



**UT Neutral citation number: [2023] UKUT 00075 (IAC)**

**YSA (Committal for contempt by media)**

**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Heard at Field House**

**THE IMMIGRATION ACTS**

Heard on **27 July 2022**  
Promulgated on **14 February 2023**

**Before**

**THE HONOURABLE MR JUSTICE LANE, PRESIDENT  
MR C M G OCKELTON, VICE PRESIDENT**

Between

**YSA**

Applicant

and

**ASSOCIATED NEWSPAPERS LTD**

Respondent

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Interested Party

**Representation**

**Adam Speker KC** for the **Applicant**

**Jude Bunting KC** and **Sarah Palin** for the **Respondent**

**Jack Anderson** for the **Interested Party**

1. *The Upper Tribunal has the contempt powers of the High Court derived from s 25 of the Tribunals, Courts and Enforcement Act 2007. Save where required by statute, the jurisdiction does not require the participation of the Attorney-General, even where the alleged contempt is a 'criminal' or 'public interest' one.*
1. *In the absence of specific procedures laid down by Tribunal Procedure Rules, the Tribunal will require applications to commit for contempt to adopt, so far as possible, the same practices and safeguards as are found in CPR part 81, so as to ensure fairness to the respondent, and economy of resources.*
2. *Permission is required, and must be sought, when the application is made other than 'in existing proceedings'. An application is not made 'in existing proceedings' if it is an application made in the course of an appeal under s 82 in relation to an alleged breach of an order made in Judicial Review proceedings by the same claimant.*

### **DECISION AND REASONS**

1. This is an application by the applicant against the respondent. In the words of the application itself, it is an application "to the Tribunal to bring proceedings against the R for contempt pursuant to Tribunals, Courts and Enforcement Act 2007, s.25(2)(c) because of the respondent's repeated breach of anonymity orders made in the A's favour by this Tribunal and by the FT."
2. The application was made on 5 July 2022 and was intended by the applicant to be considered and decided in conjunction with the applicant's appeal to the Upper Tribunal. The Tribunal considered, however, that it was desirable that this application be considered separately from the appeal and thus it was listed to be heard before us. We are very grateful to Mr Speker KC and Mr Bunting KC, who were not instructed in the appeal, for the comprehensive submissions which they have made, in writing and orally. The Secretary of State, the defendant in the appeal, has indicated that she takes no position on this application, and accordingly we did not hear from Mr Anderson.
3. The orders invoked by the applicant are as follows. First, during judicial review proceedings before this Tribunal, JR/5428/2019, the following order was made on 22 October 2019 by UTJ Perkins:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the applicant. Breach of this order can be punished as a contempt of Court. I make this order because I [am] concerned that publicity could cause the applicant real harm, given his apparently precarious mental health. The need for this order can be reconsidered on application and when any further order is made."

4. The application for judicial review was dismissed, following which the respondent to the present proceedings made an application for the anonymity order to be lifted. That application was heard by Foster J who ordered on 10 July 2020 that the anonymity order made by UTJ Perkins on 22 October 2019 “be continued until further order”.
5. Secondly, anonymity orders have been made in the context of the applicant’s most recent appeal. The First-tier Tribunal remarked in its decision that “an anonymity order has been in place throughout the life of the appellant’s appeal to date”, which it proposed to continue, “out of an abundance of caution and in case we are wrong in our assessment of the risk”. It concluded its decision with an order as follows:

“Unless and until a Tribunal or Court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to Contempt of Court proceedings.”

The decision, and that order, are dated 8 March 2022.

6. The chronology is of some importance in this case, and before setting out the allegations made against the respondent, we must outline the context. The applicant came to the United Kingdom in 2003 and was recognised as a refugee. In 2008 he was sentenced to a total of 9 years imprisonment for rape and conspiracy to rape, having been found guilty following a trial. Subsequently, on 21 April 2015, following the various notifications of liability, the Secretary of State made a decision revoking the applicant’s refugee status, refusing his human rights claim and making a deportation order against him.
7. The appellant has challenged those decisions, and as a result there has been a series of proceedings in the Tribunals and in the High Court. The respondent has taken an interest in publishing details of the applicant’s cases, and his history, following a particular incident in October 2018.
8. So far as we are aware, all the court and tribunal proceedings relating to the applicant, including the criminal trial to which we have referred, a further criminal trial in relation to an offence committed in prison, and tribunal and court proceedings both before and after the anonymity orders to which we have referred, were held in public. It does not appear to be asserted that any anonymity orders, other than those to which we have already referred, were made or are relevant to these proceedings.

### The alleged breaches

9. The breaches of the anonymity orders identified in the application, and elsewhere referred to as “counts” are as follows:
  1. An article published in the Mail on Sunday and the MailOnline on 24 August 2019, before UTJ Perkins’ order and

updated on 12 November 2019, that is to say after that order, which named the applicant and included a photograph of him, and said of him that “the rapist is applying for a judicial review and still denies his appalling crime.”

2. An article published in the Mail on Sunday and the MailOnline on 9 September 2019, naming and including a photograph of the applicant and saying, referring to him by name, that his “grounds for judicial review included psychiatric evidence that he posed a “high suicide risk”.”
  3. An article published in the Mail on Sunday on 18 October 2020, naming and including a photograph of the applicant, indicating an estimated cost of his representation and recording that an anonymity order had been imposed preventing reporting of two other developments in his case.
  4. An article published in the Mail on Sunday on 1 February 2020 giving the appellant’s name, indicating that he was part of a gang who subjected a 16 year old girl to a terrifying ordeal and that he was applying for judicial review in a bid to block his deportation to Somalia.
  5. An article published in the Mail on Sunday on 10 May 2020 naming the appellant and including a photograph, referring to the judgment of the Supreme Court referring to AM (Zimbabwe) v SSHD as having “delayed” his case, and to Foster J having asked for submissions on that decision.
  6. An article published in the Mail on Sunday on 19 June 2022, not naming the applicant but containing information which would enable his identity to be revealed by an internet search and saying that in 2019 the Upper Tribunal had “again” rejected the applicant’s stay in the United Kingdom, describing his case as “absolutely hopeless”; had made a determination against him in May 2020, following which there had been another appeal; reporting what Counsel for the Secretary of State had said during an appeal “earlier this year [2022]”, and indicating that the Mail on Sunday had failed to dislodge an order for his anonymity.
10. There were detailed submissions before us about jurisdiction and practice and it seems to us advisable to look at the matter from first principles.
11. Disobedience of an order of a court is a contempt of that court. It is an interference with the due administration of justice, because it is a challenge to the fundamental supremacy of the law: Johnson v Grant [1923] SC 789 at 790 per Lord President Clyde. In its discussion of the forms of contempt liability, the White Book (2022 edition, 3C-17) summarises the position so far as relevant for present purposes as follows:

“Reasonable persons may reasonably disagree as to what conduct should incur liability for contempt of court. But it is likely that they will agree that it should include conduct in the form of disobedience to a court judgment or order (whether made in the course of, during, at the conclusion of, or after proceedings) by a person subject to it. The administration of justice will be rendered ineffectual if such conduct did

not incur liability of a contempt of court and the consequences that flow from that.”

12. We did not understand the respondent to take a contrary view. On behalf of the respondent, Mr Bunting sought to draw what is a classic, but far from clear, distinction between “criminal” and “civil” contempts, largely for the purpose of arguing that this Tribunal either does not have, or should not exercise, a power, at the instance of an individual, to commit for a criminal contempt. His submission was that a criminal contempt ought to be pursued only by the Attorney General, and only in the High Court, perhaps only in a Divisional Court. He reminded us that the present proceedings do not have the fiat of the Attorney General, and that the Attorney General specifically declined to institute proceedings in relation to what is now Count 3.

13. The distinction between criminal and civil contempts clearly exists; but is far from easy to draw from the authorities cited to us. We were referred to a number of cases, including Attorney General v Crosland [2021] UKSC 15, and Re Yaxley-Lennon (No.2) [2019] EWHC 1791 (QB) where proceedings brought by the Attorney General established that the contempt in question was a criminal contempt. We were referred also to Attorney-General v Leveller Magazine Ltd [1979] AC 440, where Lord Diplock said this at 449:

“[A]lthough criminal contempts of court may take a variety of forms they all share a common characteristic: they involve an interference with due administration of justice either in a particular case or more generally as a continuing process. It is justice itself that is flouted by Contempt of Court, not the individual court or judge who is attempting to administer it.”

14. It is, we think, fair to say that those words describe features that criminal contempts have in common with one another, without specifically indicating that the possession of those features makes a contempt criminal and not civil. That too was a case brought by the Attorney General; and such circumstances do not readily provide an opportunity for a Court to determine authoritatively that the proceedings would not have been good if not brought by the Attorney General. There is an interesting discussion by Sir Robert Megarry V-C in Clarke v Chadbourne [1985] 1 WLR 78. That was a case where during the miners’ strike, a group of individuals had obtained an injunction relating to the conduct of a forthcoming meeting of the National Union of Mineworkers, but the meeting had proceeded in what was described as “defiance” of the order. The Learned Judge was in no doubt that a contempt had been established, and, after some doubt, concluded that it would be right to make a declaration that the relevant decisions of the meeting were void. He went on at 82-83 to say this:

“It is perhaps not generally realised that where the party who has obtained an order from the Court is content that it should not be performed, the Court, generally speaking, has no interest in interfering so as to enforce what the litigant does not want enforced. The order is made so as to assist the litigant in obtaining his rights, and he may consult his own interests in deciding whether or not to enforce it. If he

decides not to, there may in some cases be a public element involved, and the Attorney General will judge whether the public interest requires him to intervene in order to enforce the order. If neither the litigant nor the Attorney General seeks to enforce the order, the Court will act of its own volition in punishing the contempt only in exceptional cases of clear contempts which cannot be dealt with, cases in which, in the words of Lord Denning MR “it is urgent and imperative to act immediately (Balogh v St Albans Crown Court [1975] QB 73, 85). ... I should add that I speak only of disobedience to orders and not, for example, of contempts committed in the face of the Court”.

15. The remainder of the discussion indicates the possibility of an enlarging of the Court’s role in elevating the rule of law in cases where neither the person who has obtained the order, nor the Attorney General, choose to attempt to enforce the order. But, for the purposes of the proceedings before us, the important part is that the Court saw the possibility of enforcement by the Attorney General as existing in some cases, but not as excluding an action by the person who had obtained the order for his benefit.
16. We were referred to one case in which it was concluded that the Crown Court (which does have powers to commit for contempt) had acted without jurisdiction in purporting to do so. That was Taylor v Topping, unreported, 15 February 1990 (DC). The Court, Mann LJ and Brooke J, was dealing with an application relating to a contempt claim “relating both to the common law and to the strict liability rule”. The proceedings had become academic by the discharge of the alleged contemnor, but there was a procedural point of some interest, which the Court decided. So far as the strict liability consent was concerned, procedure was governed by s 7 of the Contempt of Court Act 1981, providing that such 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”. The Attorney General had not given his consent, and the decision of the Crown Court to proceed did not give it the required jurisdiction save in the case of contempt in the face of the Court or a contempt which fell under the dicta in Balogh to which we have referred. The Crown Court accordingly had no jurisdiction to deal with the strict liability contempt.
17. Although Mr Bunting prayed this decision in aid of a submission that the Crown Court “did not have jurisdiction to consider a common law or strict liability contempt brought in respect of the publication of a book”, it seems to us that both members of the Court confined their observations to the strict liability contempt, and not to the common law contempt to which the publication might also have given rise.
18. A number of other decisions, to which we were referred, including re Lonrho plc [1990] AC 154, and DPP v Channel 4 Television Co Ltd [1993] 2 All ER 517, indicate that proceedings in relation to a criminal contempt brought against the media should be heard in the High Court, specifically in a Divisional Court. The difficulty is, however, that even if that remains the position, it can be only advisory in the absence of any restriction on

the jurisdiction of other courts to deal with contempt. As we understand the matter there are no proceedings in which the jurisdiction of the High Court can be exercised only by a Divisional Court, although of course within the High Court business may be assigned to a Divisional Court without thereby bringing the proceedings to a halt. In Simmonds v Pearce [2017] EWHC 3126 (Admin), contempt proceedings against a trustee in bankruptcy were begun, correctly as the Court decided, in the High Court and assigned to a Divisional Court. The latter ruled, however, at [31] that in future such proceedings should be dealt with by “a judge” of the Chancery Division. This decision seems to put an end to any suggestion that “free-standing” contempt proceedings are, or should be, reserved to a Divisional Court. The difficulty with Mr Bunting’s submission remains, however, that where proceedings are brought not in the High Court but in another court that has jurisdiction to deal with the contempt, there is no authority depriving the latter court of jurisdiction on the basis that it is not the High Court or a Divisional Court.

19. For these reasons we are not persuaded that the characterisation of the allegations against the respondent as allegations of a criminal contempt are sufficient either to show that proceedings ought to lie only at the instance of the Attorney General or that they ought to be entertained only in the High Court. The question rather is the prior one of whether this Tribunal has jurisdiction to deal with the present application.
20. The Upper Tribunal is a creature of statute. It could obtain jurisdiction to commit for contempt only if given that jurisdiction by statute. It is suggested that there are two routes by which that jurisdiction vests in the Upper Tribunal.
21. The first is that by s 3(5) of the Tribunals Courts and Enforcements Act 2007, “the Upper Tribunal is to be a superior court of record”. In R (Cart) v Upper Tribunal [2009] EWHC 3052 (Admin) Laws LJ at [75] remarked that a superior court of record has power to punish for contempt and that that was one of the characteristics which Parliament may be taken to have attributed to the Upper Tribunal by s 3(5). On behalf of the respondent, Mr Bunting submitted that that observation was obiter and on a matter which had not been the subject of any submissions. We should hesitate long before ignoring even an unsubstantiated observation from such a source, but in truth, Cart does not assist the applicant. There is a world of difference between having the power to commit for contempt in the face of the Court (as Laws LJ’s reference to ex parte Fernandez (1861) 10 CB (NS) 28 suggests he may have had in mind) on the one hand, and power plenipotentiary to adjudicate on any contempt of court, whether or not in relation to proceedings before the Upper Tribunal, on the other. Showing (and admitting) that the Upper Tribunal has, as a superior court of record, some contempt jurisdiction, does not demonstrate that it has jurisdiction to deal with the present application.
22. The alternative, or additional, route by which the Upper Tribunal may obtain jurisdiction in Contempt of Court proceedings is s 25 of the 2007 Act:

“25. Supplementary powers of Upper Tribunal

- (1) In relation to the matters mentioned in subsection (2), the Upper Tribunal –
  - (a) has, in England and Wales or in Northern Ireland, the same powers, rights, privileges and authority as the High Court, and
  - (b) has, in Scotland, the same powers, rights, privileges and authority as the Court of Session.
- (2) The matters are –
  - (a) the attendance and examination of witnesses,
  - (b) the production and inspection of documents, and
  - (c) all other matters incidental to the Upper Tribunal’s functions.
- (3) Subsection (1) shall not be taken –
  - (a) to limit any power to make Tribunal Procedure Rules;
  - (b) to be limited by anything in Tribunal Procedure Rules other than an express limitation.
- (4) A power, right, privilege or authority conferred in a territory by subsection (1) is available for purposes of proceedings in the Upper Tribunal that take place outside that territory (as well as for purposes of proceedings in the tribunal that take place within that territory).

23. There seems no real room for doubt that sub-s 1(a), taken with sub-s (2)(c) confers upon the Upper Tribunal some jurisdiction in contempt of court. So much seems, unsurprisingly, to have been accepted without argument by the Administrative Appeals Chamber of this Tribunal in CB v Suffolk County Council [2010] UKUT 413 (AAC), a decision to which we shall have to return. There are, however, two important features of s 25 which characterise and delimit the contempt powers so conferred on the Tribunal.
24. The first is that the jurisdiction of the Upper Tribunal in contempt as derived from s 25 of the 2007 Act is limited to matters “incidental to the Upper Tribunal’s functions”. The Upper Tribunal may make an anonymity order and the enforcement of that order would, we are confident, be regarded as incidental to the Upper Tribunal’s functions. Although the matter is not perhaps entirely free from doubt we are content to assume that the same applies to an order made by the First-tier Tribunal in proceedings that continue in the Upper Tribunal by way of appeal. Certainly nobody argued the contrary before us.
25. The second is that the statute specifically confers the powers within the context of their possession by the High Court (or equivalent court in other parts of the United Kingdom). Although the powers of the High Court in contempt matters are in principle unlimited, they are in practice and in reality governed by certain procedural requirements, particularly as set out in Part 81 CPR. Clearly the Civil Procedure Rules do not apply directly



to proceedings in the Upper Tribunal; and CPR 81.1(2) does not alter “the scope and extent of the jurisdiction of courts determining contempt proceedings”. Nevertheless, it would, in our judgment, be unrealistic to treat s 25(1) as conferring on the Tribunal the jurisdiction of the High Court unaffected by that Court’s practice and procedure. To that extent it seems to us that, where the Tribunal’s power derives from s 25, its procedures should be closely modelled on those operating in the relevant court in the relevant part of the United Kingdom, save where Tribunal Procedure Rules provide otherwise. The High Court has, by practice and within the CPR (which is a Statutory Instrument) developed and operated rules which promote the efficiency of contempt of court proceedings, as well as providing certain protections for those accused of contempt. In our judgment it is inconceivable that the parallel and derivative jurisdiction of the Upper Tribunal was not intended to be operated in essentially the same way.

26. That conclusion might, at first sight, seem to depart from the conclusion of the Administrative Appeals Chamber in CB at [22]:

“22. Thus it is that we find ourselves considering whether Mr Allard’s non-attendance should be punished as a contempt of court, as would be the issue for the High Court. We do so however not against a background of the provisions of the Civil Procedure Rules and associated Practice Statements which would apply in the High Court, nor of statutory provisions such as section 36(4) of the Senior Courts Act 1981, whose impact we consider to be confined to the High Court. Rather, we consider that in passing the 2007 Act, Parliament was intending to confer upon the Tribunal Procedure Committee the power to make the necessary provisions to regulate the issuing of witness summons by the First-tier Tribunal and the conduct of references to the Upper Tribunal. It would be in our view both surprising and undesirable – not least in view of the aims stated in section 22(4) of the 2007 Act – if it was necessary to apply a raft of measures from other sources, so that one could not take at face value what was stated in the Tribunal Procedure Rules.”

27. In CB the contempt was disobedience to a witness summons, and in answering the question set out at the beginning of paragraph [22], the Tribunal directed itself to the procedures for the issue of witness summonses, their content, and the process of referral of failure to the Upper Tribunal, in accordance with the detailed procedures set out in the relevant Tribunal Procedure Rules. We do not understand paragraph [22] to mean that it would have been wrong to consider the practice of the High Court in a case such as the present, where there are no rules made specifically for the Tribunal that cover the situation at all.
28. Having set out the background, we proceed to consider the applications made. It will be recalled that the breaches alleged are of three anonymity orders, two made by this Tribunal in judicial review proceedings by the applicant that are no longer pending, and the third made by the First-tier Tribunal in the appeal currently continued to, and pending before, this Tribunal.

29. CPR 81.3 is, so far as relevant, as follows:

“How to make a contempt application

(1) A contempt application made in existing High Court or county court proceedings is made by an application under Part 23 in those proceedings, whether or not the application is made against a party to those proceedings.

(3) A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or county court proceedings, is made by an application to the High Court under Part 8.

(5) Permission to make a contempt application is required where the application is made in relation to—

(a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;

...”

30. It is clear that there are two types of application, to which different procedures apply. It may be a matter of some difficulty to determine whether an application is made in “existing” proceedings. In Care Surgical Ltd v Paul Shane Bennetts [2021] EWHC 3031 (Ch), the alleged contempt was interference with the due administration of justice by making a false statement under oath at the trial and, also at the trial, confirming the correctness of a statement, previously made, which was no longer true. If those allegations were made out, the trial could be described as having proceeded “on a profoundly compromised basis”. Judgment had been given some three years before the application for contempt. The claimant nevertheless argued that he did not need permission but fell within the exception found in CPR 81.3(5)(a). Although the proceedings were not pending, they existed and indeed an enquiry as to damages ordered following the trial was still pending. Bacon J held at [7] that the word “existing” was “on its natural meaning a broad term which does not appear to be confined to pending proceedings”. Indeed she went on to say that “the question of whether proceedings are still pending or have been finally determined is irrelevant.” She went on to say, however, that if she was wrong about that, these proceedings were “existing”, because of the continuation of the enquiry as to damages.
31. It appears to us that, although where the alleged contempt relates so intimately to the conduct of the trial as was the case in Care Surgical Ltd, the termination of the proceedings may be irrelevant, the width of the word “existing” is, with respect, not sufficient to make the question of whether the proceedings are pending irrelevant in all cases. Where, as in the application before us, the alleged contempt is a media publication in disobedience to an order made in proceedings which are now over, and where it is not said that the contempt had any effect on the proceedings at the time they took place, we would not regard it right to describe the proceedings as “existing”, even though the effect of the order (having been made for an indefinite period of time) still continues. Accordingly, in our judgment, for the purposes of applying a procedure parallel to that in

CPR 81.3, the exception for existing proceedings does not apply to the present application insofar as it relies on the orders made in the judicial review proceedings.

32. That has a number of consequences for that part of the application. First, the application is heard by the Tribunal by analogy with the High Court's procedure in a "stand-alone" contempt application made under CPR 81.3(3). The Tribunal is entitled, by analogy, to require the commencement of new proceedings, rather than an attempt to attach the application to different proceedings that happen to be in progress. Secondly, permission is required. The test for the grant of permission in a contempt of the sort alleged in this application, made by an individual, has been indicated in Ocado Group plc v McKeeve [2021] EWCA Civ 145 at [69]. An application by a private party needs to demonstrate a strong *prima facie* case, that is to say "a prima facie case of sufficient strength ... that, provided the public interest so requires, permission can properly be given". (The threshold is less high if the application is made by a relevant public body or by a law officer.) The application for permission must actually be made: it is not sufficient to leave the Tribunal to deduce that permission is being sought from an application that makes no mention of permission (although, in the case before us, the respondent indicated that it was prepared to treat the application as an application for permission).
33. Whether or not we are right in our interpretation of the breadth of the word "existing", and whether or not permission is required, the application is one that, if governed by the CPR, would need to meet the requirements set out in CPR 81.4. Those requirements are numerous and do not need to be set out here. They appear to us to be directed to ensuring that the Court has a precise indication of what is alleged by way of contempt, sufficient evidence to justify making a decision, and further, to provide proper protections for the respondent. There does not appear to us to be any good reason why the Tribunal dealing with a contempt application should be in any worse position, nor that a respondent to a contempt application in the Tribunal should be in a worse position, than in the High Court.
34. The application before us is by this test defective in a number of important respects. The most striking is that there is no statement of truth accompanying it. There is a witness statement, post-dating the application, and covering some of the material in the application, but there is no detailed indication of which parts of which of the articles referred to constitute breaches of the orders to which the application relates, and there is no formal statement of truth. True it is that the Upper Tribunal may act on unsworn evidence, but it is not required to do so; and in a case where (whatever its formal classification) penal relief is sought, and the standard of proof is high, it is highly likely that the Tribunal would require any live witness to be sworn. In these circumstances it would be wrong to treat the matter as established on informal written evidence, especially where the evidence is a late supplement to the application, and incomplete. Further, there is no "confirmation" that the orders said to

have been breached were served on the respondent, or that they contained appropriate penal notices. Additionally, the application itself does not contain the warnings which would be required by CPR 81.4.

35. The defects were raised before us on behalf of the respondent. Mr Speker's response was to indicate that the respondent, being a large media organisation, and having legal representation, did not need the protection offered by the provisions of CPR 81.4, was aware of the orders, and that the facts upon which the application was made could be understood from the application without reference to a statement of truth or other documents.
36. Given the dates of the matters complained of, it cannot be said that this was an application which needed to be made at short notice, and, in any event, the Tribunal was not invited to dispense with any requirements. The applicant is also legally represented, and if he had chosen to do so, he could easily have adapted the form available for proceedings in the High Court, complying with the relevant requirements. He, and his lawyers, chose not to do that, but instead to treat the Tribunal as ready to exercise contempt jurisdiction if invoked by a procedure wholly different from that of the High Court on the model of which the jurisdiction is derived.
37. The need for precision and formality is, as it happens, particularly acute in the present case. The appellant's history extends back well beyond the order made by UTJ Perkins. There is considerable doubt about whether the articles cited in the application do in truth breach either of the orders made in this Tribunal in the judicial review application in particular. It strikes us as in the highest degree unlikely that a contempt could be established in this case solely by reference to the publication of an article, given that so much about the applicant was already in the public domain. A contempt could only be established by showing precisely what elements of which article were in breach of the orders in question. The application makes no real attempt to do that at all.
38. There is a further problem. As Mr Bunting pointed out, one of the reasons for failure to confirm that the orders in question were served on the respondent is that at the time of at least some of the alleged breaches, the order had not been served. The applicant attempts to deal with that (without seeking leave to do so) by modifying an original allegation of publication in breach of the order to an allegation of not withdrawing materials which, possibly without breach of the order, had appeared online. That purported amendment was made very shortly before the hearing. It raises a difficult question of law, which the application does not set out, and which the respondent could not be expected to deal with in the short time allowed for it.
39. These features of the case which the Tribunal was asked to determine only confirm the good sense of modelling the Tribunal's procedure on that in CPR Part 81. The truth of the matter is that, by failing to make an application which recognised the way in which the High Court's jurisdiction in this area could be invoked, the applicant has essentially deprived

himself of the ability to establish whatever case he had in a way that was fair to all parties, and economical of the Tribunal's resources.

40. In summary, as relates to the alleged breaches of the orders made by the Upper Tribunal, our conclusions are as follows. First, the Tribunal's jurisdiction under s 25 of the 2007 Act should, in the absence of Tribunal Procedure Rules covering this area of procedure, be modelled on the procedure which would be used in the High Court. Secondly, the procedure which would be used in the High Court contains requirements and safeguards which are properly applicable in the Tribunal and should be applied, with necessary adaptations. Thirdly, this application, in so far as it relates to alleged breaches of the orders made in the judicial review proceedings, is not one made in "existing" proceedings. It therefore requires permission. Fourthly, whether or not the application requires permission, it is seriously defective in being insufficiently detailed of itself to demonstrate which precise parts of which articles breach the Tribunal's orders, given the fact that much material about the applicant was in the public domain and not obviously covered by those orders. Fifthly, both the failure to include the material required for the protection of the respondent and the attempt to change the nature of the application at short notice mean that the respondent is placed at a wholly unnecessary disadvantage, such that it would be unfair to the respondent to act in the way sought by the applicant.
41. For these reasons, we decline to accept the application, because it is defective and unfair. If we had accepted it, we should have refused permission, because the application fails to establish a strong *prima facie* case with a sufficient public interest in proceeding. If permission had been granted, or if permission is not necessary, we should have refused the application on the basis that it does not itself establish that the treatment of the applicant in the article cited in the application was, in any of the cases mentioned, a breach of the orders of the Upper Tribunal.
42. Only slightly different issues are raised by the allegation of breach of the order made by the First-tier Tribunal in the present appeal. In this case there is in our judgment no doubt that the application in relation to alleged breaches of the First-tier Tribunal's order of anonymity does relate to "existing" proceedings and is made in "existing" proceedings. On the analogy of CPR 81.3, therefore, permission is not required. That, however, is the only material difference. So far as the alleged breaches of that order are concerned, we decline to accept the application for all the reasons we have given in relation to the alleged breaches of the orders made in the judicial review proceedings, and if we had accepted it we should have refused it, for all the reasons we have given, with the exception of those relating to permission.
43. For the foregoing reasons, this application fails.

C.M.G. Ockelton

C. M. G. OCKELTON

VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER

Date: 26 January 2023  
Revised under the slip rule 13 February 2023