since that date. Secondly, any information purporting to identify any persons having formerly been known as Venables or Thompson. Thirdly, any information purporting to describe their past, present or future whereabouts.

8 Those guilty of heinous crimes do not forfeit their civil rights. It is many centuries since the concept of being an outlaw, literally forfeiting the protection of the law, passed into history in this country. The punishment of offenders is the task of the courts, not of vigilantes. So when those who are known to have committed serious crimes are themselves attacked or threatened with death or serious violence, they may seek the protection of the courts. There was a wealth of evidence discussed in the judgment of Dame Elizabeth which demonstrated that Venables and Thompson were vulnerable to attack and death if their new identities and whereabouts were disclosed. The underlying position has not changed. On two occasions the scope of the injunctions has been reviewed by High Court judges, both following the prosecution of Venables for the possession of child pornography.

9 It has been shown that the threats to the life and physical wellbeing of Venables and Thompson continue and that the importance of preventing the implementation of those threats outweighs competing public interests. The position was reviewed by Bean J (as he then was) in a judgment dated 30 July 2010, which is unreported.

10 He referred to evidence that a person who had been mistaken for Venables had endured five years of danger. He and his family had to flee for their lives, and he had been threatened with being stabbed to death in a pub. The injunctions were maintained.

11 There was no suggestion that the position had changed when the matter was more recently reviewed by Edis J.

12 These injunctions take effect against the world. Compliance is not optional. Anybody who has been served with or knows of the injunctions and, with that knowledge, acts contrary to their prohibitions is guilty of contempt of court and liable to be punished for the breaches. It is essential in the public interest that these principles should be upheld. It is fundamental to the rule of law that orders of the court are obeyed. An injunction of this sort is granted by a court only after careful consideration of all the evidence, the applicable law and arguments advanced by the parties. If it is suggested that the judge has made an error in granting the injunction, there is the possibility of appeal. It is also possible to apply to vary an injunction if circumstances change. There may well be a temptation for individuals, almost always on incomplete or superficial understanding of the position, to believe that they know better and, in a misguided way, to conceive that they are right to undermine the rule of law by breaching an injunction of this sort. There are others who do so appearing to welcome the consequences they might face; and others, particularly in a case of this sort, who are motivated by pure malice to those protected by the injunction, and without any thought for the wider implications. The difference between today and the pre-internet and social media era is the very easy practical way any individual can breach an order of the court and widely

disseminate information. Mr Hall QC for the Attorney General, submits and we accept, that the facility to broadcast and publish material widely makes these breaches worse rather than less serious.

13 The Attorney General has brought motions on a number of occasions to commit for contempt individuals who have acted in breach of the injunctions with which we are concerned. In doing so, the Attorney General acts to safeguard the public interest, and to uphold the rule of law and safeguard the administration of justice.

**Past breaches**

14 In *Attorney General v Harkins* [2013] EWHC 1455, the motion to commit followed the posting on the internet of photographs purporting to show Venables and Thompson as adults. The prompt was the 20th anniversary of the murder of James Bulger. Harkins, knowing that these photographs were not allowed to be shown, published them on his Facebook profile. He had 141 friends, but the images came to be shared many thousands of times. A co-defendant, Liddle, posted similar images to his Twitter account, where he had over 900 followers. He posted statements indicating that he was aware of the injunction but that it was worth the risk. Both respondents removed the images when told to do so. They admitted their contempt and they apologised. After taking account of mitigating factors, including the respondents' good character, this court committed the defendants to prison for nine months but suspended for 15 months. This was said to be exceptional. Lord Thomas of Cwmgiedd CJ emphasised that vigilantism had no place in a civilised society and indicated that any similar publication after the date of his judgment was likely to attract a substantial, immediate custodial sentence.

15 Then came *Attorney General v Baines* [2013] EWHC 4326. Two days after the 20th anniversary of the murder, Baines used his Twitter account to post images purporting to show Venables. He responded abusively to warnings of contempt proceedings and made clear that his intention was indeed to harm Venables. He then re-tweeted the pictures and responded dismissively and scornfully when warned that proceedings might be brought. He dissembled in correspondence and posted a defiant message on Facebook. But in due course he admitted both that the account was his and that he had made the postings. He also eventually admitted that he was aware of the injunction. The court regarded this as a persistent course of conduct far more serious than in the *Harkins* case, with a number of aggravating features, including the flagrancy of the breach, the abuse of those who suggested he was in breach, and the intention to cause harm. Allowing the late admission of guilt, the court committed Baines to prison for 14 months but suspended for 15 months.

**The present applications**

16 The present applications arise from online publications by these two unconnected respondents on and between about 23 November 2017 and March 2018. The Attorney General's application notices were both filed on 11 September 2018. The respondents both admit timely service or receipt of the application notices and supporting affidavits. Neither respondent takes any point on service. Although the papers were not personally served on McKeag, despite many attempts, we are satisfied that he has had adequate actual notice and thus grant the Attorney General's application for an order dispensing with personal service in his case.

17 Neither does either respondent suggest that the Attorney General needs to prove that the injunction was personally served upon them. That is clearly the right stance. It is enough for the respondent to be aware of the existence and nature of the order. In *Harkins* and then

again in *Baines* at para.5, this court made clear its view that it is impossible nowadays for anyone credibly to argue that they do not know about the injunctions protecting Venables and Thompson.

18 Both respondents have admitted the factual allegations against them and that their acts amounted to contempt of court. Ms Barker did so by means of an affidavit sworn on 20 December 2018 Mr McKeag did so by letter from his solicitors dated 17 January 2019.

**The Respondents' conduct**

*Richard McKeag*

19 Mr McKeag was the owner and controller of a publicly accessible website. Between about 23 November and 5 December 2017 he published on that website a lengthy article which he had written entitled "John Venables Pictured - Killer's Identity Revealed". Within the article were four photographs of an adult male purporting to be Venables, which the article described as accurate. The article gave a name purporting to be the name under which Venables had been living, and the place at which he was said to have been working at that time. The content of the article makes it clear beyond argument that this was a publication, the essential purpose of which was to reveal Venables' identity to as wide an audience as possible, in the certain knowledge that such conduct was expressly prohibited by injunction, and with the deliberate and express intention of contravening the court's order. The publication was made in the knowledge or belief that the effect would be, or could include, the need to establish a fresh identity for Venables at substantial public expense. McKeag himself reported that: "Each time the police issue this murdering paedophile with a new identity, it costs the British taxpayer £250,000".

20 Mr McKeag urged others to share his article "far and wide" using all possible means to distribute it across as many websites and fora as possible, "especially if you live overseas". His express intention was to defeat the legal system by mass publication. He sought to justify his conduct on the basis that "the legal system has failed so this is the only chance for the public to take a stand to show the force of people power and force the authorities into a brick wall and stop them from releasing this monster onto the streets of Britain". Mr McKeag was well aware of the risks he ran in publishing this material. He referred to legal action taken against others, asserting that "numerous people have been sentenced to prison for exposing Venables in the past". He maintained that he was prepared to go to prison and face prosecution, expecting that "they will punish me with the full extent/force of the law".

*Natalie Barker*

21 Natalie Barker was the controller of a Twitter account in her own name. Her account had more than 600 followers and was at all times publicly available to users of the internet. On 25 February 2018, Ms Barker poster to her Twitter account a collaged image of an adult man and an adult woman with the caption: "Venables and his fiancée who vows to stand by the paedo child murdering scum". There was a red-face icon indicating anger, and then various hashtag connections. The post was re-tweeted at least 24 times and received 26 likes. In the comments section below her post of 25 February, Ms Barker made various assurances about the accuracy of the picture.

22 On 28 February 2018, Twitter wrote to Ms Barker advising her that the post was unlawful. Her response was to post on her Twitter account a copy of the message she had received, together with the caption: "Oh, dear, looks like Twitter wants me to voluntarily remove the picture of Venables", and other persons she named. When Twitter removed her post, Ms Barker posted: "Twitter has removed this from my account, so re-posting". This post was re-tweeted by other users of Twitter at least 10 times and received 18 likes.

23 On 3 March 2018, Ms Barker asked her followers whether they had heard any names that Thompson could be using and asked anyone who had to send her a direct message. She was inviting readers of her Twitter account to send her a direct personal message about Thompson's identity. Later the same day she posted a report that she had been visited by the police about her posts, ending her message: "Fuck the police, fuck Venables, fuck Thompson, justice for James". That received 20 likes. She posted again stating she did not care about the police coming. She abused the person she suspected of reporting her. This post received 32 likes. Further posts on 3 and 4 March 2018 expressed anger at Venables getting a new identity and protection, seeking to contrast this with the lack of thought she, at least, believed had been given to the family of James Bulger.

24 On 8 March 2018 Ms Barker posted a link to a news story about the *Harkins* case, which reported the suspended sentence to which we have referred. She asked her followers whether, apart from Harkins and Liddle, there were any others who had been prosecuted for sharing pictures of Venables and Thompson.

**Sentence**

*Principles*

25 When sentencing for breaches of an injunction in contempt of court, the court is concerned to punish what is effectively criminal behaviour, but the powers available to the court are not those which may be deployed in the criminal courts. In the first place, maximum penalty for contempt of court is committal to prison for two years: see section 14 of the Contempt of Court Act 1981. Such a committal order may be suspended. There is a power to fine a contemnor but not to impose a community sentence. The sentence is also concerned to demonstrate the determination of the court to protect those who benefit from an injunction, to uphold the rule of law by deterring vigilantism and to encourage compliance with orders of the court. For those propositions, see the discussion in *Harkins* between paras.27 and 29. It falls to us to assess the seriousness of the offending, i.e. the harm caused or risked by what was done, together with the offender's culpability. The penalty must be commensurate with the seriousness of the offending but no more than that.

26 There is no sentencing guideline, for contempt of court. However, in previous cases this court has held that it is appropriate to have regard to the 2008 Definitive Guideline for breach of anti-social behaviour orders: see *Amicus Horizon Ltd. v Thorley* [2012] EWCA Civ 817, and *Doey v Islington Borough Council* [2012] EWCA Civ 1825. We accept the submission of Mr Hall QC, for the Attorney General, that we should have regard to the more recent guideline issued by the Sentencing Council for breach offences, which applies to offences sentenced after 1 October 2018, regardless of the date of the offence. We have regard to it, but it does not apply directly. In having regard to the breach guideline, we have well in mind that it relates to offences which have a maximum sentence of five years' imprisonment rather than two years, and the wider range of sentences available in criminal cases than in cases arising out of alleged contempt. We also have regard to the guideline on the imposition of community and custodial sentences. That is concerned with the approach to suspending sentences of imprisonment when the custody threshold has been passed. We also bear in mind the guideline on reduction of sentence for guilty pleas.

*McKeag*

27 Mr McKeag infringed the injunction by publishing the photographs and the information about Venables' supposed alias and workplace. We have no hesitation in concluding that Mr McKeag's breaches crossed the custody threshold. Nothing short of a custodial sentence would properly reflect the gravity of his conduct. It was planned and deliberate. It was an

attempt to defeat what he knew were the court's objectives. It was persistent in that he continued to publish over a period of two weeks. He intended to defy the court order and, albeit, as Mr Monteith submits, he did not think through the implications of breaching the order, he must accept that the natural consequences of generating the risk will be attributed to what he did. Mr Monteith submits that we should approach the culpability in this case by reference to the guideline by locating it in category B. We are satisfied that the combination of the circumstances to which we have referred, despite the mitigation to which we shall turn, puts culpability in category A. The harm, in our judgment, if we were considering the guideline directly, would fall within category 2.

28 The offending was aggravated by Mr McKeag's encouragement of others to commit similar breaches in the course of an article which he held out as a piece of public interest journalism. It might have influenced others. Mr Monteith reminds us that there is no evidence of very wide dissemination or reading of the article. The nature of the posting is such that that is not capable of verification one way or another.

29 In mitigation, Mr McKeag did remove the article after about two weeks, after a member of his family implored him to do so. He has expressed remorse and appears now to have understood the seriousness of his misconduct. In a letter which he began to write but was unable to complete (but the content of which has been explained to us by Mr Monteith), he made the following points. He expressed deep remorse and apology to the court, coupled with embarrassment at what he had done. He accepted that what he had done was in total disregard of the law. He gave a personal guarantee that such behaviour would not happen again. Finally, he expressed his recognition that justice must be left to the courts rather than to individuals.

30 We have been provided with a bundle of mitigating materials which speak of Mr McKeag's very difficult upbringing in the care system, which resulted from familial abuse, and his serious mental health problems. He attempted suicide in early 2017 and was thereafter detained under the Mental Health Act. On his release, he became a recluse despite the availability of the services of a community mental health team. He effectively shut himself away. He is now 28 years old. He is fortunate indeed to have the support of close family members who seek to care for him in a way more normally appropriate for someone rather younger. In particular they try to monitor his use of the internet.

31 He has not attended court today. He lives in the Pennines, and yesterday was unable to drive to London, as he had initially hoped, because he was snowbound. We note in the materials that have been provided to us that making long journeys is described as generating acute anxiety. Yesterday, we agreed that he might attend by videolink either from a local court or even via Skype. But, unfortunately, overnight Mr McKeag took an overdose and is currently in hospital. That speaks all too loudly of his fragile mental health.

32 Additionally, Mr McKeag has significant physical health problems which restrict his mobility. Other conditions include pancreatitis, which leaves him in constant pain, and he takes a broad constellation of medication. He is in receipt of Personal Independence Payments, which tells us something of his difficulties.

33 The Attorney General recognises that there is strong personal mitigation in his case.

34 In our judgment, the appropriate custodial sentence before discounting for Mr McKeag's admission of guilt would be one of 16 months' custody. In coming to that conclusion, we also take into account that the application was not initiated until a year after the offending and has taken time to come on for hearing. In the meantime, there has been no repetition of the conduct. We allow four months' discount for the admissions, which results in a

custodial sentence of 12 months. We have given anxious consideration to whether, in the light of the observations in *Harkins*, the resulting sentence of 12 months can be suspended. We ultimately have concluded that it can and should be suspended, and we do so for two years.

35 Were it not for the mental and physical health problems suffered by Mr McKeag, we make it clear that we would not have suspended the sentence. He would have gone straight into custody. But we are persuaded that these features, coupled with the other matters that we have identified, tip the balance in favour of suspending the committal order. As a matter of form, the committal order will attach to the first of the breaches identified in the application notice, and we make no order on the balance of the breaches.

*Barker*

36 Ms Barker broke the injunction by purporting to identify Venables by means of a photograph, an alias, and on two occasions by the purported identification of his supposed fiancée. She contravened the prohibition on soliciting information of aliases used by Thompson. She continued offending despite a visit from the police. This was persistent conduct. Her offending is serious, but we consider that in comparative terms it is less serious than that of Mr McKeag. Her publication risked grave harm, but was, fortuitously, comparatively limited. By reference to the guideline, we would categorise the contempt in her case as at the upper end of category B, with the harm in category 2.

37 Her defiance of attempts to stop her breaching the injunction is an aggravating factor. In mitigation, we take account of the evidence that she suffers from depression and anxiety and a borderline personality disorder. She is on appropriate medication for those conditions. They provide some measure of explanation for her vicious, impulsive and stupid conduct, heedless of the consequences for others and careless for the consequences for herself and her family. She has deleted the post and expressed genuine remorse. She has given assurances that she will not engage in such behaviour again. She has abandoned her Twitter account. Her affidavit concludes with this statement:

> "I wish to purge myself of my contempt and give an assurance to the court that nothing like this will ever happen again".

38 There is additional personal mitigation which flows from her family circumstances. Ms Barker is a single mother with three children, separated from the father of the children in very difficult circumstances. The children are aged 15, 12 and 8. Ms Barker and her children live with her own mother, who has a Special Guardianship Order in relation to the children. One of the children is not free from personal difficulty. Although the children would remain in the care of their grandmother were Ms Barker to receive a penalty of immediate custody, they would suffer serious adverse harm.

39 As in Mr McKeag's case, the Attorney General recognises that there is strong personal mitigation.

40 We are satisfied that the offending in Ms Barker's case passes the custody threshold but we are persuaded by Mr Fortune, who appears this morning on her behalf, that we should suspend the committal order. We consider that the appropriate starting point is one of 12 months' custody, which we reduce to eight months to reflect the early and full admissions. We suspend that order for a period of two years. As in the case of Mr McKeag, as a matter of form, the committal order will attach to the first of the particulars of breach identified in the application notice, and we make no order in respect of the balance. We should make it clear that were it not for the position of the children in this case, the committal order would have resulted in immediate custody.

41 In both cases further offending will make the respondents liable to serve the time in custody that we have identified, coupled with any further penalty appropriate to reflect any further contempts. There are no applications for costs made by the Attorney General on this occasion, it being clear that neither respondent would be in a position to meet any order.

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