



Neutral Citation Number: [2024] EWHC 2145 (KB)

Case No: KB-2023-002576

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION FOR COMMITTAL
OF THE DEFENDANT FOR CONTEMPT OF COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/08/2024

Before :

THE HONOURABLE MR JUSTICE KERR

Between :

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF RICHMOND

Claimant

- and -

ALISTAIR TROTMAN

Defendant

Mr Francis Hoar (instructed by **South London Legal Partnership**) for the **Claimant**
The Defendant appeared in person

Hearing dates: 29 and 30 July 2024

Approved Judgment

This judgment was handed down remotely at 11am on 19 August 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

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MR JUSTICE KERR

Mr Justice Kerr :

Introduction and Summary

1. The defendant, Mr Trotman, used to operate riverboats on the River Thames. His activities became unwelcome to the boroughs of Kingston and Richmond, which own and manage the river bank in their respective areas. The latter brings the present contempt proceedings, alleging breaches of an injunction granted by Lambert J in July 2023. Richmond says Mr Trotman’s positioning of his boat from 18 July to 25 September 2023 and the attaching of it to the river bed at or near Richmond’s land on various occasions during that period, was a breach of the injunction.
2. Lambert J’s order was an interim one granted on notice, founded on a strong case of trespass to Richmond’s land, i.e. the river bank. It included a power of arrest. Costs were reserved. In September 2023, Mr Trotman was twice arrested by local police and twice bailed by Choudhury J, pursuant to the power of arrest. Lambert J’s order was then replaced after a trial of the action (Richmond’s Part 8 claim) in November 2023, with a different order founded not on trespass but on nuisance, in accordance with the reserved judgment given by His Honour Judge Blair KC in February 2024.
3. By then, Richmond had already issued the present contempt application. But HHJ Blair KC decided that Mr Trotman had not trespassed on Richmond’s land. He had not “moored” his boat to the land within the meaning of the verb “moor” found in the relevant byelaw. Rather, he was committing an actionable nuisance by obstructing the bank from a position a little offshore, with the boat anchored to the river bed using scaffolding poles. The judge granted an injunction to stop that nuisance and awarded assessed costs of £27,500 against Mr Trotman, who was then an undischarged bankrupt.
4. Richmond persisted with the present contempt application, at first attacking HHJ Blair’s finding that there was no trespass; but then accepted at the hearing before me, belatedly, that Richmond is bound by HHJ Blair KC’s relevant findings and decisions, under the doctrine of issue estoppel. Richmond has not recovered any of its costs under HHJ Blair KC’s order. Mr Trotman was discharged from bankruptcy recently, in June 2024. He was entitled to legal aid in these contempt proceedings, though not in the underlying injunction proceedings; but has not been able to secure legal representation.
5. In those unusual circumstances, Richmond submits that I can be sure, to the criminal standard of proof, after considering written and oral evidence and submissions over two days, that Mr Trotman is guilty of contempt by breaching the order, no longer in force, of Lambert J. Mr Hoar, for Richmond, suggests that Mr Trotman not being a man of means and having no assets of any substance, the appropriate penalty is a sentence of a month or two in prison, suspended for two years with the condition that he must not during that period breach HHJ Blair KC’s order, which now has four years to run.
6. Mr Trotman, representing himself as he has throughout these proceedings, submits that his activities did not breach Lambert J’s order and that Richmond has wrongfully interfered with his right of navigation, i.e. his right to proceed up and down the Thames by boat, as he pleases. He says he has not moored his boat, “Kupe”, to the

river bank anywhere on Richmond's land; that Richmond does not own the river bed, which is owned by the Crown through the Environment Agency; and that anchoring a little offshore by driving scaffolding poles into the river bed is not a breach of the injunction.

The Facts

7. The following are findings of which (unless I say otherwise) I am sure, to the criminal standard. There is much common ground, although in exchanges between Mr Trotman and Mr Hoar both became heated at times. I sought to lower the temperature as best I could and for the most part the necessary courtesies were observed, just about. Mr Trotman believes his rights are being infringed by serial court proceedings against him; while Richmond's officers believe he has contempt for the law and for court orders; and for the rights of Richmond's inhabitants to peaceful enjoyment of the river bank.

Background

8. Mr Trotman is a science graduate from a university in New Zealand. He is 57, with young children, not living with him and not his dependants. His home until September 2023 was cabin number 7 on board Kupe. He is now staying with friends in the south west London area. He is not working and lives on universal credit payments. He has in the past occasionally earned commission by placing rugby players with clubs. Otherwise, he has no trade or profession except the river boat business.
9. Mr Trotman has an imminent appointment for a hip replacement operation. He also suffers from back pain for which he takes paracetamol. Apart from those matters, he has no specific health problems. He is a man of nearly good character, so far as the criminal law goes; though he has fared poorly in civil proceedings by and against him. He has no convictions or cautions apart from fines imposed by a magistrates' court in 2019 totalling £800 for four offences relating to the condition or use of his boat. He has previously lost civil proceedings brought by the London Borough of Kingston.

The Kingston proceedings

10. Omitting unnecessary detail, that application led to the judgment of His Honour Judge Roberts given *ex tempore* on 29 April 2022. The judge gave summary judgment for Kingston and made a final injunction against Mr Trotman in very wide terms, without hearing any oral evidence, finding that the claim was incontestable and indefensible. He accepted (see at [51]) Kingston's case that Mr Trotman had persistently moored, i.e. "attached to" Kingston's land, his vessels such that "mooring his boats on the Claimant's land amounts to a trespass".
11. The statutory background and arguments were not exactly the same as in this case. The solicitors now representing Richmond then represented Kingston. The injunction granted was in similar terms to (and not any better drafted than) the interim one later granted by Lambert J in this case; but with the difference that Kingston's injunction contained no reference to or express prohibition of the use of scaffolding poles to anchor a vessel to the river bed a short distance offshore. It was premised on trespass

to Kingston's land by mooring, i.e. by a boat being "near or attached to" the river bank.

12. Kingston's evidence included a statement (see the judgment at [14]) that Mr Trotman had, as at 20 November 2020, "moored the vessel KUPE at Riverside Walk in Kingston-Upon-Thames, attaching the boat to the land with a nylon rope ... and attaching the boat to the riverbed by the use of scaffolding poles, which is prohibited by the body with authority over the riverbed, namely the Crown Estate". At [50], the judge accepted Kingston's submission that "attaching a boat to the river bed by the use of scaffolding poles is prohibited by the Crown Estate, which has authority over the river bed"
13. But Kingston's injunction (see judgment at [5]) did not seek to restrain Mr Trotman from doing that provided he did not also trespass by attaching his boat to Kingston's river bank. The Crown Estate was not a party. The evidence about anchoring by using scaffolding poles was part of the *means* by which Mr Trotman was able to connect his boat to Kingston's river bank. The means used were unlawful but the cause of action was the tort of trespass to land. Kingston did not suggest that anchoring offshore by use of scaffolding poles, without more, was independently tortious; perhaps because it does not own the river bed and did not rely on the tort of nuisance.

The present proceedings

14. Richmond later alleged at paragraph 10 of its pleaded case (to which I am coming shortly) that Mr Trotman moved Kupe on 29 January 2023 "to moor adjoining to and/or to the Council's land at 'Hamlands', where Richmond owns the river bank. On 28 May 2023, Mr Trotman transferred ownership of Kupe from himself to Rivercabins Limited, of which he was then the sole shareholder and director. Richmond then brought the present proceedings, filing its Part 8 claim form with attached particulars of claim on 30 May 2023. It was sealed by the court for issue on 6 June 2023.
15. Under the heading "[t]respass to the Council's land", at paragraph 13 of the particulars of claim, Richmond repeated Kingston's plea that "[a]ttaching ... KUPE to the river bed by the use of scaffolding poles is prohibited by the EA, which has authority and ownership over the river bed, thus impeding navigation" In the next paragraph, Richmond pleaded that Mr Trotman had suggested Kupe "is not moored to the Claimant's Land because it is secured by scaffolding poles to the riverbed that the Environment Agency owns".
16. That, said Richmond in the same paragraph, did not avail him:

"... there is a space of less than one foot to the bank/towpath from KUPE and trees and plants have been damaged, trampled, or sawn down to gain access to and from the vessel KUPE by the Defendant and his occupiers of the vessel. The Defendant's acts of mooring his boats on / to / abutting the Claimant's land amounts to a trespass and the Claimant is entitled to exercise its powers with a view to ensuring that the Defendant's vessels are removed from its property. ..."
17. Richmond made other allegations in its pleading: that Mr Trotman's conduct breached the byelaws concerning mooring; that there was anti-social behaviour; and (at

paragraph 16) that Mr Trotman had behaved in such a manner that he “thereby continues to cause nuisance”. The claim was for “an injunction in the terms of the attached draft”, among other things. The draft was similar to the Kingston injunction except that express reference to scaffolding poles was added, as we shall see.

18. The “attached draft” included a power of arrest and a provision permitting any committal application to be supported by witness statements in place of affidavits. Before the application came on for hearing, on 16 June 2023 Mr Trotman was made bankrupt on Kingston’s petition, arising from (I am told) an unsatisfied costs order in Kingston’s favour. Ownership of his shareholding in Rivercabins Limited and, therefore, beneficial ownership of KUPE, thereupon passed to his trustee in bankruptcy, the Official Receiver.

The interim injunction hearing

19. So he was a bankrupt when the matter came before Lambert J on 11 July 2023. She was aware of that; see her judgment at [9]; Mr Hoar relied on the bankruptcy to support his argument that Mr Trotman would be unable to pay damages. Mr Trotman produced the transcript of most of the hearing. Nothing in it suggests the judge’s attention was drawn to section 285(2) of the Insolvency Act 1986, stating that where proceedings are “pending against any individual” and he becomes bankrupt, the court may “either stay the proceedings or allow them to continue on such terms as it thinks fit”.
20. Mr Trotman also produced the application for an injunction dated 19 May 2023, served on him, which escaped the main bundle. Although it predates the Part 8 claim form it was sealed by the court on the same date, 6 June 2023. Something may have gone wrong with the documents because that application notice, though dated 19 May 2023 and sealed on 6 June 2023, states that it is made under Part 8 rather than Parts 23 and 25 (interim relief applications); and is supported by a witness statement of Mr Matt Almond (of Richmond) signed on 13 August 2020, years earlier than his current witness statements made in June and September 2023.
21. The relief sought in that application is, as Mr Trotman points out, differently worded from the relief sought in the draft order put before Lambert J. I accept that, as he complained, the inconsistency is confusing. At the start of the hearing, Mr Hoar referred to “the application notice and the application for an interim injunction, that we seek”. His wide ranging opening included the proposition that Kupe was “moored using scaffolding poles driven into the river bed, so it was inches from the river bank but a ladder was touching Council’s land and the vessel was touching the trees” (p.8E).
22. Mr Hoar relied on the proposition that “mooring includes touching the land” (p.8F) and “that is the words of the relevant byelaw ...”. Mr Almond had, Mr Moor explained, “informed him [Mr Trotman] that Kupe was resting on trees on the land effectively moored to the Council’s land whether directly or into the river bed by the river bank”. Mr Hoar said the photographs before the court “show very clearly damage to the trees, damage to the wildlife around the vessel. The trees are clearly touching the vessel and a number of photographs show planks which are attached to the river bank, all relevant considerations because of the scope of the byelaws.”

23. Mr Hoar then referred to scaffolding poles and the Kingston case; he submitted that “mooring in this way was a trespass” and “the byelaws themselves say that mooring is where a vessel is touching upon the bank ...”. He clarified (p.12F-G) that he was not suggesting the case he referred to (*Akerman v. Richmond LBC* [2017] EWHC 84 (Admin)) was authority that use of scaffolding to moor a boat was capable of being a trespass. The *Akerman* case simply confirmed the lawfulness of the byelaws.
24. At p.13D-F Mr Hoar explained that he recognised the Crown Estate were not present and that his proposition was that:

“the byelaws say that touching upon the land, which of course includes the trees because the trees are part of the land ... they are directly attached to the land and they are an intrinsic part of it and of course the river bank through necessary access, that is to say the passages, the gangplanks sorry, means that these boats are moored. ... while it is attached by scaffolding poles it is moored because it is touching and it would probably help to show your Ladyship the photographs ... because they do show that this vessel was touching on those trees”.
25. Mr Hoar reiterated (p.14B-C) that the photographs show “the trees are touching upon this boat” and submitted that “when a vessel is touching any part of the land it is moored”. He then took the judge to the byelaws to make good that point and referred to the definition of “moor”; it is, he pointed out, “the act of being physically attached to the land, physically touching the land, or tied to objects in the land, by way of ropes, gangplanks, stakes in the ground, or other similar methods”.
26. Mr Hoar then turned to other points not directly relevant to this contempt application. The judge asked whether he was seeking an interim or final injunction. Mr Hoar said he was seeking an interim injunction unless the court considered there was no arguable defence, as HHJ Roberts had found in the Kingston case. The judge enquired about whether a defence had been filed. She then turned to Mr Trotman, who made his counter-arguments.
27. The judge indicated (p.17H-18A) that it was for him to respond as he thought fit but pointed out Mr Hoar’s emphasis on the byelaws and case law and “the local authority’s position that the existence of scaffolding, that’s not the point, it is the existence of communications, necessary communications between the boat and the land. So ... I think focusing on the scaffolding which moors or anchors the boat to the river bed may not be the point to focus on”.
28. Mr Trotman turned to other topics which I need not recite here; they did not assist the judge. He said (p.20C-D) that Richmond’s trees overhanging the river bed were “trespassing over the Environment Agency’s river bed”. The judge then steered him back to the topic of mooring: “what you need to deal with, Mr Trotman, is the suggestion that ... by the communication, the necessary communication between land and boat and the harnessing of the boat to the trees that therefore you are trespassing on the land of the claimants.”
29. Asked by the judge where the boat (Kupe) was, Mr Trotman answered (p.21C) that it was “not moored to their land Ma’am, I am attached with scaffold poles to the Environment Agency’s river bed and I have an anchor in the river bed and as they admit they cannot take any issue”. He denied that Kupe was “moored”. The judge asked (p.21D) if it was “attached via a scaffolding pole”. Mr Trotman responded:

“[t]o the Environment Agency’s river bed which they have admitted having no issue with and it is outside the boundaries of their land”.

30. The judge said “what about gangplanks and everything else?” Mr Trotman said “[t]he gangplanks also 100% over the [E]nvironment [Agency] river bed which you can see in the photos”. The judge answered “[s]o does the gangplank not go onto the land?”; Mr Trotman said it did not; “[w]e respect boundaries ...”. He explained that he paid fees to the Environment Agency to navigate the river. After a break at lunchtime, the hearing continued and Mr Trotman made his further points, which I need not set out.
31. Eventually, Mr Trotman alluded to the byelaws and the definition of “moor” (p.24H). He denied that the evidence showed any physical contact between his boat and Richmond’s river bank; “we are not tied to any of those trees” (p.25A) “by way of ropes, gangplanks, stakes in the ground or other similar methods”. So, he said, “we are not attached to either the land or the tree. We anchor as allowed ... to the Environment Agency’s river bed” (p.25B).
32. After Mr Trotman had spoken a while longer, Lambert J asked Mr Hoar about the balance of convenience “in favour of my granting this interim injunction”. She indicated that a two day hearing would be needed to consider a final injunction. She asked why an interim injunction was needed to cover the intervening period before that hearing. Mr Hoar made various points including that the boat was trespassing and that “trees are obviously part of the land” (p.32D).

Judgment and order on the interim injunction application

33. Lambert J then gave her decision; see *Richmond LBC v. Trotman (No. 1)* [2023] EWHC 2461 (KB) (as I shall call it). Richmond elected not to put it in the main bundle. It was provided only after I asked to see it. She described the claim at [1] as for an injunction which “requires the Defendant to remove ... KUPE” and “prohibits him from mooring KUPE or any other of his vessels which are moored on land owned by the Claimant”. The causes of action were trespass and nuisance, she noted. She took the facts from Mr Almond’s statement, on which he had not then been cross-examined.
34. The judge noted at [3] Mr Almond’s evidence that he had attended on 30 January 2023 when Kupe was:

“moored using scaffolding poles which had been driven into the riverbed. A ladder provided access and egress from the vessel: one end of the ladder rested on the vessel, the other on the Claimant’s land. The vessel was so close to the riverbank that it appeared to him to be touching or resting on trees growing on the Claimant’s land. The Defendant explained to Mr Almond that he did not believe that he was moored on the Claimant’s land because KUPE was moored to poles driven into the riverbed.”
35. At [4], the judge described photographic evidence she had seen showing “the position of the vessel in relation to the riverbank; a plank of wood resting on a ladder running between the vessel and trees on the riverbank; damage to trees and vegetation”. She noted Mr Almond’s evidence of damage to vegetation and on one occasion ([6]) “a previous mooring line had been reattached to a nearby tree albeit that rope was not directly attached to KUPE.”

36. Turning to the submissions, Lambert J recorded at [8] Mr Hoar's argument that Kupe was "moored" within the definition of that term in the relevant byelaw; and for periods longer than the maximum one hour in a 24 hour period. At [9], she noted Mr Hoar's submission that:

"KUPÉ is undoubtedly moored to the Claimant's land. He draws my attention to the adapted ladder obviously being used as a gangplank running from the vessel and resting in a thicket of sycamore roots and branches on the riverbank. This had been present on each occasion upon which Mr Almond had attended. The Byelaw is lawful and has been breached. The Defendant is therefore moored unlawfully and is trespassing on the Claimant's land. On this basis he submits the claim against the Defendant in trespass is well made out and undoubtedly raises a serious issue to be tried."

37. At [10], Lambert J recorded Mr Trotman's submission (among others) that "he denies that he is moored on the Claimant's land. He argues that he is moored by way of poles driven into the riverbed and the riverbed is not owned or controlled by the Claimant but by the Environment Agency."

38. The judge's decision was set out in her judgment at [11] and [12], now set out in full:

"11. I am quite satisfied that the Defendant's vessel, KUPÉ, is moored on the Claimant's land in contravention of Byelaw 4. The photographs clearly demonstrate that the makeshift gangplank is a physical attachment between the vessel and the riverbank and that the vessel is physically tied to the riverbank by means of the gangplank. I accept the statement of Mr Almond that the vessel has been moored to the Claimant's land in this way for – effectively – several months without being moved. Certainly it has not been moored for periods of less than one hour in each 24-hour period. I therefore accept that the Particulars of Claim raise a serious issue to be tried in trespass. The claim is also brought in nuisance but it is not necessary for me to consider that cause of action separately given my finding on trespass. As to the Defendant argument that he has a right to navigate the Thames as he might wish, section 79 Thames Conservancy Act 1932 (which identifies the right to pass and repass in vessels over every part of the Thames and a right to remain stationary (anchor or moor) for a reasonable period of time) does not confer an unrestricted right to navigate the Thames but that right is "subject to such restrictions as the Conservators may from time to time by byelaws determine." Any rights of navigation which the Defendant may have therefore are subject to byelaws issued by the Environment Agency and contained in the Thames Navigation Licensing and General Byelaws 1992 which themselves impose restrictions on amongst other matters, mooring and require at [58] those who use the river to conform to the directions of any Officer of the Authority. I note in this context that there has been a number of attempts (by way of service of notices) by the Environment Agency requiring the Defendant to remove the scaffolding poles driven into the riverbed without the permission of the Environment Agency.

12. I am satisfied that an undertaking in damages would not be sufficient to protect the Claimant. Setting aside that the Defendant is bankrupt, the ongoing mooring of the vessel and its use is causing damage to trees and vegetation. It is affecting the ability of other river users to moor their boats on that stretch of the Thames in accordance with byelaws for periods of less than one hour in each 24 hour period. This will continue until the vessel is moved. I am also satisfied that the balance of convenience favours the grant of the interim injunction sought. There has been no delay in bringing these proceedings and making this application. The Claimant sought to engage with the Defendant before making this application but the Defendant simply ignored Mr Almond maintaining his

right to remain moored to the Claimant's land. I raised with Mr Hoar whether the preferable course in this case would have been to have asked the court to list the application for a final injunction rather than an interim injunction. However I accept that a court date for a two hour hearing such as has been conducted today would have been available rather more quickly than for a final and substantive hearing with evidence. Having found a serious issue to be tried in trespass, there is no reason to allow it to continue. The Defendant is a serial trespasser. For these reasons I am satisfied that it is just and convenient to exercise my discretion under s. 37 Senior Courts Act 1981 to grant such an injunction. There will be a penal notice attached. Any breach of that injunction will amount to a contempt of Court which is punishable with imprisonment or a fine."

39. There was then discussion about how long Mr Trotman should have to remove Kupe from its then current location. The judge gave him a week, until 18 July 2023. She gave directions for trial of Richmond's application for a final injunction. Mr Hoar agreed to provide a draft order for Lambert J's approval. There was no mention in the post-judgment discussion of the proposed power of arrest included in Richmond's draft order, nor of the test in section 27 of the Police and Justice Act 2006 where an injunction is sought by a local authority under section 222 of the Local Government Act 1972:

"(2) If the court grants an injunction which prohibits conduct which is capable of causing nuisance or annoyance to a person it may, if subsection (3) applies, attach a power of arrest to any provision of the injunction.

(3) This subsection applies if the local authority applies to the court to attach the power of arrest and the court thinks that either—

(a) the conduct mentioned in subsection (2) consists of or includes the use or threatened use of violence, or

(b) there is a significant risk of harm to the person mentioned in that subsection."

40. Mr Trotman was not invited to speak against the power of arrest being included. Mr Hoar did not address the judge in the post-judgment discussion on what the "significant risk of harm" was; still less did he allege use or threatened use of violence. The judge's final order included the power of arrest. A separate power of arrest document with the judge's name at the end included part of the test, stating that "[t]he court thinks that there is a significant risk of harm to a person"; presumably, a "person" within section 27(2) to whom prohibited conduct is "capable of causing nuisance or annoyance".

41. That was on 11 July 2023. The order was not sealed until 19 July but was immediately binding on Mr Trotman, who was in court when it was made. The order, endorsed with a penal notice, stated materially as follows:

"THE COURT ORDERS:

(1) An Interim Prohibitory injunction restraining the Defendant, whether by himself or by inciting or encouraging any other person,

a. from mooring on the River Thames situated near to or attached by any means to the riverbank of any towpath in the London Borough of Richmond-upon-Thames owned by

the London Borough of Richmond-upon-Thames Council and remaining beyond the 24 hours restriction or such other restriction permitted;

b. from mooring on the River Thames to any land, wharf or property in the London Borough of Richmond upon Thames owned by the London Borough of Richmond upon Thames Council;

c. from bringing, mooring and leaving on the River Thames attached to or moored to poles in the River Thames so as to access a vessel by land owned by the London Borough of Richmond upon Thames or for any other purpose, without obtaining prior consent from the London Borough of Richmond upon Thames Council to enter its land or the River;

(2) An Interim Mandatory [*sic*] injunction against the Defendant as follows:

a. Not to moor, or trespass to the river bank or attach to the land, by any means, including overhanging the river, or the use of gangplanks and scaffolding poles sunk into the river bed and or by ropes to overhanging trees, any vessels owned or controlled by you, your agents or representatives to land owned by the London Borough of Richmond upon Thames Council, including permitted Council owned moorings;

b. By midday on 18th July 2023, to remove from any land, wharf or property (moored by any means) owned by the London Borough of Richmond upon Thames Council, any vessels owned or controlled by the you, currently moored to land or wharves owned by the London Borough of Richmond upon Thames Council;

c. By midday on 18th July 2023, to remove from any land, wharf or property owned by the London Borough of Richmond upon Thames Council the vessel ‘KUPE’;

d. This order will remain in force unless varied by an order of the court or until further order;

(3) The above order shall include a power of arrest.”

Alleged breaches of the interim injunction

42. On 17 July 2023, Mr Trotman resigned his directorship of Rivercabins Limited. His associate, Mr Fabio da Silva, became the sole director or a director of that company. The next day was 18 July 2023, the deadline for removal, by 12 noon, of any vessel of his “currently moored to land or wharves owned by the London Borough of Richmond”; and specifically, the deadline for removing Kupe “from any land, wharf or property owned by the London Borough of Richmond”. Although Mr Trotman strongly believed that neither Kupe nor any other vessel of his was on Richmond’s land or moored to it, he saw the practical need to move Kupe since Richmond clearly took a different view.

43. He set about doing so on 18 July 2023. The *first of ten sample allegations* of contempt is that he did not do so by midday that day. This is alleged to be “an ongoing breach until the last date on which the Defendant was seen controlling the vessel”. That date is not specified, except that it was on or before 25 September 2023. Mr Hoar explained that his case was that Kupe was on Richmond’s land, wharf or property throughout the period from 18 July to 25 September 2023 apart from 31 August to 8 September 2023.

44. The *second allegation* is on 18 July 2023 “[m]oor[ing] the vessel KUPE, by rope and sunken scaffolding poles, to the Council’s land.” What then happened on 18 July 2023? Richmond relies mainly on Mr Almond’s written and oral evidence. His written evidence was in a witness statement but his oral evidence, including confirming his witness statement, was sworn. Much of the factual position is undisputed. Mr Almond arrived with others at about 11.50am to find Kupe still present in the water, adjacent to Richmond’s river bank. Mr Trotman and others were loading a barrow with supplies.
45. Mr Almond did not like the look of that; he told Mr Trotman Richmond had not given prior consent to any barrow wheeling across its land and mentioned a byelaw on the subject. Mr Almond’s evidence is that until 5pm when he left, Kupe was attached to Richmond’s land by a rope tied to trees. Ms Maria Brown of Richmond was there but did not make a contemporaneous note and did not when giving evidence trust to her memory so long ago. Her written witness statement was prepared for other purposes and did not cover 18 July 2023.
46. Mr Trotman needed a tug to move Kupe. He told Mr Almond the tug was broken and he was waiting for an engineer. Mr Trotman and others did move Kupe manually about 60 yards downstream, pushing with poles and with those pushing resting on trees and vegetation on the river bank. Mr Almond was not happy about the treatment of the river bank vegetation and said so, mentioning a byelaw on the subject. Mr Trotman’s view is that it was the unkempt vegetation and trees overhanging the river that were the issue. He made clear to Mr Almond that he denied any trespass.
47. Mr Almond’s more general complaint was that Mr Trotman has provided a “precarious form of access / egress ... by attaching to this vessel and sinking into the water ... a household extendable ladder. The ladder is touching the riverbank and therefore constitutes ... ‘mooring’”. A note he made on 25 July 2023 stated that at 4.50pm on 18 July he returned to Kupe and observed that she was “moored to land belonging to ... Richmond ... by the form of a ladder”. I reject Mr Almond’s evidence that any ladder was touching the river bank. Mr Almond’s note written a week later does not say it was; only that mooring was “by the form of a ladder”.
48. The photographs do not demonstrate that any such ladder touched the river bank. Mr Trotman’s concern was that it should not do so. Mr Hoar did not support Mr Almond’s suggestion, accepting in closing that all he could prove, apart from the incident on 18 July when a rope from the vessel was tied to trees, was anchoring a short way offshore using scaffolding poles sunk into the river bed. Ms Brown, a solid and reliable witness, was there wearing a bodycam device which she did not feel any need to activate. She accepted in cross-examination that she could not say she had seen Mr Trotman put any plank or pole onto Richmond’s land or encourage anyone else to do so.
49. Apart from the ladder issue, Mr Trotman’s written account was largely consistent with the above. He said Kupe’s engine would not start and he needed a new battery for a tug to tow her. Mr Almond’s interventions were impeding him from complying with the injunction. Mr Trotman needed a barrow to bring a new heavy battery but Mr Almond objected. The tug would not start despite the new battery, so Mr Trotman and his companions hauled Kupe manually “pulling on the trespassing nuisance

saplings over the public riverbed”. Some branches protruded six metres out into the river, he said. He called an engineer to help.

50. Mr Trotman’s evidence, which I accept, was that he was “careful to only put the ladder for him to board on the ... riverbed, not [Richmond’s] riverbank”. That is not consistent with Mr Almond’s evidence but is consistent with Mr Trotman’s wish for there not to be any physical connection, direct or indirect, between Kupe and the river bank. He denied having attached the ropes to trees, or encouraged anyone else to do so; but whether or not he personally did so, he is responsible for that as the master of Kupe. I doubt whether he tied the ropes himself; he was not at the scene all morning. But I am sure it was done by someone acting as crew and therefore in his name.
51. The next day was 19 July 2023. The *third allegation* is, on that date, “mooring ... Kupe by sunken scaffolding poles to the Council’s land and remaining beyond the 24 hour restriction”. The *fourth, fifth, sixth, seventh and eighth allegations* are of doing exactly the same on 20 July (fourth allegation); 23 July (fifth allegation); 4 August (sixth allegation); 14 September (seventh allegation) and 15 September (eighth allegation). Again, with one major exception, the evidence about Kupe’s positioning and location on those dates was not disputed.
52. Mr Almond visited Kupe on 19 July 2023 (*third allegation*). Mr Trotman was not there; his associate Mr da Silva was. Mr Almond observed in a note made on 25 July 2023 that Mr Trotman had used scaffolding poles to stabilise Kupe and “sunk a household extendable ladder into the water, resting on the riverbank and riverbed”. He apparently formed the view that Kupe was “moored to the riverbed and riverbank”. Ms Brown was there; she wrote a contemporaneous report. She noted “a ladder and 3 scaffolding poles driven into the waterbed Approx 8/10 inches from the Embankment.
53. Ms Brown’s report does not corroborate Mr Almond’s evidence that the ladder was “resting on the ... riverbank”. She is a more reliable witness than Mr Almond. I prefer her evidence. I accept her contemporaneous note as accurate. In cross-examination she said she stood by her report. If she had seen scaffolding poles or a plank or other object touching the riverbank it would have been in her report, she said. Her account is consistent with the photographs; Mr Almond’s is not. I am far from sure that his evidence about the ladder touching the river bank is correct.
54. On 20 July 2023 (*fourth allegation*), Mr Almond did not go to see Kupe. Ms Brown did. Mr Almond’s account is based on Ms Brown’s. There is no contemporaneous report from her about whether she saw anything physically connecting Kupe to the river bank. None of the photographs shows any such physical connection. They show Kupe about half a metre offshore with scaffolding poles attached to Kupe and driven into the river bed to keep her from moving. One of the photographs shows a ladder, but with its base in the river, not on the bank.
55. There is some evidence about Kupe’s location on 21 and 22 July 2023, but no corresponding allegation of contempt except the “portmanteau” first allegation. Ms Brown wrote a report of her attendance on 21 July. I accept it as accurate. She reported that “the ladder previously reported remains, in an upright position resting on the waterbed Approx 6/8 inches from the Embankment, and 3 scaffolding poles impelled into the waterbed ...”.

56. If the ladder had been touching the bank, it could not have been “in an upright position”. The photographs taken that day confirm that the ladder was in an upright position and resting on the river bed, not the river bank. Ms Brown’s report the next day, 23 July is about other matters and not relevant. Mr Hoar in cross-examination of Mr Trotman was unable to elicit any admission that there was any physical connection, direct or indirect, between Kupe and the river bank. I find there was none.
57. On 23 July 2023 (*fifth allegation*), a Sunday, Mr Almond did not visit Kupe. Ms Brown did. Mr Almond’s evidence is based on her account. She wrote a contemporaneous report, which I accept as accurate. Ms Brown’s report states that there were “4 scaffolding poles impelled into the waterbed, I made my way ... to the Stern, I witnessed the 3 scaffolding poles impelled into the waterbed along with the ladder appear to be closer to the Embankment, by Approx 4 inches than previously reported”. She noted “the void between the Hull and the Embankment” which was collecting driftwood. There is no evidence of any physical connection between Kupe and the river bank that day; the evidence is of a “void between the Hull and the Embankment”.
58. Mr Almond does not rely on any photographs taken that day. He does rely on photographs taken the next day, Monday 24 July 2023 - not corresponding to any of the ten sample allegations except the first, generic allegation. He visited Kupe that day. Mr Almond’s note made on 25 July returns to the ladder issue; his assertion in that report is that Mr Trotman has been “attaching to his vessel and sinking a household extendable ladder into the water. The ladder is touching the base of the riverbank and therefore constitutes ‘mooring’ under the Council’s Mooring Byelaw”.
59. There are seven photographs taken on 24 July 2023. One shows Ms Brown on the bank, adjacent to Kupe in the water. The ladder is nearly but not quite upright and standing in the water; it does not appear to be touching the river bank. A picture of its base in the water shows that the base has a wider strut than the rungs above it. The base is not separate from the rest of the ladder, as Mr Hoar wrongly suggested it was, in a leading question to Mr Almond in re-examination.
60. Mr Almond suggested that the base of the ladder was touching the river bank in some way by virtue of the bank somehow protruding outwards beneath the water. I reject that evidence. I think that was wishful thinking on his part. He accepted in cross-examination that he did not go into the water to see if there was contact under water between the base of the ladder and the river bank. There is no objective support for his proposition that the ladder was touching the river bank beneath the surface of the water.
61. On 4 August 2023 (*sixth allegation*), Mr Almond and Ms Brown visited Kupe, which was adjacent to Richmond’s land in an area known as Ham Lands or Ham Riverside. Mr Trotman was not there. Mr Almond asserts in his witness statement, again, that the ladder was “sunken into the water and touching the riverbank and riverbed”. Mr Almond does not rely on any photographs taken that day. There is a report but if it was made by Ms Brown she was not asked about it.
62. I am not sure how contemporaneous that report is. Mr Almond relies on it as a true record of the visit. It is twice over dated 4 August 2024, which must be wrong; the

year should be 2023. I do not know who wrote the report. The wording is characteristically Mr Almond's: "[t]he precarious household ladder remained in situ, sunken into the water and touching the riverbank and riverbed". He described it in his witness statement as a "true copy of the inspection report".

63. I am far from sure Mr Almond's account is accurate when he says, without objective corroboration, that the ladder was touching the river bank on 4 August 2023. On the earlier occasions I have mentioned, his assertions to the same effect are contradicted by other evidence, not least Ms Brown's reports and the photographs. In any case, none of the ten sample allegations of contempt mentions use of a *ladder* to connect Kupe to Richmond's land. The mooring is in each case alleged to be effected "by sunken scaffolding poles to the Council's land."
64. I accept Mr Trotman's unchallenged evidence that in the period from about 7 to 14 August 2023 Mr Trotman offered to move Kupe as a goodwill gesture if Richmond's lawyers could particularise any breach of the injunction. He did not regard himself as in breach of the injunction because he did not accept that Kupe was moored to Richmond's land. Nothing came of that proposal. On 4 September 2023, Kupe was not at or near land owned by Richmond. She was at Teddington Lock, where the river bank is owned by the Environment Agency.
65. But by 8 September 2023, she was by Richmond's land again. There she stayed until 14 September 2023 (*seventh allegation*). No specific evidence of a visit or photographs on 14 September is relied on by Richmond; the evidence consists of Mr Almond's belief that, as he put it in his witness statement, from 9 to 15 September 2023 "[t]he vessel remained moored in breach of the injunction". The next day, 15 September 2023 (*eighth allegation*), Mr Almond did visit Kupe, with agents of Mr Trotman's trustee in bankruptcy, who seized Kupe.
66. The *ninth allegation* is rather long and ponderous: it is that on Friday 22 September 2023:

"[d]uring the afternoon and early evening, the Defendant was present upon and in control of the vessel, whilst the vessel was moored against or near to the Claimant's riverbank. It is not known whether the Defendant had been present upon or in control of the vessel between 15th September 2023, when the vessel was secured by the bailiffs, and 22nd September 2023. By being in control of the vessel while it was moored by land owned by the Claimant, the Defendant was in breach of the Injunction Order."
67. The allegation has now expanded to include mooring "near to" Richmond's river bank and that Mr Trotman was in control of Kupe while she was "moored by" Richmond's land; these acts of alleged mooring are said to breach Lambert J's order. Aside from this tendentious phrasing, there is little dispute about what happened on 22 September that is relevant to these contempt proceedings. Ms Brown was on duty that day and visited Kupe. Mr Trotman was still in possession of it despite the seizure on 15 September, the previous week. He and friends were having a party aboard Kupe.
68. Police officers were called to Kupe. One was PC Karim Fazal, who was alerted to an incident involving "ABH and AFFRAY", as he said in his statement. Another officer who attended was PC Jack Roche. Ms Brown was assaulted, but not by Mr Trotman; by another man referred to by PC Roche as "the man in the red hat", in fact a Mr

Daniel Cappellini, who was subsequently convicted of the assault. However, Mr Hoar made it clear he did not suggest Mr Trotman incited or encouraged that or any violence.

69. Ms Brown showed PC Roche a copy of Lambert J's order, which Ms Brown had on her phone. PC Roche's statement for the purpose of the criminal proceedings stated his view that "[t]he mooring of the boat includes the bottom of the boat being in contact with the river bed which is considered the property of the Borough of Richmond-upon Thames". Mr Hoar does not support that proposition. PC Roche would not have had to attribute ownership of the river bed to Richmond if Kupe had been on that day connected physically to the river bank by a ladder or other apparatus.
70. Ms Brown provided body worn camera footage for the criminal proceedings, but Richmond did not rely on it in these proceedings, nor on any still photographs. I am far from sure that Kupe was physically connected to Richmond's land that day; in fact I am pretty sure from PC Roche's statement and his oral evidence, that she was not. In cross-examination he confirmed that he had not alleged the boat was tied by any rope or cable to the land and was not alleging that any scaffold plates or poles were attached to the river bank. He said he had learned from Richmond that it was the owner of the river bed. He regarded this as a "learning point for all".
71. Mr Trotman was taken into custody at Kingston police station, pursuant to the power of arrest. He arrived there at 7.15pm and spent the night in the cells. The next day, Saturday 23 September 2023, Richmond applied for bail for Mr Trotman. Mr Hoar spoke by telephone to the out of hours duty judge, Choudhury J. Mr Trotman could not attend, being in custody. Choudhury J granted bail on condition that Mr Trotman must attend at Court 37 in the Royal Courts of Justice, London, on 28 September 2023. He granted Richmond permission to issue a contempt application.
72. Mr Trotman was released and went back to Kupe, where he spent the weekend. The final sample allegation (***tenth allegation***) again asserts breach of Lambert J's order by mooring "near to" the river bank and mooring "by land" owned by Richmond. It is said that on Monday 25 September 2023, he was:

"present upon and in control of the vessel, whilst the vessel was moored against or near to the Claimant's riverbank. By being in control of the vessel while it was moored by land owned by the Claimant, the Defendant was in breach of the Injunction Order."
73. Richmond's evidence to support that allegation comes from PC Max Mason. He made a written statement and gave oral evidence before me. He was called to Kupe and shown Lambert J's order which, he understood, "stated that a male by the name of ALISTAIR TROTMAN could not be moored along the river THAMES in the London Borough of RICHMOND-UPON-THAMES". There was a "brief discussion" with Mr Trotman "arguing what the injunction was stating". After Mr Trotman got off the boat, PC Mason arrested him at 1327, giving breach of the injunction as the reason.
74. PC Mason's statement confirms that he told Mr Trotman he was arresting him "for breach of court injunction under section 27 Police and Justice Act 2006 as you have breached your court order by being moored on the river THAMES in RICHMOND UPON-THAMES". He cautioned Mr Trotman in the usual terms. Mr Trotman

replied “what reasonable cause do you think, what clause do you think has been breached”? PC Mason handcuffed him using the “back to back handcuffing technique”. Mr Trotman was then returned to custody at Kingston police station, arriving at 1358.

75. In cross-examination, Mr Trotman again asked PC Mason how he thought the injunction had been breached. PC Mason agreed that he was not suggesting there was any rope, chain or cable joining Kupe to the river bank; nor that any scaffold planks or poles were attached to or resting on the river bank. He agreed that he had not seen Mr Trotman put or encourage anyone else to put any rope, chain or cable on the river bank.
76. PC Mason had seen poles attached to the river bed; nothing was attached to the land but the gap between boat and land could be “stepped across”. He confirmed that Mr Trotman did not resist arrest. Body cam footage was taken. Richmond did not rely on it or produce any still photographs of Kupe that day. I accept PC Mason’s evidence that Kupe was not physically connected to the land that day but the gap could be stepped across. Mr Trotman had got off the boat and was on dry land when arrested.

Contempt proceedings and trial of the final injunction claim

77. After a second night in the cells, Mr Trotman was taken in custody to the Royal Courts of Justice and produced before Choudhury J, who again granted bail but this time on condition that Mr Trotman must appear to Court 37 on 28 November 2023 and that he must not go within five metres of Kupe, currently “moored to or adjacent to” Richmond’s land, or wherever Kupe might be, apart from boarding at an agreed time, escorted by a police officer, to collect his personal possessions from the boat. Choudhury J gave directions for filing evidence in forthcoming contempt proceedings.
78. The contempt application was issued on 6 October 2023. While it was pending, the trial of Richmond’s Part 8 claim for a final injunction took place before HHJ Blair KC, sitting as a judge of the High Court. He heard oral evidence from Mr Almond and Mr Trotman on 21 November 2023. Judgment was reserved. A week later, His Honour Judge Bird, sitting as a judge of the High Court, gave further directions in the contested contempt proceedings, including filing up to ten sample allegations to be tried, the remainder being left on file. The ten allegations were filed on 5 December 2023.

Judgment and order on the claim for a final injunction

79. On 9 January 2024 HHJ Blair KC handed down his reserved judgment; see *Richmond LBC v. Trotman (No. 2)* [2024] EWHC 9 (KB) (as I shall call it). He set out the procedural history, criticising the interim order of Lambert J as “verbose, poorly expressed and ungrammatical in a number of its paragraphs”. He was aware that Mr Trotman had been made bankrupt on 16 June 2023, but his attention was not drawn to section 285(2) of the 1986 empowering the court to stay the proceedings or allow them to continue on terms; nor to section 285(3) preventing enforcement of any debt provable in the bankruptcy (which would, as far as I am aware, include a quantified costs order).

80. HHJ Blair KC set out the legal framework, most of which I need not repeat. He noted that byelaw 4(a) of Richmond’s 2015 “Byelaws Relating to Mooring” prohibited mooring (other than in an emergency) for more than one hour in any 24 hour period starting when the mooring occurs; and that it is enforceable by criminal proceedings. He quoted the definitions of the noun “land” and the verb “moor” in byelaw 1:

“‘land’ means any land owned or managed by the Council abutting the tidal and non-tidal stretches of the River Thames and includes the banks, walls and embankments...

‘moor’ means the act of being physically attached to the land, physically touching the land, or tied to objects in the land, by way of ropes, gangplanks, stakes in the ground, or other similar methods.”

81. The judge also considered the case law on nuisance, most notably the decision of Jessel MR in *Original Hartlepool Collieries Company v Gibb* (1877) 5 Ch.D. 713; and, in modern times, the decision of Arnold J (as he then was) in *Couper and others v Albion Properties Ltd, Port of London Authority and Hutchison Whampoa Properties (Europe) Ltd* [2013] EWHC 2993 (Ch). Broadly, those cases stand as authority that unauthorised and unjustified obstructions of a river bank owned by another are a private and public nuisance and may be restrained by injunction (see Jessel MR’s judgment at pp.724-6).

82. At [33], the judge referred to “whips, saplings and branches growing from tree roots embedded in (and forming part of) its riverbank” and “overhanging the River Thames at the points where Kupe came into contact with it.” At [34] he stated:

“There is ample photographic evidence of the side of the defendant’s houseboat being in contact with these overhanging tree saplings. This has not put the defendant in breach of the claimant’s byelaws, because he has not been moored to them. There is no evidence of any damage having been caused to the trees.”

83. Only once on 4 April 2023 at 12.46pm, he said at [35], was there direct evidence of Kupe being physically attached to Richmond’s land. He noted among other things, at [40], Mr Trotman’s defence that “[t]he gangplank was not attached in any way to the riverbank because it would have been foolish and dangerous to do so”. He added Mr Trotman’s further point:

“The other method adopted for a period of time to go ashore involved stepping across to the land from a ladder which had been placed at an angle so that its upper end was against the vessel’s gunwale with its lower end seated on the riverbed somewhere near the bottom of the bank.”

84. At [49], the judge said:

“In considering Mr Trotman’s case overall I was put in mind of arguments which have been successfully advanced in the field of tax avoidance. Essentially they are these: if he happens to have found a way of strictly complying with the letter of the law which at the same time enables him to enjoy an advantage (economic or otherwise) which has frustrated the claimant’s objectives then it is legally improper for the claimant and the courts to twist the law so as to seek to ensnare him.”

85. At [51], HHJ Blair KC said this:

“With some diffidence I have not come to the same conclusions on the evidence as to trespass as was reached by Lambert, J. when she granted an interim injunction in this case. I do not accept that on a balance of probabilities the claimant has established, as it asserts, that Kupe has been moored in contravention of its byelaws for a period of several months. I am not satisfied that the gangplank was a physical attachment between the vessel and the riverbank. Therefore, notwithstanding the decision made in July granting an interim injunction on the basis of Mr Almond’s first witness statement and exhibits, having now heard the evidence given on oath and tested under cross-examination over the course of a long court day, on the balance of probabilities I do not find that there has been any significant trespass by Mr Trotman to the claimant’s land, especially as regards his navigation of Kupe in the vicinity of the claimant’s land. The claimant’s argument about Kupe being in contact with overhanging trees is something of a contrivance to try to overcome the fact that he has not moored to the council’s land and to try to found a tenuous basis for a cause of action in trespass. Certainly there has not been the extent or degree of trespass which to my mind could possibly justify granting a final injunction against Mr Trotman on the basis of the law of trespass.”

86. He therefore went on to consider the case in nuisance, which Lambert J had found unnecessary to consider. He found that the nuisance was made out. Mr Trotman was “committing a public nuisance by obstructing the riverbank for a considerable length ... This was no trifling interference ...” ([54]). He would grant an injunction but:

“As for the application for a power of arrest, there is no basis whatsoever on the evidence before me to attach such a power to this injunction. The claimant has not shown that there has been the use of, or threatened use of, violence and there can be no risk of harm to the person of the council (s.27(3) Police and Justice Act 2006).” ([59])

87. He awarded summarily assessed costs of £27,500 against Mr Trotman and granted an injunction in much clearer terms, included at the end of his judgment, at [61]:

“The defendant shall be prohibited, whether by himself or by inciting or encouraging any other person, from bringing, mooring or leaving on the River Thames any vessel whereby any part of it comes within 3 metres of a riverbank in the London Borough of Richmond-upon-Thames owned by the London Borough of Richmond-upon-Thames Council, unless it be so as to moor in compliance with the London Borough of Richmond-upon-Thames’ Byelaws Relating to Mooring of 2015 (and any amendments thereto or replacements thereof). ...”

Trial of the contempt proceedings

88. That injunction was to last indefinitely but, by agreement at the hearing before me, its duration is now restricted to four years from the second day of the hearing, 30 July 2024, i.e. up to midnight on 29 July 2028. HHJ Blair KC’s formal order was not sealed until April 2024 but it was binding from 9 January 2024 and replaced Lambert J’s order from that date. The trial of the contempt proceedings was fixed in March 2024 to take place at the end of July 2024. Shortly before the hearing before me, on 20 June 2024 Mr Trotman was discharged from bankruptcy. Kupe has been scrapped and is no longer Mr Trotman’s home. He is staying with friends.
89. On 12 July 2024, Mr Hoar produced Richmond’s skeleton argument for this contempt application. He asserted that Mr Trotman was in contempt of his obligation “not to moor a vessel by scaffolding poles” and that in breach of the injunction he had “failed to remove Kupe”. The premise of Richmond’s contempt application was that

“mooring” included “the use of scaffolding poles connecting the vessel to the riverbank”. It was said to be “unnecessary and inappropriate” to include Lambert J’s judgment “given that findings were made on an interim basis”. A judge is often especially keen to read what a party does not want him to read. I felt Lambert J’s judgment could shed light on what her order means, or was intended to mean.

90. Mr Hoar submitted in the skeleton that HHJ Blair KC made “one mixed finding of fact and law that was clearly wrong and should not be followed”. The findings criticised were: (i) that Kupe being “in contact with overhanging tree saplings” was not mooring in breach of the byelaw ([34]); (ii) that Kupe had not been “moored in contravention of its byelaws for a period of several months”; the judge being “not satisfied that the gangplank was a physical attachment between the vessel and the riverbank” ([51]); and (iii) “there has not been the extent or degree of trespass which ... could possibly justify granting a final injunction ... on the basis of the law of trespass” ([51]).

91. Mr Hoar contended that Lambert J’s order must be obeyed even if irregularly made; although he included in the skeleton, very properly, the concession that the court “will only punish a breach of an injunction as a contempt if it is satisfied that the terms of the injunction are clear and unambiguous, that a defendant had proper notice of the terms and that breach of the injunction has been proved beyond reasonable doubt”. Aside from some assertions of anti-social behaviour of potential relevance only to sentence, the heart of Richmond’s argument was paragraph 44 of the skeleton:

“Irrespective of the definition of ‘mooring’ in the 2014 Byelaws (addressed above) the prohibition in the Interim Injunction specifically prohibited the Defendant from mooring any vessel by the use of poles in the River Thames wherever the vessel kept in place by those poles was accessible by land owned by the Claimant; and required him to remove Kupe from mooring on or by the Council’s land. Thus, it is irrelevant that the riverbed into which the poles are driven is owned by the Crown (and managed by the Environment Agency). The evidence of Mr Almond is that scaffolding poles had been driven into the river to secure Kupe.”

92. Mr Hoar did also rely on Mr Almond’s written evidence; though not he did not strongly rely on that evidence later at trial, no doubt recognising that it was unconvincing, as explained above. He submitted in the skeleton that Mr Trotman had placed “a houseboat extendable ladder into the water, resting on the riverbank and riverbed, to provide a precarious form of access/ egress from land belonging to ... Richmond”.

93. After reading that skeleton, I sent to the parties shortly before the hearing extracts from Spencer Bower and Handley on Res Judicata (6th edition, updated online to October 2023), from chapter 8 on issue estoppel, at 8-01, 8-02; and at 8-04 which (omitting the footnotes) include the following passages:

“[8.01] A decision will create an issue estoppel if it determined an issue in a cause of action as an essential step in the reasoning. Issue estoppel applies to fundamental issues determined in an earlier proceeding which formed the basis of the judgment. ...

...

[8.04] The determinations which will found an issue estoppel may be of law, fact, or mixed fact and law.”

94. At the hearing before me, having taken instructions, Mr Hoar confirmed that he did not (contrary to his skeleton argument) invite me to say HHJ Blair KC’s decision was wrong in any material respect. He agreed with my proposition that it was not for me to act as a court of appeal from that decision. He did submit that the subject matter of an issue estoppel should be narrowly construed. He cited two of the many cases on issue estoppel, *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd (formerly Contour Aerospace Ltd)* [2014] AC 160 and *Secretary of State for Trade and Industry v. Birstow* [2004] Ch 1; but did not say that either was direct authority for his proposition.
95. At the start of the hearing, Mr Trotman made it clear that he did not accept that the injunction prevented mooring Kupe by scaffolding poles to the river bed. He said the injunction was poorly drafted and unclear. He relied on the principle of doubtful penalisation, he said. He denied any physical connection between Kupe and Richmond’s land. The tree branches were overhanging the river which the Crown owns and Richmond does not. He relied on HHJ Blair KC’s decision that he had not moored in breach of the byelaw or materially trespassed. As for moving Kupe, he had done his best but it is difficult to move a 50 ton barge, he said.

Issues, Reasoning and Conclusions

Submissions of the claimant

96. I have already summarised the points made in Richmond’s skeleton argument and will not repeat them in full. Before the oral closing argument of Mr Hoar, I drew the parties’ attention to section 285 of the Insolvency Act 1986, a provision apparently making its first appearance in those discussions in court. I directed that the parties make their closing submissions on all other points and that I would receive written argument on the impact of section 285. I have since done so and will return to it below.
97. In oral argument, he submitted that paragraph (2)a. of Lambert J’s order prohibits more than breach of the obligation under the byelaw not to “moor” as defined in that byelaw; and prohibits more than trespassing. He submitted, in line with his skeleton argument, that it specifically prohibits, without more and independently of any mooring, “the use of gangplanks and scaffolding poles sunk into the river bed and or by ropes to overhanging trees”.
98. He accepted HHJ Blair KC’s criticisms of the drafting, but insisted that Mr Trotman should not be allowed to take any advantage of the drafting weaknesses. His *modus operandi*, said Mr Hoar, was to use the wording of the order to evade his obligations under it. He invited me to construe HHJ Blair KC’s findings narrowly, i.e. as confined to a finding that the non-mooring related only to contact with overhanging trees and did not prevent me from deciding that anchoring to the river bed without physical connection to the land was barred by Lambert J’s injunction.
99. Mr Trotman, said Mr Hoar, has no respect for court orders; he “plays fast and loose with the law”, as he put it. Mr Hoar made a further point concerning the method of

what he called mooring using scaffolding planks anchored to the river bed. As I understood the point, he said that the method included the poles being able to move freely upwards and downwards in the metal pipework fixed to the boat and surrounding the poles, so that the boat could undulate with the ebb and flow of the currents. This, said Mr Hoar, indicated that Kupe was being moored in breach of the injunction.

100. Mr Hoar made an additional point: that Kupe was clearly tied by ropes to trees after midday on 18 July 2023, as shown in one of the photographs. HHJ Blair KC had not addressed that occasion in his judgment; he had only dealt with a prior occasion in April 2023 when ropes connected Kupe to overhanging trees. Mr Hoar said I could be sure Mr Trotman knew all about the connection between Kupe and the shore on 18 July 2023; and that he was on any view in breach of the order on that day and failed to move Kupe by midday as the order required.
101. In his written submissions on section 285 of the 1986 Act, Mr Hoar did not suggest the provision had been mentioned earlier in the proceedings. He submitted that my permission was not needed to continue them. The authorities pointed clearly to the proposition that the section applies to proceedings by a creditor to enforce payment to himself, the purpose of the provision being to protect the bankrupt's estate in the interest of creditors generally. Alternatively, if permission were needed, it could be granted retrospectively and he made a contingent application for such permission.

Submissions of the defendant

102. I have already touched on some of Mr Trotman's arguments and will not repeat them all. Some of the points he raised were, with respect, ill-founded and misconceived. He is one of those litigants in person who risk trying the patience of the court and thereby masking a few good points with many bad ones. The latter have been aired and roundly dismissed in other proceedings and I will not focus on them here. I will concentrate on those of his submissions that do warrant or may arguably warrant serious consideration.
103. He submitted that no case law supports any right of Richmond to prevent him from anchoring a vessel to the river bed for a reasonable time, using scaffolding planks. Furthermore, in a witness statement at paragraph 31 he said this:

“I have read Cs [Richmond's] Halsbury words to effect “no penalty if trivial or technical”. I cannot imagine anything more trivial as touching C's trespassing trees or anchoring, not mooring to other parties, not C's land. If case law can be produced to evidence where there was refusal to make a contempt order on this basis I believe I can argue a more fortiori case if the discredited suggestion touching trespassing trees or anchoring to a third party's riverbed consists mooring to Cs land.”
104. He complained that Richmond had not cut its trees overhanging the river bank and was itself trespassing over the river, to the detriment of those seeking to exercise lawful rights of navigation and lawful mooring in compliance with byelaws. As it was trespassing on Crown land, Richmond did not come to court with clean hands.
105. He referred to his “good will offer” to Richmond's solicitors in mid-August 2023 to move Kupe again if they could particularise any breach of Lambert J's order; instead,

they threatened and then issued contempt proceedings “trying to bully me then and by these proceedings”. He added:

“In the unlikely event Judge rules I did inadvertently breach the court order I invite court not to make any penalty as Cs evasiveness avoided me potentially purging contempt.”

106. Mr Trotman referred, as I have said, to the principle of doubtful penalisation, pointing out HHJ Blair KC’s criticisms of the poor drafting of the injunction, reminding me that Richmond not he had drafted the order and asking rhetorically “who gets the benefit of the doubt?” He took me through the operative parts of the order, renewing the criticisms of the drafting, grammar and syntax, particularly the vagueness of the phrase “near to” in paragraph (1)a. and the garbled English in paragraph (2)a.

Some propositions of law

107. The authors of Halsbury’s Laws of England, vol. 24, say at paragraph 72 (omitting the footnotes):

“The power to order committal for civil contempt is a power to be exercised with great care. The court will only punish disobedience to an order of the court, or non-compliance with an undertaking, if satisfied that the terms of the order or undertaking are clear and unambiguous, that the defendant has proper notice of the terms and that a breach of the order or undertaking has been proved beyond reasonable doubt.”

108. Similarly, in the current edition of Arlidge, Eady & Smith on Contempt (5th edition, 2017, incorporating First Supplement, up to July 2019 with some additional developments incorporated), the learned authors state at 12-55:

“An order or undertaking will not be enforced by committal if its terms are ambiguous, [footnote 158] the rule being analogous to that which governs the interpretation of penal statutes. ... It is to the terms of the order itself that one must look in order to define the obligations imposed.”

109. The authors develop these points in more detail at 12-56 through to 12-64. The footnote numbered 158 cross refers as follows: “*Att-Gen v Sillem* (1864) 10 H.L. Cas. 704. See generally F.A.R. Bennion, *Statutory Interpretation*, 7th edn (2019) at 27.1, ‘Principle against doubtful penalisation’ p.825.” The principles are, indeed, developed further at paras 26.4 and 27.2 in Bennion, 7th ed. (by Diggory Bailey and Luke Norbury, incorporating developments up to October 2020).

110. The court “will not order committal where the contempt is of a minor or technical nature” (Halsbury’s Laws, vol. 24 at paragraph 110). Footnote 2 cites, among other authorities, the decision of Lord Donaldson MR in *Smith v. Smith* [1988] 1 FLR 179, at 181: “[b]reach of an order or undertaking does not automatically, or even normally, lead to committal”.

111. On the other hand, it is not a defence to a contempt application that the defendant honestly believed what he did was not a breach of the injunction, even if the injunction was irregularly obtained. And, as Mr Hoar said in his skeleton, even “[w]here an order ought not to have been made, its terms must still be followed: *Isaacs v Robertson* [1985] AC 97, applied in *T (a child ...) v. an NHS Trust* [2020] EWHC 1147 (QB).”

112. As for the supervening insolvency of the alleged contemnor and the effect of section 285 of the Insolvency Act 1986: Mr Trotman accepted, as I do, that Mr Hoar's interpretation of the section and the case law is as he set out in his supplemental written submissions on the point: see especially *Re Smith (a Bankrupt) v Braintree District Council* [1990] 2 AC 215, per Lord Jauncey at 229H and 230F; and *Bank of Ireland (UK) plc v Colliers International UK plc* [2012] EWHC 2942 (Ch), per David Richards J (as he then was) at [31]. I will return to this issue.

Scope of the injunction: what conduct does it prohibit?

113. I must consider the words used in the order, but that does not mean they were used in a vacuum. Mr Trotman is entitled to the benefit of the principle of doubtful penalisation, in case of ambiguity. The analogy with tax avoidance arguments is not against him where it is sought to have him imprisoned. The context is also relevant to determining the scope of what conduct the order prohibits. It purports to be in part "mandatory" but that is clearly wrong. In my judgment, the relevant contextual matters are as follows.

114. First, the injunction in the Kingston case did not include words about attaching a boat to the river bed using scaffolding poles. Kingston did not rely on any public nuisance. The evidence did feature that technique and complained of "mooring" Kupe by "attaching the boat to the land with a nylon rope ... and attaching the boat to the riverbed by the use of scaffolding poles". The Kingston injunction did not seek to prevent any tort other than trespass, which requires a physical connection between boat and land.

115. Second, Richmond's particulars of claim in this case, relying primarily on trespass but also on nuisance, reproached Mr Trotman with trespass by "acts of mooring his boats on / to / abutting the Claimant's land" which "amounts to trespass". Richmond's pleading (not surprisingly) did not suggest that trespass included anchoring a boat to the river bed, without more, i.e. without any physical connection between boat and land. Richmond does not (*pace* PC Roche) claim to own the river bed; and the Environment Agency which does own it (i.e. holds it for the Crown), does not sue.

116. Third, Richmond's case in trespass relied heavily on Mr Almond's evidence that there was a physical connection between boat and land. Mr Hoar's opening words to Lambert J were founded on that evidence: Kupe, he said, was "moored using scaffolding poles driven into the river bed, so it was inches from the river bank but a ladder was touching Council's land and the vessel was touching the trees". The photographs, said Mr Hoar, show trees touching the vessel and "planks attached to the river bank". These were "relevant considerations because of the scope of the byelaws".

117. Fourth, heavy reliance was placed on the definition of mooring in the byelaws. Mr Hoar was at pains to explain to Lambert J that "the byelaws themselves say that mooring is where a vessel is touching upon the bank ...". The definition of the verb "moor" in the byelaws was important to make good the submission that Mr Trotman was a serial trespasser, as Richmond persuaded the judge he was. The validity of the byelaws was therefore important too. It was not suggested that mooring meant something beyond the definition in the byelaws; breaching them was the essence of the trespass relied on.

118. Fifth, Lambert J therefore pointed Mr Trotman away from focussing on scaffolding poles: “that’s not the point, it is the existence of communications, necessary communications between the boat and the land. So ... I think focusing on the scaffolding which moors or anchors the boat to the river bed may not be the point to focus on”. She was telling Mr Trotman she regarded “communications between the boat and the land” as “necessary”.
119. Sixth, when Lambert J gave her judgment, she relied on Mr Almond’s evidence and photographic evidence which persuaded her there was a likely physical connection between boat and land; and that Kupe was therefore moored to the land within the definition of “moor” in the byelaws. She thought that a ladder being used as a “gangplank” was “resting on a thicket of sycamore roots and branches on the riverbank”. Mr Trotman was therefore “moored unlawfully and is trespassing”. She did not suggest he could be trespassing if he were not moored unlawfully.
120. Lambert J rejected on the facts Mr Trotman’s suggestion that Kupe was attached only to the river bed, saying there was... a “physical attachment between the vessel and the riverbank and the vessel is physically tied to the riverbank by means of the gangplank. I accept the statement of Mr Almond that the vessel has been moored to the Claimant’s land in this way for – effectively – several months”.
121. Seventh, that view of the evidence meant that the judge did not need to consider and did not consider the cause of action in nuisance. It was sufficient for an interim injunction that here was a “serious issue to be tried in trespass” and “the Defendant is a serial trespasser”. No one was suggesting and the judge could not have thought that it would be trespassing on Richmond’s land to attach Kupe to the river bed only and not to that land.
122. Taking account of those matters of context and looking at the wording used in the injunction, I make the following judgments about the meaning and scope of the prohibitions in Lambert J’s order. I find it unlikely that she can have intended to prohibit acts that (i) as against Richmond, did not amount to trespass; (ii) amounted, or may have amounted only to nuisance, a cause of action she did not consider; and (iii) amounted to some form of “mooring” outside the byelaw definition of that term.
123. In paragraph (1)a. the word “mooring” means mooring in breach of the byelaws. The words “situated near to” denote the position of Kupe while unlawfully moored in breach of the byelaw. They do not mean it is a breach of the injunction for Kupe to be situated near to the river bank, with or without anchoring to the river bed. That is far too vague a provision and would not be an unlawful act. The gist of (1)a. is that Kupe must be “attached” to the river bank and that this can be “by any means”.
124. Paragraph (1)b. is repetitious of paragraph (1)a. It is an example of the language being “verbose”, to borrow HHJ Blair KC’s word. Paragraph (1)c. seeks to add the point that mooring can include doing so with “poles in the River Thames”. The “mooring” must be “so as to access a vessel by land” owned by Richmond. This posits boarding the boat from the river bank - not the other way round - using a gangplank or ladder fixed to the land, which would be to “moor” under the byelaw. I do not think (1)c. prohibits jumping onto the boat from the river bank without a physical connection.

125. Paragraph (2)a. (ignoring the erroneous “[m]andatory”) is again verbose and repetitious. I do not accept Mr Hoar’s submission that “moor” means something broader than the byelaw definition of that verb. It prohibits trespass, certainly, but trespass where the tortfeasor “attach[es] to the land” something physically connecting the boat to the land. This attaching, i.e. physical connection can be “by any means”.
126. Paragraph (2)a. continues with a non-exhaustive description of various different means of physically connecting boat to land. These include “overhanging the river”; “the use of gangplanks”; “the use of ... scaffolding poles sunk into the river bed”; and “by ropes to overhanging trees”. These are all ways of mooring by physically connecting the boat to the land. They are not acts prohibited over and above mooring the boat.
127. Paragraphs (2)b and (2)c. should be read together. They require Mr Trotman by noon on 18 July 2024 to remove any of his vessels - and specifically under (2)c. Kupe – from any land, wharf or property owned by Richmond, to which the vessel is “moored by any means”. Paragraph (2)c. is otiose because Kupe is covered by (2)b; another example of needless verbosity. The two sub-paragraphs do require the vessel to be moored, within the byelaw definition. It would be sufficient compliance for Kupe to be offshore, anchored to the river bed and with no physical attachment to the river bank.
128. It follows that I reject Mr Hoar’s submissions to the effect that the injunction outlaws anchoring to the river bed irrespective of the definition of mooring and without the need for any physical connection between boat and land. That submission would mean Lambert J was consciously prohibiting conduct that is not unlawful *per se* on any basis put to her at the hearing. It would be contrary to the way in which the matter was argued before her, contrary to the reasoning in her short judgment and contrary to Mr Trotman’s right to benefit from ambiguities in the poorly drafted order.

The ten sample allegations; reasoning and conclusions

129. I turn to consider the ten sample allegations listed for trial before me. I start with what happened on 18 July 2024, which is relevant to the ***first and second allegations***. Mr Trotman was late arriving with the battery and did not manage to start the tug engine in time to pull Kupe away by midday. I am sure that at noon on that day, Kupe was connected to Richmond’s land in the sense that ropes were tied to Kupe and to trees or other vegetation on the river bank, probably overhanging the river. That was before Kupe was manually hauled, with difficulty, about 60 yards downstream.
130. That was, strictly, a breach of paragraph (2)b. and c. of the injunction. The breach was short lived. After Kupe was manually moved, no further breach is proved. I have rejected the evidence of a physical connection between boat and land other than on that occasion and I am not sure, on the evidence, that it persisted after Kupe was moved manually. It is at the most a short lived trespass comparable to what HHJ Blair KC later called (writing about a different occasion) “something of a contrivance ... to try to found a tenuous basis for a cause of action in trespass”. It would not have persuaded HHJ Blair KC to grant a final injunction. Still, it is contrary to Lambert J’s order.

131. To that extent only, Richmond has, for what it is worth, proved a breach of the first and second allegations, in relation to 18 July 2024 only. The **third, fourth, fifth, sixth, seventh and eighth** allegations are not proved. Richmond has shown only that on those occasions, Kupe was anchored to the river bed offshore, without any physical connection to Richmond's land. Mr Almond's evidence to the contrary does not carry conviction. The allegations say nothing about use of a ladder.
132. The **ninth allegation** fares no better. I have described above the tense and difficult confrontation that occurred on 22 September 2023 when Ms Brown and others interrupted Mr Trotman's party aboard Kupe. There is no body worn footage evidence although Ms Brown's camera was activated. PC Roche's mistaken understanding that Richmond owned the river bed to which Kupe was anchored does not support any physical connection between Kupe and the land. The allegation fails.
133. The **tenth allegation** also fails. PC Mason accepted that on 25 September 2023, he saw poles resting on the river bed. He agreed that nothing was attached to the land; the gap could be "stepped across". There was no rope, chain or cable joining Kupe to the river bank. Mr Trotman had disembarked by the time he was arrested. There is no suggestion that he used a gangplank. Clearly, he "stepped across" the gap.
134. In summary, the only breach proved is minor. It would not have persuaded HHJ Blair KC to have granted a final injunction. He was not of the view that being in contact with overhanging tree saplings is mooring within the byelaw. He may be right about that, though he was considering the issue on a different date. The breach is of an order now no longer in force and which, to judge by later evaluation of oral evidence in two trials, was only made because the low threshold *Cyanamid* test was applied to Mr Almond's unreliable evidence. The low level breach on 18 July 2023 is minor and insufficient to found an order of committal. I am unwilling to make one based on it.

Further observations

135. I have a number of serious concerns about the way in which these contempt proceedings have been pursued. A statesmanlike and wise decision would have been to abandon them after HHJ Blair KC's judgment and order. He made binding findings greatly reducing the sting of any contempt. His order replaced Lambert J's with one that is a model of clarity. He excoriated the drafting of Lambert J's order, with good reason. He cast serious doubt on the power of arrest. Continuation of the contempt proceedings after these setbacks was ill-judged.
136. As for section 285 of the 1986 Act, I agree with Mr Hoar, for the reasons he gives, that my permission is not needed to continue these contempt proceedings. If it had been, I would have refused it for the many reasons I have given. However, I believe it probably was needed (though I need not decide the point definitively) from HHJ Blair KC before applying to that judge for an award of summarily assessed costs against Mr Trotman. Richmond thereby made a monetary claim against Mr Trotman as his creditor. The claim was for about £30,000 of which £27,500 was awarded.
137. Before Lambert J, first, Richmond provided a very poorly drafted order. Second, Mr Almond's incorrect evidence influenced her, before he could be cross-examined on it. Third, Richmond did not refer Mr Trotman or the judge to section 27 of the Police and Justice Act 2006, with its high threshold for attaching a power of arrest to the

order. Fourth, nor did Richmond invite Mr Trotman, or remind Lambert J to invite Mr Trotman, to speak against attaching a power of arrest.¹ Fifth, Richmond did not refer Mr Trotman or Lambert J to section 285 of the 1986 Act.

138. As for the trial of the final injunction application before HHJ Blair KC, Richmond omitted to draw to his and Mr Trotman's attention section 285 of the Insolvency Act 1986 which was highly relevant, at least, to the substantial costs order sought and granted against Mr Trotman. Sensibly, Mr Hoar indicated at the hearing that Richmond might well take a "pragmatic" view of that costs order, which it has not sought to enforce as Mr Trotman has no assets of any substance.
139. As for the present contempt proceedings, Richmond chose to attack HHJ Blair KC's decision without in its skeleton argument mentioning the problem of issue estoppel. It conceded the issue estoppel point grudgingly, not until the morning of the first day of the hearing. This was a serious failure when litigating against an unrepresented opponent with little legal knowledge. Richmond's unwarranted attack of HHJ Blair KC's decision unfairly made Mr Trotman's conduct look worse than it was. The issue estoppel point was not difficult or complicated; it fell squarely within the words of paragraph 3.4.11 in volume 1 of the White Book.
140. In sum, Richmond's pursuit of Mr Trotman in these contempt proceedings has been zealous to a fault, to the point of being heavy handed, even extending to the loud and harsh tone in which Mr Trotman was, at times, cross-examined, with discursive and aggressive questioning. Richmond's misplaced zeal in its pursuit of him was in inverse proportion to the dwindling merits of its case against him in contempt. It has been neglectful of its duties to its unrepresented opponent and to the court to inform both of points that could assist the other side.
141. Although these criticisms are serious, I do not mean by articulating them to suggest that all the fault in this case is on one side. On the contrary, it should not be forgotten that Mr Trotman has committed an ongoing and continuing public nuisance over months and probably years by blocking the river bank and impeding the lawful exercise of navigation and mooring rights of others. I entirely agree with HHJ Blair KC that this was tortious and justified his final injunction, which has four years to run.
142. Mr Trotman is a difficult character with an abrasive and sometimes (not always) discourteous manner. That may be part of the reason why he has lost successive court proceedings and had substantial costs orders made against him, even to the point of being warned of a possible general civil restraint order. With respect, he would do well to lie low for a while and not to seek and pursue any further litigious conflict with Richmond, Kingston or anyone else, if he can. He has lost a lot more than he has won in the courts.

Sentence

¹ I am, respectfully, unable to agree with William Davis LJ's view (refusing an application for permission to appeal) that "[t]he 2006 Act was and is irrelevant". Section 27 of that Act "applies to proceedings in which a local authority is a party by virtue of section 222 of the Local Government Act 1972". That is the position here. Section 37 of the Senior Courts Act 1981 confers no express authority to attach a power of arrest. Powers to do so tend to be statutory. Even if there is any other power to do so in an action for trespass, section 27 was still relevant because of the cross-reference to local authority proceedings under section 222 of the 1972 Act.

143. If I had found that it was a breach of the injunction, without more, to anchor Kupe to the river bed with scaffolding poles; and if, in consequence, I had made a finding that Mr Trotman is in contempt of court, I would not have imposed any penalty beyond a nominal £50 fine, for the following brief reasons. The order of Lambert J had ceased to have effect and was water under the bridge. It was unclear and had been superseded by an order in clear terms. Mr Trotman believed he was complying with it.
144. Further, the order breached would have been irregularly made and would have prohibited conduct that was not a trespass to Richmond's land nor a breach of its byelaws. And any breaches of the mooring byelaw or any other byelaw could have been dealt with in the magistrates' court, whose jurisdiction Richmond has not invoked.
145. Yet further, Mr Trotman is a man of no means who could not afford a substantial fine. This is partly his own doing because he has fought losing causes in the courts, leading to adverse costs orders; but I would shrink from imprisoning him, even with a suspension, where a rich person would avoid prison and receive a substantial fine or perhaps confiscation of an asset such as a river boat.
146. I would also have taken into account that Mr Trotman has been twice arrested and once handcuffed with his hands behind his back and had spent two nights in custody, which would not have happened but for the power of arrest; which might have been omitted from the order if Richmond had drawn the judge's attention to the test in section 27 of the 2006 Act. And I would take into account that a community order with a pre-sentence report is not an available sentencing option in contempt proceedings.
147. Finally, I would have taken into account that the costs order of £27,500 made against Mr Trotman while he was bankrupt far exceeds any fine that would have been appropriate had I found Mr Trotman in contempt here. Richmond's omission to draw the judge's attention to section 285 of the Insolvency Act 1986 on that occasion may have contributed to the judge's decision to make that costs order.

Conclusion and disposal

148. I will make an order in the following terms. The application for a committal order will be dismissed. The order of HHJ Blair KC will continue in force until midnight on 29 July 2028, when it will expire. I will consider further brief written argument on costs, unless the parties are able to reach agreement, as I hope they will. Mr Trotman has suggested that he might apply for a wasted costs order, but any such application is highly unlikely to succeed. The threshold for making such an order is high.
149. My provisional view in relation to costs is that Mr Trotman may well be entitled to his costs of the application. Such an order may be appropriate even if a technical or minor contempt is proved. The reasoning of Jacob J in *Adam Phones Ltd. v. Goldschmidt* [2000] FSR 163, [1999] 4 All ER 486, is instructive in this regard. Mr Trotman may be entitled to a costs order under CPR rule 46.5 and Practice Direction 46, paragraphs 3.1-3.3. Richmond would, probably, be entitled to set off its liability against Mr Trotman's costs liability under HHJ Blair KC's costs order.

150. I would be very unlikely to award costs in Mr Trotman's favour if Richmond were to undertake not to seek to enforce HHJ Blair KC's costs order. I have doubts about its propriety, not from any disagreement with HHJ Blair KC but because his permission was not sought and may have been required to claim costs, thereby becoming a creditor of a then undischarged bankrupt.
151. It would be regrettable if the parties were now to become mired in further litigious controversy about costs. My proposed solution would avoid this, if the parties agree that there should be no order as to costs and that Richmond undertakes not to enforce HHJ Blair KC's costs order against Mr Trotman.