



Neutral Citation Number: [2019] EWHC 2973 (QB)

Case No: QB2019002461

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/10/2019

**Before:**

**MR JUSTICE CHAMBERLAIN**

-----  
**Between:**

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

**Claimants**

**- and -**

**LUKE MCKAY**

**Defendant**

-----  
-----  
**Mr Edward Rowntree (instructed by Kerman & Co.) for the Claimants**  
**The Defendant did not appear**

Hearing dates: 30 October 2019  
-----

**Approved Judgment 1 of 2**

**Mr Justice Chamberlain:**

- 1 This is an application by the First and Second Claimants, the All England Lawn Tennis Club (Championships) Ltd and the All England Lawn Tennis Ground plc, to commit the Defendant, Luke McKay, to prison for contempt of court. The contempt alleged is breach of an interim injunction granted by Nicklin J on 9 July 2019.
- 2 The following facts are stated in the affidavits of Emma Elizabeth Shaw and Lewis David Glasson, both associate solicitors in the firm of Kerman & Co. I stress that these facts are as alleged by the Claimants. At this stage, I make no findings. The First Claimant runs and issues tickets for the well-known tennis championships at Wimbledon ('the Championships'), which take place during a two-week period in June and/or July of each year. In 2019, the Championships took place between 1 and 14 July. The Second Claimant owns the premises where the Championships take place ('the Premises'). All of the tickets except those issued to debenture holders are Non-Transferable Wimbledon Tickets ('NTWTs'). They are issued on condition that they may not be resold or transferred. If they are, they become void. This means that selling a NTWT is a breach of contract.
- 3 The Claimants became aware that the Defendant had for some time been operating a private Facebook group using the name Peter Raven. On 8 May 2019, he changed the name of the group to 'Wimbledon 2019 tennis ticket enquiries debentures', on which there were offers to buy and sell tickets to the Championships. On 3 July 2019, an agent acting on behalf of the Claimants sent a private message to the Defendant via Facebook offering for sale two NTWTs for Centre Court on 5 July 2019. An exchange took place in which the Defendant made clear he knew the tickets were not for debenture seats and asked for a price reduction. The Defendant in due course purchased them from agents of the Claimants for £250 in cash. Prior to completing the sale, the Defendant referred to 'his boss' and used his mobile telephone to call someone whose caller identification appeared as 'Greg Shep'. That person spoke to the Claimants' agent, who thinks he introduced himself as 'Greg Shepherd'. On 5 July 2019, two other individuals were found at the Premises in possession of these tickets. They had been purchased from a website: [www.onlineticketexpress.com](http://www.onlineticketexpress.com).
- 4 On 9 July 2019, the Claimants issued proceedings against the Defendant, whom they described as a 'ticket tout'. On the same day they applied for an interim injunction. Nicklin J granted the injunction, which was endorsed with a penal notice ('the Order'). It provided materially as follows:
  - '2. The defendant must not carry out, cause or permit to be done any of the following acts, namely:
    - (a) offering or exposing for sale or selling or in any way whatsoever trading in any tickets (except for Debenture Holders' tickets) for the 2019 Wimbledon Lawn Tennis Championships (hereinafter referred to as "Non-Transferable Wimbledon Tickets"); or providing or arranging for the provision by another of Non-Transferable Wimbledon Tickets; or giving away Non-Transferable Wimbledon Tickets whether as part of the package of products and/or services or otherwise;

- (b) offering to buy or buying or in any way whatsoever trading in Non-Transferable Wimbledon Tickets; and
- (c) destroying, altering, moving or otherwise dealing with the documents referred to in paragraph 3 below, save in compliance with that paragraph.

3. The Defendant must:

- (a) forthwith upon service of this Order upon the Defendant, each deliver up to the Claimants' solicitors (c/o Kerman & Co, 220 Strand, London WC2R 1DJ) all and any Non-Transferable Wimbledon Tickets in the Defendant's possession, custody, power or control which have come into their possession without the written consent of the Claimants. For the avoidance of doubt, such tickets as shall be delivered by the defendant to the Claimants' solicitors shall be held by the solicitors at the direction of the Court;
- (b) insofar as the Defendant has the necessary third party contact details (whether such be addresses, email addresses, mobile or landline telephone numbers or otherwise howsoever), within **24 hours** of the service of this Order upon the Defendant or the communication of its terms to him (whichever is the sooner) each write to or communicate with every third party to whom the Defendant has purported to sell or transfer Non-Transferable Wimbledon Tickets and/or associated hospitality, notifying such persons that the Non-Transferable Wimbledon Tickets that they have been sold have at all material times been non-transferable and accordingly are void in their hands;
- (c) By no later than 4.30 pm on Thursday 11 July (unless the Court otherwise orders) Defendant shall make and serve on the Claimants' solicitors by email to [lewis.glasson@kermanco.com](mailto:lewis.glasson@kermanco.com) a signed witness statement and exhibits thereto:
  - (i) Setting out so far as practicable full details of every transaction or contract pursuant to which the defendant whether by himself, or through a third party company, individual or otherwise, as purported to buy or otherwise obtain non-transferable Wimbledon tickets and/or associated hospitality, including but not limited to:
    - (1) full details of the identity of the party with whom the transaction or contract was made including names and addresses and other contact details as well as the full details of others working in concert with the defendant in any such transaction;
    - (2) full details of when and where any transaction in Non-Transferable Wimbledon Tickets took place, between whom on each side, what form it took, whether it was made orally or in writing, what tickets were bought under it, and all other terms of the transaction, exhibiting originals or copies of all invoices and

delivery notes, payments, ledgers and other documents recording or relating to the purchase of any and all Non-Transferable Wimbledon Tickets including bank statements for all accounts held by the Defendant and any business (whether a registered business or otherwise) to which they are associated (formally or otherwise) showing details of payments made by or on behalf of the Defendant or others for whom the defendant has procured the purchase of Non-Transferable Wimbledon Tickets and the names of those to whom the payment was made;

(3) confirming the Defendant's compliance with paragraph 3(a) and 3(b) of this Order.

(d) If the provision of any of this information is likely to incriminate the Defendant, he may be entitled to refuse to provide it, but must set this out fully in the witness statement. The Defendant is recommended to take legal advice before refusing to provide any information referred to in this order. Wrongful refusal to provide the information is contempt of court and may render the Defendant liable to be imprisoned, fined or have his assets seized.'

- 5 The Order was sealed on the same day, Tuesday 9 July 2019. It provided for a return date at 3pm on Thursday 11 July. It did not prove possible to serve the Order personally on the Defendant in advance of this hearing, but a copy of it was posted through the letter box of his property in Beckenham, Kent.
- 6 In the event, the Defendant did not attend on the return date and Nicklin J continued the Order with costs of £15,000 awarded in the Claimants' favour.
- 7 The Order was personally served on the Defendant at his home address on 16 July 2019.
- 8 On 17 July 2019, the Claimants' solicitors, Kermans, wrote to the Defendant to notify him that, because he had not provided the witness statement required, he was in breach of the Order, but offering to extend time for compliance to 5pm on Friday 19 July 2019. The witness statement was not provided by that date; and the Defendant did not contact the Claimants' solicitors at that time.
- 9 On 26 July 2019, the Defendant called Kermans from the Personal Support Unit at the Royal Courts of Justice as he was under the impression that there was a hearing listed on that day. He said that his mother had died, he was in financial difficulty and did not want to be in contempt. The phone was passed to a member of the PSU, who said that the Defendant wanted to settle his costs liability under the Order by way of payment in instalments. The solicitor from Kermans told the PSU member of staff that he should put any offer in writing and Kermans would then take instructions on it. On the same day, the Defendant hand delivered a letter indicating that his financial circumstances were bad since his mother had died, he was facing eviction and was currently awaiting benefits. He said that he would contact Kermans within 28 days with an instalment plan. He also said: 'I do not intend to sell tickets anymore as this is affecting my mental health'.

- 10 On 5 August 2019, Kermans wrote to the Defendant pointing out that he was still in breach of the Order and indicating that the Claimants were prepared to give him until 9 August 2019 to comply with the provision requiring service of a witness statement, failing which the Claimants would apply to commit him to prison. Kermans drew the Defendant's attention to the possible availability of criminal legal aid should such an application be made. On 6 August 2019, the Defendant called Kermans and spoke to two solicitors there. It is not necessary to record the whole contents of the conversation, but it included words to the effect that the Defendant would rather face prison than 'grass up' someone called 'Greg' who he said was a friend.
- 11 On 7 August 2019, the Defendant contacted Ms Shaw to say that he had been struggling to obtain legal aid despite having been to four firms of solicitors. She suggested trying a free legal advice service such as the Free Representation Unit ('FRU'). Later that day, he called back to say that FRU were unable to help and Ms Shaw suggested contacting the Law Society, who might be able to suggest a suitable firm.
- 12 On 8 August 2019 the Defendant sent Kermans a one-page document headed 'Statement of Luke McKay', which was signed and dated but did not contain a statement of truth. It said this:

'I make the following statement regarding tickets I sold for an event at Wimbledon.

I placed an advert on Facebook asking if anyone had any Wimbledon tickets for sale.

This was on the 4<sup>th</sup> July.

I was contacted on Facebook by someone called John Denning offering me two tickets. He said he was a solicitor and had been given the tickets.

He wanted £250 for the pair of tickets.

I agreed to this and arraigned [sic] to meet him at Monument station the following day.

Once I receive the tickets I googled Wimbledon Ticket sales.

Online ticket express was what came up on the search.

The number is +34931221229.

I call them and was told I could get £300 for the tickets. I agreed and they asked me to meet one of the reps at London bridge station. I met a representative of theirs and I was paid £300 pounds cash for the pair of tickets.

I know that it was wrong for me to do this an [sic] apologise and assure you that it will never happen again.'

- 13 On 13 August 2019, Kermans wrote again to the Defendant, pointing out three deficiencies with the statement he had provided on 8 August. First, it was not clear whether he had purchased and/or sold and/or transferred any other NTWTs than the two mentioned. This needed to be made clear. Second, the Order required him to provide details of others working with him in the purchase, sale and transfer of NTWTs; and the statement did not provide this information. It was pointed out that in the initial application for an injunction, the court had been given evidence that the Claimants' agent had spoken to a third party who identified himself as the Defendant's 'boss'; that Kermans understood this to be 'Mr Greg Shepherd'; and that paragraph 3(c)(i) of the Order required him to set out 'full details of others acting in concert with you'. Third, there was no statement of truth. The Defendant was advised to seek advice on the consequences of signing a statement of truth. Kermans required the Defendant to provide a fully compliant witness statement by 5pm on 20 August 2019 and pointed out that an individual in a separate matter had recently been committed to prison for 26 weeks for a failure to provide a witness statement in similar circumstances.
- 14 On the same evening (13 August 2019), the Defendant wrote three emails to Ms Shaw. In the first, he swore on his grandson's life that he had not bought or sold any other NTWTs and pointed out that he had just lost his step mother to cancer and was grieving. The second email attached a video of his family. The third contained the statement: 'Greg shepherd has nothing to do with this'.
- 15 Ms Shaw called back on 14 August 2019 but received an automated message. She therefore emailed. The Defendant emailed back on 15 August saying that he had just had to deal with the funeral and would call back on Monday (19 August 2019). He did not, so Ms Shaw telephoned him on 20 August 2019. He again indicated that he wished to obtain legal advice but had been unable to do so. On 21 August, Ms Shaw called the Defendant again and gave him the details of Mary Ward Legal Centre in Holborn. On the same day (21 August 2019) he emailed Ms Shaw to say that he was going to get his brother to help him with the statement and requested to be given until 5pm on Tuesday 27 August 2019 to complete it. On 22 August 2019, Ms Shaw sent a letter agreeing to this extension and setting out in clear terms what was required in the statement.
- 16 On 27 August 2019, the Defendant wrote to Ms Shaw in these terms: 'I'm sorry but it is not in my interest to sign a statement of truth – without sound legal representation.' He continued, inviting Ms Shaw to 'please take me back to court' where he would 'ask the judge to grant me legal aid'.
- 17 There was no further communication until 5 September 2019, when the present application was issued to commit the Defendant to prison for breach of the Order. With the permission of Master Eastman, that application was personally served on the Defendant on 24 September 2019, when the Defendant attended a hearing before the Master of the Claimants' application for default judgment against him.
- 18 Prior to the hearing at 10.30am today, I caused an email to be sent to the parties inviting submissions from both parties on three questions:
  - '(a) whether the court has power to make a representation order under s. 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Criminal Legal Aid (Determinations by a Court and Choice of

Representative) Regulations 2013 (SI 2013/614); (b) whether the court should exercise that power; (c) if so, what directions should be given to enable representation to be sought'

I drew attention to three authorities, which I shall consider in greater detail in a moment.

- 19 The Defendant did not appear at 10.30am today. I was told by Mr Rowntree, who appears for the Claimants, that his instructing solicitor had contacted the Defendant by telephone and the Defendant had said he would not be attending, but a friend would bring a letter explaining why. A man saying he was the Defendant's friend appeared with a letter addressed 'To whom it may concern' and gave it to those representing the Claimant. The letter was apparently from a Dr D. Patel of the Cator Medical Centre in Beckenham and purported to be about the Defendant, whom it identified by name, date of birth address and mobile telephone number:

'The above patient who is registered at our practice is under review with ongoing mental health issues of low mood, agoraphobia and panic. He is currently receiving medication for this and tells me that he finds it hard to leave the house and travel due to his symptoms. I would be grateful if you would take this into account with his upcoming court hearing.'

- 20 Mr Rowntree invited me to issue a bench warrant for the Defendant's arrest. I indicated that I would not do so immediately, but instead would put the case back to 2pm, inviting Mr Rowntree's instructing solicitors to communicate to him by telephone and email that his attendance was required, that I would consider issuing a bench warrant if he did not attend and that it was in his interests to attend because among the issues I wished to consider was whether I should make a representation order to enable him to be represented and if so what further directions I should give to enable the committal application to be dealt with at a later date once he had obtained representation. I made clear that I had considered the letter handed to the Claimants' representatives today but that that letter did not give sufficient detail about the Defendant's condition to enable me to reach the view that it would be detrimental to his mental health to proceed with the hearing and also did not give any details about his prognosis, which would enable me to decide how to deal with this matter going forward.
- 21 The Defendant did not appear at 2pm and Mr Rowntree showed me an email and WhatsApp messages sent to him summarising what I had said.
- 22 In deciding how to proceed today, I have borne in mind in particular two decisions of the Court of Appeal. In the first, *Haringey v London Borough Council* [2017] 1 WLR 542, the Court allowed an appeal against a committal order made at a hearing in the county court at which the Defendant had not been represented. McCombe LJ (with whom Richards and Lewison LJ agreed) noted at [39] that the right to a fair trial at common law and under the ECHR was squarely engaged on any application to commit an individual to prison and that legal aid was in principle available. On the facts, the order had been made after a hearing which suffered from a serious procedural irregularity and was therefore set aside.
- 23 Very recently, in *O (Committal: Legal Representation)* [2019] EWCA Civ 1721, the Court of Appeal allowed an appeal from a High Court committing the appellant to prison

for breach of an order. At [2], Peter Jackson LJ (with whom Moyland LJ agreed) said this:

‘The case is a reminder that respondents to committal proceedings are entitled to be provided with legal representation if they want it and that they will qualify for non-means tested legal aid. There is an obligation on the court to ensure that this protection is available. Where this does not happen any resulting order for committal may be procedurally irregular.’

- 24 As I have said, Ms Shaw of Kermans has very commendably taken the trouble to explain to the Defendant, on a number of occasions, that he should seek legal assistance and has helpfully pointed him in the direction of places where he might obtain it. She is not to be criticised in any way. However, the authorities I have mentioned indicate that there is a serious lack of clarity about how to go about making an application for legal aid for representation in respect of a committal for breach of an order made in civil proceedings.
- 25 The uncertainty arises in the following way. Section 16 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provides that legal aid for the purposes of criminal proceedings is to be available to an individual if he is a ‘specified individual’ and ‘the relevant authority’ has determined that he qualifies for representation. There is no doubt that an individual facing proceedings for committal for breach of a civil order is a ‘specified individual’. This is because, although only one type of contempt proceedings (contempt in the face of the court) is specified in s. 14 of the 2012 Act, civil contempt proceedings are treated as criminal for the purpose of Article 6(3) of the ECHR and proceedings so treated are treated as criminal by reg. 9(v) of the Criminal Legal Aid (General) Regulations 2013.
- 26 The real issue is not whether legal aid is available, but who has the power to grant it: the court or the Legal Aid Agency. Regulation 7 of the Criminal Legal Aid (Determinations by a Court and Choice of Representative) Regulations 2013 governs determinations by the High Court. Looking at that regulation on its own, the reader might well conclude that the High Court’s power to make a determination that a person is entitled to legal aid arises only in the cases there set out, which do not include contempt proceedings for breach of a civil order. However, in *King’s Lynn and West Norfolk BC v Bunning* [2015] 1 WLR 531, Blake J held – accepting submissions made to him on behalf of the LAA and having considered the statutory scheme in considerable detail – that reg. 7 does not preclude the High Court from making a determination in such a case. That decision was followed by Sir James Munby, President of the Family Division, in *Chelmsford County Court v Ramet* [2014] 2 FLR 1084; and it was at least assumed by the Court of Appeal to be correct in *Brown*.
- 27 In *H v T (Committal Appeal: Notice on Orders)* [2018] 4 WLR 122, Baker J recorded submissions made to him by the Legal Aid Agency that Blake J’s conclusion in *Bunning* (expressly accepting submissions made to him by Agency) was wrong; and it was the Agency, not the court, which had power to make legal aid determinations in contempt proceedings for breach of a civil order. He did not in the event have to determine that question.
- 28 The current situation presents two problems. The first is that the Defendant has clearly indicated his wish to be represented. He claims to have sought representation and been



unable to obtain it. I am in no position to make findings about why, but the authorities I have mentioned provide ample support for the proposition that even lawyers, never mind litigants in person, may find it difficult to understand how to go about obtaining legal aid in cases like this. Both Blake J in the *King's Lynn* case and McCombe LJ in the *Haringey* case expressed the hope that improvement would be made to the drafting of the legislation to make it clearer who has the power to make legal aid determinations in civil contempt cases. No such improvements have been made. Instead, it would appear that the Legal Aid Agency now contends that the submissions it made to Blake J (and which were accepted by him) in the *King's Lynn* case were wrong. The lack of clarity creates a real problem for individuals like the Defendant who seek legal representation and for courts dealing with civil contempt cases. I consider that the issue needs to be determined and I am minded to give directions for a hearing, on notice to the Legal Aid Agency, to determine it.

- 29 The second problem, however, is that the Defendant can only benefit from legal representation if he is prepared to engage with legal representatives and the court. As I have said, the doctor's letter handed up today provides no satisfactory basis for concluding that it would be inappropriate to proceed with the current hearing. Quite apart from the fact that there has been no communication direct from the Defendant attesting to the authenticity of the letter, and even allowing for well-known the pressures on GPs, it does not in any event satisfy the guidance given by Norris J in *Levy v Ellis-Carr* [2012] EWHC 63 (Ch) at [36] and expressly approved by the Court of Appeal in *Forresters Ketley v Brent* [2012] EWCA Civ 324:

'The medical evidence required to demonstrate that a party is unable to attend a hearing and participate in the trial . . . should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all resultant recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition, which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is independent opinion after proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case).'

I have also borne in mind the comments of King LJ (with whom Lloyd Jones LJ agreed) in *Emojevbe v Secretary of State for Transport* [2017] EWCA Civ 934, which is referred to in the White Book at p. 1253. Even making due allowance for the pressures on busy GPs, Dr Patel's letter does not say that it would be impossible for the Defendant to attend court, nor that it would be detrimental to his mental health if he did so, nor does it identify the particular features of the Defendant's condition which would make attendance difficult so as to enable the court to form a view about whether measures short of an adjournment could be put in place to alleviate those difficulties. More importantly it gives no prognosis which would enable the court to make directions for the hearing of the application at a later date.

- 30 In my judgment the proper way to accommodate and address these two problems is to make the following directions:
- (1) that this application be adjourned to be listed before me at 10.30am on Friday 8 November;
  - (2) that the Legal Aid Agency be notified of the hearing and of this judgment and invited to attend to make submissions on the question whether the court has power to make a legal aid determination in the Defendant's favour;
  - (3) that the Defendant must attend the hearing or by 4pm on Wednesday 6 November 2019 file at court and serve on the Claimants' solicitors evidence in writing from a medical practitioner:
    - a. giving details of the practitioner's familiarity with the Defendant's medical condition (detailing all resultant recent consultations);
    - b. identifying with particularity what the patient's medical condition is and the features of that condition, which (in the medical practitioner's opinion) would prevent participation in the trial process; and
    - c. providing a reasoned prognosis.
- 31 I should make it very clear at this stage that, if the Defendant does not comply with direction (3) above, it is likely (subject of course to anything that emerges between now and then) that that a bench warrant will be issued authorising his arrest.