Neutral Citation Number: [2022] EWFC 113

Case No: MA19P02184/MA21P01785

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/10/2022

Before:

THE HONOURABLE MR JUSTICE MACDONALD

- -

Between:

Robert McCarren	**Claimant**
- and -	
Paul Ireland	**Defendant**

- -
- -

Mr Joseph Chiffers (instructed via Direct Access) for the **Claimant**
Mr Peter Kidd (instructed by **Paul Ireland Solicitors**) for the **Defendant**

Hearing date: 22 July 2022
In Public

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

The Judge has given leave for this version of the judgment to be published.

Mr Justice MacDonald:

INTRODUCTION

1. In this matter I am concerned with an application by the Defendant, Mr Paul Ireland, dated 10 June 2022 to strike out an application made by the Claimant, Mr Robert McCarren, to commit Mr Ireland for contempt of court for, it is alleged, disclosing certain documents arising from family proceedings without the permission of the court.

2. The application to commit Mr Ireland for contempt of court made by Mr McCarren can fairly be described as one amongst a blizzard of applications made by Mr McCarren arising out of concluded litigation under Part II of the Children Act 1989 concerning his son, S. Those proceedings were finalised on the basis of a child arrangements order made by DJ(MC) Carr on 1 July 2021. Since that date, Mr McCarren has engaged in litigation in two Divisions of the High Court and has launched complaints to multiple regulatory agencies with a view to demonstrating that the decision in the family proceedings was erroneous. The bundle for the application currently before the court contains a table that purports to summarise the individual sets of legal proceedings in which Mr McCarren has been, or is currently, engaged. Mr McCarren does not accept the accuracy of that table but on his own evidence the scope of his former and current litigation is expansive. At the heart of each of the sets of proceedings commenced by Mr McCarren, and each of the complaints he has made to regulatory agencies, is his contention that he has suffered a grave injustice at the hands of the Family Court.

3. With respect to Mr McCarren's application to commit Mr Ireland, and the application by Mr Ireland to strike out that application, Mr Ireland is represented by Mr Peter Kidd of counsel. Mr McCarren is represented by Mr Joseph Chiffers of counsel. I have been greatly assisted by the written and oral submissions of both counsel. At the conclusion of the hearing, I reserved judgment in this matter.

BACKGROUND

4. Within the foregoing context, the procedural background to the matter might best be described as labyrinthine, ranging as it does over protracted private law proceedings and the multiple incidences of ancillary litigation launched by Mr McCarren during, and in the context of the outcome of, those family proceedings. It is, in places, difficult to follow the course of the proceedings in circumstances where Mr McCarren is in the habit of issuing serial interlocutory applications in addition to commencing new substantive proceedings (a Case Summary from the family proceedings dated 16 June 2021 contained in the bundle lists no less than *twenty-eight* separate interlocutory applications within the private law proceedings under the Children Act 1989). The effect of this is to confuse and obfuscate the procedural position. The following account, however, represents the history of the family proceedings relevant to the current application by Mr Ireland to strike out Mr McCarren's application to commit him for contempt.

5. As I have noted, Mr McCarren has a son, S, with his ex-wife. Mr McCarren first made an application for a child arrangements order in respect of S in 2017. A final order was made in those proceedings by consent, subject to the determination by the court of certain narrow issues between the parties. In 2018 Mr McCarren made a further application for a child arrangements order in respect of S and a further child

arrangements order was made, again largely by consent. Mr Ireland acted as solicitor for Mrs McCarren in that second set of family proceedings. In 2019 Mr McCarren launched a third application under the Children Act 1989, seeking overnight contact with S. Mrs McCarren cross-applied to vary the existing child arrangements order and for an order under s.91(14) of the Children Act 1989 requiring Mr McCarren to obtain the permission of the court before making any further applications in respect of S. Once again, Mr Ireland acted as solicitor for Mrs McCarren in those proceedings.

6. S was joined as a party to the proceedings under the Children Act 1989 on 6 August 2020 and a Children's Guardian was appointed. By an order dated 28 August 2020, and upon the application of the Children's Guardian, DJ(MC) Carr gave permission for the joint instruction of Dr Kate Hellin to prepare a psychological assessment of the parents. That order was made by consent, with both parents agreeing to the instruction of Dr Hellin. Dr Hellin prepared and filed her expert report with the court on 18 December 2020. In short, Dr Hellin concluded that Mr McCarren demonstrated a narcistic personality, with limited insight or empathy and an obsessive, ruminative and rigid cognitive style with elements of paranoia.

7. Following the receipt of Dr Hellin's expert report Mr McCarren launched multiple interlocutory applications, leading to a series of interim hearings in the family proceedings between August 2020 and March 2021. Those applications included an application by Mr McCarren on 20 December 2020, two days after the filing of Dr Hellin's report, to exclude the evidence of Dr Hellin and to remove the Children's Guardian from the proceedings, both of which applications were refused by the court on 28 January 2021.

8. On 23 March 2021 Mr McCarren wrote to the court and informed the court of "his immediate withdrawal from the ongoing proceedings". DJ(MC) Carr treated that letter as an application for permission to withdraw under FPR 2010 r.29.4 and invited written representations from the parties. An order dated 4 May 2021 further records that, notwithstanding his letter of 23 March 2021 indicating his withdrawal form the proceedings, Mr McCarren had also issued a C2 application dated 22 April 2021 for permission to instruct an expert psychologist and an independent social worker and for directions for further disclosure and the filing of further evidence. In the circumstances, DJ(MC) Carr refused permission to Mr McCarren to withdraw proceedings. On 14 May 2021 each of the applications made by Mr McCarren on 22 April 2022 was dismissed.

9. At a final hearing on 1 July 2021, and having regard to the conclusions of Dr Hellin, DJ(MC) Carr made a child arrangements order providing for S to live with Mrs McCarren and for him to have indirect contact with Mr McCarren. Whilst Mr McCarren attended the commencement of that hearing, the order of DJ(MC) Carr records that Mr McCarren left the hearing during the course of the court giving its reasons for refusing an application by the Mr McCarren to adjourn the final hearing and refusing again each of the applications that had first been made by Mr McCarren on 22 April 2021 and dismissed by the court on 14 May 2021. The order records that Mr McCarren did not return to the final hearing and did not give evidence at that hearing. In addition to making a final child arrangements order, DJ(MC) Carr made a non-molestation order against Mr McCarren in favour of Mrs McCarren and a costs order in favour of Mrs McCarren in the sum of £10,000.

10. On 1 July 2021, DJ(MC) Carr also made an order under s.91(14) of the Children Act 1989 requiring Mr McCarren to seek the permission of the court before issuing any further applications under the Children Act 1989 until 30 June 2024. DJ (MC) Carr further directed that any further applications by Mr McCarren under the Children Act 1989 should be considered on the papers before consideration is given to serving Mrs McCarren.

11. The reasons provided by DJ(MC) Carr for making the orders he did on 1 July 2021 make clear that he rejected a series of criticisms made by Mr McCarren of Dr Hellin and the expert report she provided to the court.

12. Mr McCarren appealed the final orders made by DJ(MC) Carr on 1 July 2021 on the basis that Dr Hellin's report was biased (he alleging that Dr Hellin and Mrs McCarren had both worked for the same NHS Trust for an overlapping period) and that the report of Dr Hellin was of insufficient quality. On 27 January 2022 Mr McCarren's application for permission to appeal was dismissed by Deputy Circuit Judge Jordan as being totally without merit. In the circumstances, the order of DJ(MC) Carr of 1 July 2021 remains operative, including the order made pursuant to s.91(14) of the Children Act 1989. Within this context, on 28 June 2022 this court has recently refused an application by Mr McCarren for permission to commence further proceedings under the Children Act 1989 in respect of S.

13. Mr McCarren was clearly dissatisfied with the course of the proceedings under the Children Act 1989 and remains so. As I have noted, both prior to and following the judgment of DJ(MC) Carr, Mr McCarren launched multiple sets of litigation aimed at those he considers to be responsible for what he considered, and considers, to be a miscarriage of justice in the family proceedings. Primarily, Mrs McCarren, Mr Ireland and Dr Hellin. At times, the litigation pursued by Mr McCarren has also touched others involved in the proceedings. The litigation ancillary to the family proceedings pursued by Mr McCarren has ranged across actions in defamation against the mother, the maternal family and the mother's General Practitioner, applications for non-molestation orders against the mother, civil actions in the Kings' Bench Division for "fraud and deception" against the mother, Mr Ireland and Dr Hellin (albeit it is not entirely clear whether those actions were ever in fact issued), an application for committal for contempt against Dr Hellin, and proceedings under the Protection from Harassment Act 1997 against Mr Ireland. Most recently, Mr McCarren has issued a C2 application form naming Mr Ireland as the respondent and which seeks to "deem the evidence of an unregulated court expert as inadmissible" in the now concluded family proceedings. Mr McCarren has also made complaints to the Solicitors Regulation Authority, the Information Commissioner, the Charities Commission, the British Psychological Society and to Members of Parliament.

14. Mr McCarren's application for relief against Mr Ireland under the Protection from Harassment Act 1997 was heard by District Judge Gray on 28 May 2021 and led to a costs order being made against Mr McCarren in Mr Ireland's favour in the sum of £6,540.00. I will come back to the role that the costs order made during the claim under the Protection of Harassment Act 1997 has played in the current application before the court shortly It would appear from a recent statement dated 5 May 2022, that Mr McCarren intends now to make a further application claim for harassment in the Kings' Bench Division against Mr Ireland, he stating that:

> "I also raise the point that the contemnor has a 30 incident harassment claim against him waiting to be issued by the Queen's Bench Division of the High Court for a 4 year long campaign of harassment towards me, the pinnacle of this the sharing of the family court orders he finds himself before this court for."

15. On 28 October 2021, Mr McCarren applied to commit Dr Hellin for contempt of court, before replacing that application with a revised application against Dr Hellin on 15 February 2022 following the loss of his appeal on 27 January 2022. That latter application was dismissed by Deputy Circuit Judge Jordan on 24 February 2022 as totally without merit. Mr McCarren appealed that decision to the High Court, which appeal was dismissed by Mrs Justice Arbuthnot on 7 April 2022, again as being totally without merit.

16. As I have noted, Mr McCarren's most recent application ancillary to the concluded family proceedings purports to be an application on form C2 to "deem the evidence of an unregulated court expert as inadmissible". The allegedly "unregulated expert" referred to in that application is Dr Hellin. The application purports to be made under FPR 2010 r. 18(1)(c) and issued one day after this court refused Mr McCarren permission to issue a further application under the Children Act 1989 on 28 June 2022. The application is issued under one of the case numbers associated with the family proceedings. It names Mr Ireland as the respondent to the application, even thought Mr Ireland is not, and never has been, a party to those proceedings (as expressly conceded by Mr McCarren in his application to commit Mr Ireland for contempt).

17. Whilst the papers accompanying Mr McCarren's latest application to the court are not strictly relevant to his application to commit Mr Ireland, I understand that Mr McCarren insisted that they be placed in the bundle. In this context, and in circumstances where Mr Ireland was not a party to the family proceedings, it is of note that the statement in support of C2 the application dated 29 June 2022, permission for the disclosure of which to Mr Ireland has not been sought by Mr McCarren:

    i) Quotes extracts from the report of the CAFCASS officer in the family proceedings;

    ii) Includes a screenshot of the responses provided by Dr Hellin within the family proceedings to further questions put to her in writing;

    iii) Includes screenshots of extracts from the expert report and addendum expert report provided by Dr Hellin and filed and served in the family proceedings;

    iv) Includes a screenshot of a statement provided by PC Holt in the family proceedings with respect to the issue of allegations against Mrs McCarren of domestic abuse;

    v) Includes screenshots of extracts of Mr McCarren's Position Statement for the hearing on 9 March 2020 in the family proceedings and of the Skeleton Argument filed on behalf of Mrs McCarren.

    vi) Includes screenshots of an extracts of a court order in the family proceedings concerning S.

18. In the days before the hearing of Mr Ireland's application to strike out the contempt proceedings, Mr McCarren continued to file statements of evidence without the permission of the court. In a statement dated 7 July 2022, Mr McCarren included a screenshot of an order in the family proceedings dated 18 March 2022. A further statement dated 17 July 2022, and again filed without the permission of the court, contains a further screenshot of Dr Hellin's expert report filed in the family proceedings. The statement asserts that the information in it, including the information pertaining to the family proceedings, has been sent by Mr McCarren to, inter alia, the Charity Commission, the National Audit Office and the Serious Fraud Office. No permission was sought by Mr McCarren for this disclosure of information from the family proceedings.

19. Returning to the contempt proceedings currently before the court, Mr McCarren did not pay the costs of £6,540.00 ordered by District Judge Gray on 28 May 2021 upon his application under the Protection of Harassment Act 1997 being dismissed. Within this context, Mr Ireland issued a statutory demand for that sum. In March 2022, Mr McCarren applied to set aside the statutory demand. In response, Mr Ireland instructed solicitors to resist that application. On 11 March 2022, the solicitor instructed by Mr Ireland, Mr Javaid, prepared a statement in response to the application by Mr McCarren to set aside a statutory demand. It is that statement that forms the foundation of Mr McCarren's application to commit Mr Ireland for contempt of court.

20. The application by Mr McCarren to commit Mr Ireland for contempt of court was made on 15 March 2022. The alleged grounds for committing Mr Ireland for contempt are not itemised in the application form. Rather the application form contains the following narrative:

> "I make this application against Paul Ireland who was not a party to the family proceedings merely a legal representative who without permission of the court has disclosed confidential documents from family court proceedings that he was prevented from doing so by way of no court order permitting him to do so and the prevention of which is determined by 12.73 of the family procedure rules.
>
> I find it important to mention practice direction 12g also does not permit the contemnor from disclosing confidential papers from family proceedings.
>
> This will be explained and evidence of the contempt provided in a separate witness statement but in summary Paul Ireland has disclosed the documents to a Solicitor instructed by him and then this solicitor has disclosed them on his behalf to a further tribunal. The other solicitor has been given amnesty upon which to admit he should not have disclosed the documents, if he does not accept his misdemeanour then I invite the court under its own powers also to commit the Solicitor for contempt proceedings."

21. There is no affidavit or affirmation in support of the application to commit Mr Ireland, as required by FPR r.37(1). Mr McCarren has provided instead a signed statement in support of the contempt application dated 15 March 2022. Once again, that statement does not particularise the grounds of contempt relied on by Mr McCarren, but rather makes a series of narrative statements in respect of the alleged conduct he complains of, the following of which are salient:

> "It is my allegation that the above named person is in contempt of court because he has disclosed confidential documents that he was not permitted to under the family procedure rules 12.73 and PD12G"

And:

> "I ask the court to focus on what is clearly a deliberate contempt of court by the contemnor who is more than aware of the family procedure rules because it is his professional requirement to be so and as such can have no arguable defence for what he has done."

And:

> "I enclose exhibits that include the statement in which Paul Ireland's instructed solicitor Hiatham Javaid has disclosed the confidential documents."

And:

> "This is a simple matter of the solicitor who should know the rules on which he is prevented from sharing confidential family court documents but has deliberately in a predatory manner used the documents for inappropriate purposes."

22. The 'confidential documents' referred to in Mr McCarren's application form, and in his statement of 15 March 2022, are said to be those exhibited to the witness statement made by Mr Ireland's solicitor, Mr Javaid, dated 11 March 2022 to resist an application by Mr McCarren to set aside the statutory demand made respect of costs owing to Mr Ireland from Mr McCarren to which I have already referred. Whilst Mr McCarren's application and statement do not particularise the documents he contends are the subject of the contempt application, amongst other documents exhibited to the statement of 11 March 2022, Mr Javaid exhibited the following:

    i) The non-molestation order made by DJ(MC) in favour of the respondent mother on 1 July 2021.

    ii) The final child arrangements order made by DJ(MC) Carr under Part II of the Children Act 1989 on 1 July 2021.

    iii) The order of Deputy Circuit Judge Jordan dated 27 January 2022 dismissing Mr McCarren's appeal against the orders of DJ(MC) Carr dated 1 July 2022.

    iv) An undated Notice of Proceedings in respect of an application in the Children Act 1989 proceedings for a hearing on 15 June 2022.

23. With respect to the orders exhibited by Mr Javaid to the statement dated 11 March 2022, and in the context of that statement being aimed at resisting Mr McCarren's application to set aside the statutory demand made respect of costs owing to Mr Ireland from Mr McCarren, the common denominator is that each contains a costs order made against Mr McCarren in favour of Mrs McCarren, totalling £28,530.00.

24. On behalf of Mr McCarren, Mr Chiffers points out that the child arrangements order made on 1 July 2021 contains the following rubric concerning the confidentiality of the names of the parties and children involved in the proceedings. During the course of the hearing, and whilst not pleaded in the Mr McCarren's application, Mr Chiffer's sought to suggest that this constituted a further ground of contempt in this case if breached in circumstances where the rubric states:

> "The names of the parties and the children involved in these proceedings must be kept confidential and must not be made known to anybody else without the court's permission."

25. Without the permission of the court, Mr McCarren purported to file and serve a further statement dated 6 June 2022 detailing what he asserts is the impact on him of Mr Ireland's alleged wrongful disclosure of information from the family proceedings,. In that statement Mr McCarren contends the alleged actions of Mr Ireland have had an emotional impact on himself and S. Within this context, Mr McCarren states that it is his view that "Paul Ireland must be sent to prison for what he has done" and that "surely it is time for Paul Ireland to be struck off and nobody else suffer at the hands of his utter abhorrence and misconduct."

26. The statement of 6 June 2022 ranges far more widely than the issues the contempt application. In particular, the statement makes clear that Mr McCarren views the application to commit Mr Ireland for contempt as part of his wider campaign to undo the decision of the family court in respect of S.

27. Within this context, the statement of 6 June 2022 re-opens a number of matters that Mr McCarren considers led to an injustice being done in the family proceedings. These include the conduct of the judges who dealt with the proceedings, the instruction, by consent, of Dr Hellin to provide an expert psychological assessment (the statements by Mr McCarren dated 7 July 2022 and 17 July 2022 in support of his most recent C2 application, to which I have referred above, also demonstrate an acute preoccupation with the role of Dr Hellin in the outcome of the family proceedings) and the alleged adverse role in the family proceedings played by Mr Ireland. In particular, Mr McCarren states as follows with respect to the outcome of the application for contempt as it relates to Mr Ireland (the reference to the C100 is to the application for permission to issue proceedings under the Children Act 1989 that this court refused on 28 June 2022):

> "I remain strong for my son whom I hope to regain contact with in my C100 which is also before you for determination. However, off the back of a 5 year period of coercive and controlling behaviour after a marriage that involved domestic abuse and assault at the hands of Paul Ireland's client who pays him to act nothing less than a 'hired gun' for her something at some point must break. Therefore I look to you your Lordship to sufficiently deal with Paul Ireland so it can end, and I can sweep up the mess left by the 'broken system' in [the Manchester Family Court] with your help in my C100 in which I must regain contact with my son who will also be damaged by the 'broken system' if not reunited with me soon."

28. A third statement in support of the contempt application was provided by Mr McCarren on 6 July 2022, again without permission of the court. In that statement, Mr McCarren

seeks to refute any suggestion that he is using the contempt proceedings as a collateral attack on the decision in the family proceedings (that allegation being levelled in the statement of Mr Ireland in support of the application to strike out) and states as follows with respect to the basis of his application:

> "For the avoidance of doubt the application is brought due to the disclosure of the documents to Primas Law exhibited to the aforesaid statement of Mr Javaid and authorisation of the Respondent of such a statement. The entire exhibit of Mr Javaid's statement contains documents that should not have been disclosed, save for the first page which is an order of District Judge Gray in St Helens County Court."

29. The application made by Mr Ireland to strike out the contempt application is dated 10 June 2022 and is advanced on the following grounds:

    i) The contempt application is an abuse of process for the purposes of FPR 2010 PD37A 1(1)(b).

    ii) The contempt application is likely to obstruct the just disposal of the main set of proceedings for the purposes of FPR 2010 PD37A 2(1)(b).

    iii) There has been a failure to comply with a rule, Practice Direction or court order for the purposes of FPR 2010 PD37A 2(1)(c).

THE LAW

30. Pursuant to FPR 2010 r.37.3 a contempt application made in existing family proceedings falls to be made under Part 18 of the FPR in those proceedings, whether or not made against a party to those proceedings. FPR 2010 r.37(1) requires that, unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation. FPR 2010 r.37(2)(a) further states the contempt application must include a statement of the nature of the alleged contempt. The terms of FPR r.37(2) make clear that this requirement will always apply.

31. The application for contempt in these proceedings is made on the basis that Mr Ireland has breached the terms of FPR 2010 r 12.73. The terms of the rule are expressed in permissive terms as follows:

> "**Communication of information: general**
>
> 12.73
>
> (1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated –
>
> (a) where the communication is to–
>
> (i) a party;
>
> (ii) the legal representative of a party;

(iii) a professional legal adviser;

(iv) an officer of the service or a Welsh family proceedings officer;

(v) the welfare officer;

(vi) the Director of Legal Aid Casework (within the meaning of section 4 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012);

(vii) an expert whose instruction by a party has been authorised by the court for the purposes of the proceedings;

(viii) a professional acting in furtherance of the protection of children;

(ix) an independent reviewing officer appointed in respect of a child who is, or has been, subject to proceedings to which this rule applies;

(b) where the court gives permission; or

(c) subject to any direction of the court, in accordance with rule 12.75 and Practice Direction 12G.

(2) Nothing in this Chapter permits the communication to the public at large, or any section of the public, of any information relating to the proceedings.

(3) Nothing in rule 12.75 and Practice Direction 12G permits the disclosure of an unapproved draft judgment handed down by any court."

32. As noted, the terms of FPR 2010 r.12.73 are permissive, stipulating in what circumstances information relating to proceedings held in private may be communicated to defined individuals or with the permission of the court. Whilst FPR 2010 r.12.73(2) further makes clear that nothing in the rule permits communication of information relating to proceedings held in private to the public at large, FPR 2010 r.12.73 does not itself contain a prohibition against such publication. Within this context, Mr McCarren's application to commit Mr Ireland for contempt makes no mention of s.12 of the Administration of Justice Act 1963, the terms of which are as follows:

"**12.— Publication of information relating to proceedings in private.**

(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—

(a) where the proceedings—

(i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

(ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or

> (iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;
>
> (2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.
>
> (3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.
>
> (4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court)."

33. It is now clearly established that s.12 of the Administration of Justice Act 1963 does *not* preclude the publication of the fact that a child is the subject of family proceedings under the Children Act 1989, the identity of that child, the date, time and place of past or future hearings, the nature of the dispute in such proceedings or the result of wardship or family proceedings and the order or an accurate summary of the order made in those proceedings (see *Re B (A Child)(Disclosure)* [2004] 2 FLR 142 and *Her Majesty's Attorney General v Pelling* [2006] 1 FLR 93). Accordingly, the publication of such information would not amount to a contempt of court for the purposes of s.12 of the Administration of Justice Act 1963. In any event, a non-molestation order made under the Family Law Act 1996 cannot come within the terms of s.12 of the Administration of Justice Act 1963 as it does not arise out of proceedings relating to the exercise of the inherent jurisdiction of the High Court with respect to minors, proceedings brought under the Children Act 1989 or the Adoption and Children Act 2002 or proceedings otherwise relating wholly or mainly to the maintenance or upbringing of a minor.

34. The other statutory provision that regulates the publication of information from family law proceedings heard in private, namely the Children Act 1989 s.97, is not relevant in this case.

35. The power to strike out a statement of case in family proceedings is set out in FPR 2010 r.4.4, which provides as follows:

> "**Power to strike out a statement of case**
>
> 4.4
>
> (1) Except in proceedings to which Parts 12 to 14 apply, the court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the application;

> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
>
> (c) that there has been a failure to comply with a rule, practice direction or court order; or
>
> (d) in relation to applications for matrimonial and civil partnership orders and answers to such applications, that the parties to the proceedings consent.
>
> (2) When the court strikes out a statement of case it may make any consequential order it considers appropriate.
>
> (3) Where –
>
> (a) the court has struck out an applicant's statement of case;
>
> (b) the applicant has been ordered to pay costs to the respondent; and
>
> (c) before paying those costs, the applicant starts another application against the same respondent, arising out of facts which are the same or substantially the same as those relating to the application in which the statement of case was struck out,
>
> the court may, on the application of the respondent, stay that other application until the costs of the first application have been paid.
>
> (4) Paragraph (1) does not limit any other power of the court to strike out a statement of case.
>
> (5) If the court strikes out an applicant's statement of case and it considers that the application is totally without merit –
>
> (a) the court's order must record that fact; and
>
> (b) the court must at the same time consider whether it is appropriate to make a civil restraint order."

36. The burden of proof for an application to strike out is on the applicant, in this case Mr Ireland. FPR PD 4A provides that a court may conclude that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings where it cannot be justified because, for example, it is frivolous, scurrilous or obviously ill-founded. FPR 2010 PD37 makes clear that the terms of FPR 2010 r. 4.4 apply to applications to strike out proceedings for contempt borough under FPR 2010 r.37 by stating as follows:

> "(1) On an application by the defendant or on its own initiative, the court may strike out a contempt application if it appears to the court—
>
> (a) that the application and the evidence served in support of it disclose no reasonable ground for alleging that the defendant is guilty of a contempt of court;

> (b) that the application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.
>
> (2) The court may waive any procedural defect in the commencement or conduct of a contempt application if satisfied that no injustice has been caused to the defendant by the defect."

37. As noted, in FPR PD4A a court may conclude that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings where it cannot be justified because, for example, it is frivolous, scurrilous or obviously ill-founded. Within this context, an application will be an abuse of process if it is demonstrated to be brought for an illegitimate purpose.

38. In *Navigator Equities v Deripaska* [2021] EWCA Civ 1779 the Court of Appeal was required to consider the relevance (if any) of the subjective motive of an applicant in civil contempt proceedings and the proper role of an applicant in civil contempt proceedings. Within that context, the Court of Appeal made clear that the bringing of a committal application is an appropriate and legitimate means of drawing the courts attention to a serious (as opposed to purely technical) contempt. However, the Court of Appeal made equally clear that a committal application must be proportionate and may not be pursued for an improper or collateral purpose. Within this context, Carr LJ observed that, whilst holding that a personal desire for revenge is not a good reason for striking out a contempt application as an abuse of process:

> "[84] The court should be astute to detect when contempt proceedings are not being pursued for legitimate aims. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings improperly."

39. As to the circumstances in which a committal application might be held to be being brought for an illegitimate, improper or collateral purpose, having reviewed the decision of Briggs J (as he then was) in *Sectorguard Plc v Dienne Plc* [2009] 11 WLUK 21, Carr LJ observed in *Navigator Equities v Deripaska* that it is the extent to which the application fails to pursue the legitimate aims of committal proceedings, namely to obtain compliance with a court order or to bring to the attention of the court a serious rather than technical contempt, that will be a sign that a committal application is being brought for an illegitimate, improper or collateral purpose, rather than the subjective motive of the applicant (in respect of which see also *Wills v Valentine* [2002] All ER (D) 275 (Jul)). Within this context, and distinguishing illegitimate, improper or collateral purpose from the question of subjective motive (which, as I have noted, Carr LJ considered not a good reason for striking out an application as an abuse of process), Carr LJ gave the following example of collateral purpose in *Navigator Equities v Deripaska* at [121]:

> "It is well-established that an application for civil contempt that is being used for an improper collateral purpose, such as a threat in order to secure a settlement, will be abusive (see *Integral* at [37] to [39], referring to *Knox v*

> *D'Arcy Ltd* Court of Appeal Transcript No. 1759 of 1995 (19 December 1995)). There was here no finding by the Judge that the Appellants were using the Contempt Application to secure any such advantage. Specifically, the revenge that he identified on the part of Mr Chernukhin was for Mr Deripaska's past failure to drop the criminal proceedings against him (see [109] and [157] of the Judgment). I do not consider that *Integral* is an example of subjective motive being relevant to the question of abuse. Thus, in [51] of *Integral*, the reference to "proper motive" is, again, in context a reference to the "legitimate ends" for which a civil committal application can be brought. The suggested abuse in *Integral* was the use of the proceedings for an external (improper) purpose, a suggestion that does not arise here."

40. In *Navigator Equities v Deripaska* the Court of Appeal further made clear that consideration of the merits of the committal application, i.e., whether it is properly arguable to the criminal standard of proof that the alleged contemnor has committed a serious (as opposed to merely technical) contempt of court, is required when determining an application to strike out based on alleged abuse of process:

> "I turn next to the question of the role of the merits of the Contempt Application in the context of the Abuse Application, focussing on the question of breach. I accept the submission for Mr Deripaska that it was not for the Judge to determine the question of breach outright for the purpose of the Abuse Application. Nor should this court attempt to do so for the purpose of this appeal. However, the merits were undoubtedly a factor relevant to the question of abuse and an assessment of whether or not the Contempt Application was properly arguable was required. Whether or not the Contempt Application was (at least) properly arguable should have informed the correct outcome on the Abuse Application…"

41. With respect to striking out an application for failure to comply with a rule, practice direction or order of the court, the Court of Appeal has repeatedly stressed that, by reason of the quasi-criminal nature of such proceedings and the fact that the liberty of the subject is at stake in such proceedings, the relevant rules of court must be complied with. Whilst in *Nicholls v Nicholls* [1997] 1 FLR 649 Lord Woolf MR held that the requirements of the rules are not mandatory, the Court of Appeal confirmed that the rules are there to be observed. Within this context, in *Re H* [2018] EWHC 3761 (Fam), Mostyn J noted that, in respect of the requirement to provide a statement of the grounds of committal (see *R v Yaxley-Lennon* [2019] 1 WLR 5400), it is hard to envisage circumstances where the terms of FPR Part 37 would be waived. In *Navigator Equities v Deripaska* Carr LJ observed as follows with respect to the nature of contempt proceedings:

> "Contempts of court have traditionally been classified as being either criminal or civil. Proceedings for civil contempt are sometimes described as "quasi-criminal" because of the penal consequences that can attend the breach of an order (or undertaking to the court). They are criminal proceedings for the purpose of Article 6 of the European Convention on Human Rights ("Article 6"). The charges raised have to be clear; the criminal standard of proof applies; and the respondent has a right to silence. There must be a high standard of procedural fairness."

42. Within the foregoing context, and in the context of the contempt application in this case not being supported by an affidavit or affirmation as required by FPR 2010 r.37.4(1), I further note that in *Re B (JA)((an infant)* [1965] Ch 1112, Cross J held as follows:

> "It is clear that if safeguards such as these have not been observed in any particular case, then the process is defective even though in the particular case no harm may have been done. For example, if the notice has not been personally served, the fact that the respondent knows all about it, and indeed attends the hearing of the motion, makes no difference. In the same way, as is shown by *Taylor v Roe* [1893] WN 14, if the claim form does not give the grounds of the alleged contempt or the affidavits are not served at the same time as the notice of the motion, that is a fatal defect, even though the defendant gets to know everything before the application comes on, and indeed answers the affidavits. On the other hand, not every defect in the claim form will be fatal to the action, for provided that the alleged contemnor can in no way be prejudiced by the defects: 'then it seems…that there is no reason why the courts should be any slower to waive such technical irregularities in a committal proceeding than they would be in any other proceeding'".

43. Finally in respect of the law, FPR 2010 r.4.4(5) provides that if the court strikes out an applicant's statement of case and it considers that the application is totally without merit the court's order must record that fact and the court must at the same time consider whether it is appropriate to make a civil restraint order. FPR 2010 r.4.8 provides as follows with respect to the power to make civil restraint orders:

> "**4.8 Power of the court to make civil restraint orders**
>
> Practice Direction 4B sets out –
>
> (a) the circumstances in which the High Court or a county court has the power to make a civil restraint order against a party to proceedings;
>
> (b) the procedure where a party applies for a civil restraint order against another party; and
>
> (c) the consequences of the court making a civil restraint order."

44. Paragraph 3.1 of FPR PD4B provides that a court may make an extended civil restraint order where a party has persistently made applications which are totally without merit. Under an extended civil restraint order, unless the court orders otherwise, the subject of the order will be restrained from making applications in any court concerning the matter involving or relating to or touching upon the proceedings in which the order is made without first obtaining permission of the judge identified in the order. An extended civil restraint order may be made for a specified period not exceeding 2 years. The duration of the extended civil restraint order may be further extended if appropriate but not for a period greater than 2 years on any given occasion.

45. In *Sartipy v Tigris Industries Inc* [2019] EWCA Civ 225 at [29] to [37] the Court of Appeal gave the following guidance on the question of an extended civil restraint order is so far as is relevant for the purposes of these proceedings:

> "[29] First, "claim" refers to the proceedings begun by the issue of a claim form. In the course of any proceedings one or more applications may be issued. If an earlier claim issued by the person against whom the order is made was, itself, totally without merit and if individual applications made within that claim were also totally without merit, there is no reason why both the claim and individual applications should not be counted for the purpose of considering whether to make an ECRO in the course of a subsequent claim.
>
> [30] Second, although at least three claims or applications are the minimum required for the making of an ECRO, the question remains whether the party concerned is acting "persistently". That will require an evaluation of the party's overall conduct. It may be easier to conclude that a party is persistently issuing claims or applications which are totally without merit if it seeks repeatedly to re-litigate issues which have been decided than if there are three or more unrelated applications many years apart. The latter situation would not necessarily constitute persistence.
>
> [31] Third, only claims or applications where the party in question is the claimant (or counterclaimant) or applicant can be counted (although this includes a totally without merit application by the defendant in the proceedings). A defendant or respondent may behave badly, for example by telling lies in his or her evidence, producing fraudulent documents or putting forward defences in bad faith. However, that does not constitute issuing claims or making applications for the purpose of considering whether to make an ECRO. Nevertheless, such conduct is not irrelevant as it is likely to cast light on the party's overall conduct and to demonstrate, provided that the necessary persistence can be demonstrated by reference to other claims or applications, that an ECRO or even a general civil restraint order, is necessary.
>
> …/
>
> [37] Seventh, when considering whether to make a restraint order, the court is entitled to take into account any previous claims or applications which it concludes were totally without merit, and is not limited to claims or applications which were so certified at the time; *R. (Kumar) v Secretary of State for Constitutional Affairs* [2006] EWCA Civ 990; [2007] 1 W.L.R. 536 , CA followed."

46. The purpose of a similar power under the CPR to make a civil restraint order or extended civil restraint order was considered in *Odutula v Hart* [2018] EWHC 2260 (Ch):

> "[13] CPR rule 3.1(1) puts on a statutory basis the court's inherent jurisdiction to prevent abuse of process as explained by the Court of Appeal in *Bhamjee v Forsdick* [2003] EWCA Civ 1113. The jurisdiction is intended to protect potentially affected parties from the worry and expense of unwarranted litigation, and also to protect the scarce resources of the judicial system from unwarranted diversion from their primary goal of affording justice without unreasonable delay to those who have genuine grievances. A CRO does not extinguish a litigant's right to access the courts; it merely regulates the

> process by which access is obtained, and it does so only in a way that is deemed a proportionate response to the identified abuse, whether existing or threatened. This variation in the procedure required for access to the courts is not a denial of the human rights of the person subjected to the order, either generally or under Article 6 of the ECHR, notwithstanding that such orders have also often been described as "draconian"".

DISCUSSION

47. I am satisfied that Mr McCarren's application to commit Mr Ireland for contempt must be struck out for a failure to comply with the rules and practice directions applicable to such applications and as an abuse of process. I am further satisfied that this court should make an extended civil restraint order against Mr McCarren for a period of 2 years. My reasons for so deciding are as follows.

48. In *Tankaria v Morgan* [2005] EWHC 3282 (Ch) at [27] it was made clear that the respondent to a committal application is only obliged to meet the allegations specified in the application notice. This approach is consistent with the cardinal principle that the alleged contemnor is entitled to know in detail the case against him, in circumstances where the application has penal consequences; the application form making clear that "If upon determination of this application you are held in contempt of court you may be imprisoned or fined, or your assets may be seized." Within this context, FPR 2010 r. 37.4(2)(h) requires that the application to commit contain a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order, and the authorities make clear that the grounds of contempt must be clearly particularised. The first difficulty with Mr McCarren's application is that his application to commit lacks the necessary clarity and precision in a number of material respects.

49. As noted above, Mr McCarren's application does not set out with particularity the facts alleged to constitute the contempt. Rather, the application form simply makes the following, broad assertion:

> "I make this application against Paul Ireland who was not a party to the family proceedings merely a legal representative who without permission of the court has disclosed confidential documents from family court proceedings that he was prevented from doing so by way of no court order permitting him to do so and the prevention of which is determined by 12.73 of the family procedure rules…This will be explained and evidence of the contempt provided in a separate witness statement but in summary Paul Ireland has disclosed the documents to a Solicitor instructed by him and then this solicitor has disclosed them on his behalf to a further tribunal."

50. This assertion fails in particular to identify the documents, the alleged disclosure of which by Mr Ireland is said by Mr McCarren to amount to a contempt. The statement dated 15 March 2022 that accompanied the application to commit likewise does not particularise the documents that are the subject of the application to commit, Mr McCarren simply exhibiting the statement of Mr Javaid without more. Within this context, the precise factual basis of the allegation of contempt levelled against Mr Ireland it is unclear from the application form and accompanying statement. Even up

to this hearing, it remained unclear which of the documents exhibited to Mr Javaid's statement formed the basis of the contempt application.

51. The absence of particularity with respect to the documents forming the basis of the contempt application is particularly significant in this case as the documents referred to in the application form and statement as a matter of generality are court orders. As I will come to when I turn to consider the merits of the application to commit to the extent permitted for the purpose of determining the application to strike out, it is well established that it is not a contempt of court to publish the contents of an order made in proceedings under the Children Act 1989, in this case the final child arrangements order made by DJ(MC) Carr under Part II of the Children Act 1989 on 1 July 2021. Whilst the case advanced by Mr Chiffers on behalf of Mr McCarren evolved at this hearing to include the contention that the contempt is grounded in the rubric on the face of the child arrangements order of 1 July 2021 prohibiting the publication of names of the parties and the children involved in the proceedings, that case is nowhere pleaded in the application form or accompanying statement. Further, the remaining orders exhibited to Mr Javaid's statement comprising the non-molestation order made by DJ(MC) in favour of the respondent mother on 1 July 2021, the order of Deputy Circuit Judge Jordan dated 27 January 2022 dismissing Mr McCarren's appeal against the orders of DJ(MC) Carr dated 1 July 2022 would not fall within the ambit of FPR 2010 r.12.73 having regard to the application of FPR Part 12 as specified in FPR 2010 r.12.1.

52. It is further unclear from the application to commit precisely what action on the part of Mr Ireland is said constitute the contempt. The application form asserts that Mr Ireland disclosed the documents to Mr Javaid who then "disclosed them on his behalf to a further tribunal". It is unclear whether Mr McCarren is alleging that it is the provision of the documents by Mr Ireland to his solicitor that is a contempt of court, that it is an instruction on the part of Mr Ireland to Mr Javaid to exhibit the documents to the statement that is a contempt of court or the provision by Mr Javaid of the documents to the court on Mr Ireland's behalf that constitutes the contempt. In the statement accompanying the application to commit, Mr McCarren asserts both that Mr Ireland disclosed the documents exhibited to Mr Javaid's statement and that Mr Javaid disclosed those documents.

53. The lack of clarity in the application to commit as to precisely what action is said constitute the contempt is significant because the purpose of clarity in the application is to allow the alleged contemnor a fair opportunity to answer a case against him that carries with it potentially penal consequences. For example, if the allegation is that Mr Ireland is in contempt for giving the documents to Mr Javaid (as Mr McCarren belatedly confirmed it to be in his statement dated 6 July 2022) Mr Ireland might seek in response to argue that this action came within FPR 2010 r.12.73(1)(a)(iii) as he was giving the documents to a professional legal adviser for the purpose of answering Mr McCarren's application to set aside the statutory demand for costs owed, each of the orders disclosed evidencing a costs order made against Mr McCarren. The point here is not the merits of such a pleaded defence, which may or may not succeed if advanced, but rather to demonstrate that an alleged contemnor will only have a fair opportunity to answer the case against him if that case is pleaded with sufficient precision and particularity at the outset of proceedings in the application to commit. Whilst as I have noted, Mr McCarren belatedly confirmed he relied only on the provision of documents by Mr Ireland to Mr Javaid as grounding the contempt, it not consistent with the demands of

fairness for a defendant at risk of potentially penal consequences to have the case against him clarified only months after the issue of proceedings.

54. Finally, the application to commit and the statement accompanying it fail to state with sufficient particularity the nature of the alleged contempt. FPR 2010 r.37.4(2)(a) requires that the application to commit include a statement of the nature of the alleged contempt. Once again, the authorities make clear that the grounds of contempt must be clearly particularised. Within this context, the committal application asserts that Mr Ireland:

> "…has disclosed confidential documents from family court proceedings that he was prevented from doing so by way of no court order permitting him to do so and the prevention of which is determined by the 12.73 of the family procedure rules".

55. As noted by Carr LJ in *Navigator Equities v Deripaska*, the charges raised on an application to commit have to be clear. Within the foregoing context, and in addition to the lack of clarity regarding the documents and the actions of Mr Ireland relied on, it is further unclear from the application to commit the precise legal basis on which it is alleged that Mr Ireland is in contempt. In particular, it is unclear whether Mr McCarren is alleging that the contempt is constituted simply by the absence of an order permitting disclosure or that Mr Ireland is in breach of FPR 2010 r.12.73. If the latter, the application does not particularise the provisions of FPR 2010 r.12.73 on which Mr McCarren relies. Further, and as I will again come to when I turn to consider the merits of the application to commit to the extent permitted for the purpose of determining the application to strike out, FPR 2010 r.12.73 does not itself prohibit the dissemination of information from family proceedings. Rather, it is a permissive provision which specifies what information may be provided to specified persons in accordance with the rules or with the permission of the court. Whilst Mr Chiffers sought to rely on s.12 of the Administration of Justice Act 1963 in his Skeleton Argument, as I have noted no breach of that provision is pleaded in Mr McCarren's application, nor dealt with in the purported evidence in support of the application. Once again, the point here is that the alleged contemnor will only have a fair opportunity to answer the case against him if that case is pleaded with sufficient precision and particularity at the outset of proceedings in the application to commit and that it is not consistent with the demands of fairness for a defendant to have the case against him clarified only months after the issue of proceedings.

56. The authorities make clear that the grounds of contempt must be fully and clearly particularised in the application sufficient for the alleged contemnor to know the case against them and to have a fair opportunity to meet that case in circumstances where the consequences of such an application are potentially penal. I am satisfied that Mr McCarren's application to commit breaches the requirements under FPR 2010 r.37.4(2)(a) to include a statement of the nature of the alleged contempt, and under FPR 2010 r.37.4(2)(h) to include a brief summary of the facts alleging to constitute the contempt, set out numerically and in chronological order. Whilst it is permissible for the application to commit to set out succinct summary of the allegations with the detail should be set out in the evidence (see *Deutsche Bank AG v Sebastian Holdings Inc* [2020] EWHC 3536 (Comm) at [59]–[141] approved by the Court of Appeal in *Ocado Group Plc v McKeeve* [2021] EWCA Civ 145 at [89]) the summary must be clear,

sufficiently particularised and complete. In this case it was not, and the allegations were not thereafter set out with clarity and detail in the evidence.

57. As Mr Chiffer's rightly reminds the court, the court is required to consider whether the defects identified might be cured by an amendment. However, no such amendment was sought by Mr McCarren at the hearing. Further, given the extent of the lack of clarity and precision in the application to commit I am satisfied that it would not be possible to amend the application without causing significant prejudice to Mr Ireland in circumstances where he would be required, having regard to the extent of the failure to comply with the rules identified above, meet a substantially amended case over 6 months after the application to commit was made. Finally, as I will come to when I turn to consider the merits of the application to commit to the extent permitted in the current context, I am satisfied that the application would not have a reasonable prospect of success even if rectified.

58. The second difficulty with Mr McCarren's application is that it is not supported by an affidavit or affirmation as required by FPR 2010 r.37.4(1). Instead, Mr McCarren provided a statement dated 15 March 2022, followed by multiple further statements without the permission of the court purporting to clarify and reformulate Mr McCarren's case until just prior to this hearing.

59. As Mr Kidd pointed out during his oral submissions, each iteration of the procedural rules has required an affidavit rather than a statement in support of an application to commit a person for contempt, the requirement of an affidavit sworn on oath or affirmation by a deponent before a person authorised to administer affidavits being commensurate with the gravity of the potential consequences of the committal proceedings, namely imprisonment. In *Talal El Makdessi v Cavendish Square Holdings BV, Team Y&R Holdings Hong Kong Ltd* [2013] EWCA Civ 1540 the Court of Appeal observed as follows regarding the importance of similar procedural provisions in the CPR governing evidence in support of an application to commit:

> "[50] In my view, notwithstanding CPR 32.6 , CPR 81.14 requires attachments to a statement of case to be exhibited to the affidavit required by 81.14 (1) if they are to be relied on in support of the application. Part 81 is a self contained part of the Rules applying to the specific circumstance of an application for permission to commit, itself a quasi-criminal procedure, and must take precedence over the more general provisions of CPR 32.6 . If CPR 81.14 requires more of the applicant than might otherwise be required, it must be complied with. CPR 81.14 (1) (b) requires the exhibition of "all" documents relied on. "All" means all. It may be that, in litigation between parties such as these, the requirement is somewhat technical. So be it. It is not a requirement with which is difficult to comply; and in other cases, such as the case of a litigant in person or where the alleged contemnor has mislaid the documents, it may be particularly important. A person whom it is sought to commit to prison needs to be provided with a full package of the documentation, which is to be marshalled against him, so that he may know and have a copy of exactly what is relied on."

60. Within this context, and as made clear in *Re B (JA)((an infant)* [1965] Ch 1112, a failure to serve an affidavit with the application to commit can constitute a fatal procedural defect. This conclusion is consistent with the fact that an application to

commit has potentially penal consequences and, thus, must be supported by cogent evidence in the required format, in this instance an affidavit sworn on oath or affirmation by a deponent before a person authorised to administer affidavits. This service of an affidavit with the application is a *cardinal* aspect of the procedure governing proceedings for alleged contempt. The court is, of course, still required in a given case to ask itself whether the procedural omission will lead to injustice to the defendant if allowed to pass. In this case, I am satisfied that the answer to that question is yes.

61. In particular, the fact that Mr McCarren provided a statement in support of the application cannot be said in the circumstances of this case to cure the failure to support his application with an affidavit contrary to FPR 2010 r.37(4)(1). As I have already noted, the statement provided in support of the application did not provide a particularised and detailed account of the alleged contempt. Moreover, and almost up until the date of this hearing, Mr McCarren continued to file statements without the permission of the court that further obfuscated and confused his case with respect to the contended for contempt. In the circumstances, in this case not only was the defendant provided with a statement that failed to sufficiently particularise and detail the basis on which the application to commit was made but was faced thereafter with multiple serial statements re-formulating and reframing the case right up to date of this hearing. That course of conduct is not capable in my judgment of curing the failure to comply with FPR 2010 r.37(4)(1) in this case.

62. The aforementioned defects are in my judgment sufficient to justify the striking out of Mr McCarren's application on the grounds of a failure to comply with a rule or practice direction for the purposes of FPR PD37A. However, I am further satisfied that Mr McCarren's application constitutes an abuse of process and should be struck out for that reason also.

63. In considering whether Mr McCarren's application to commit Mr Ireland for contempt is an abuse of process by reason of an illegitimate or improper or collateral purpose (the authorities use a number of different terms to articulate the concept) the question for the court is what, on the evidence before the court, is the purpose of Mr McCarren's application. As made clear by the Court of Appeal in *Navigator Equities v Deripaska*, Mr McCarren's *motive* for pursuing a particular purpose is irrelevant. Rather the court must ask itself whether Mr McCarren is pursuing his application to commit Mr Ireland for one of the recognised legitimate purposes of such an application, namely, to secure compliance with a court order or to bring to the attention of the court a serious, as opposed to technical, contempt of court, or for some purpose that falls outside these legitimate aims. On the evidence before the court, I am satisfied that Mr McCarren's purpose in bringing this application is *not* to secure compliance with a court order or bring to the attention of the court a serious, as opposed to technical, contempt of court.

64. As I have noted, Mr McCarren has filed and served four statements in support of his application to commit Mr Ireland, together with insisting that his most recent C2 application and supporting statement in the family proceedings be included in the bundle for the committal application. Having read those statements in full and together I am satisfied that the Mr McCarren's purpose in applying to commit Mr Ireland is not to secure compliance with an order of the court or to bring to the attention of the court a serious, as opposed to technical, contempt of court. Rather, on the totality of evidence before the court I am satisfied that his purpose is to seek to continue to litigate the

proceedings under the Children Act 1989 and to pursue his various grievances against those involved in those proceedings, in particular Mr Ireland and Dr Hellin. This conclusion is supported in multiple places by the statements provided to the court by Mr McCarren himself.

65. In contrast to the failure, as identified above, to provide in his statements a particularised and detailed account of the alleged contempt, the statements provided by Mr McCarren contain highly detailed and involved descriptions of the manner in which Mr McCarren considers he has been wronged in the family proceedings and highly detailed descriptions of the mistakes and omissions he considers were made by professionals and the court in the family proceedings. In his statement dated 6 June 2022, filed ostensibly in support of the application to commit, Mr McCarren ranges across the conduct of the judges who dealt with the proceedings, the instruction, by consent, of Dr Hellin to provide an expert psychological assessment and the alleged adverse role in the family proceedings played by Mr Ireland. As the statements provided by Mr McCarren progressed, including that in support of his latest C2 application, they moved even further away from the objects of ensuring compliance with a court order or seeking to bring to the attention of the court a serious contempt and towards an increasingly acute preoccupation with the role of Mr Ireland and Dr Hellin in the outcome of the family proceedings. The statement in support of the latest C2 application issued by Mr McCarren evidences Mr McCarren's view that he needs to stop what he considers is Mr Ireland's pernicious influence in the family proceedings:

> "[108] The indisputable fact is that Paul Ireland with his excessive litigation has unjustly, unfairly and harmful removed a father from a child's life and creates significant risk of future emotional harm, where is his insight into what he has done, he has no insight and instead is asking for EXT CRO to protect the child harmful injustice he has secured."

66. The fact that Mr McCarren's purpose in bringing the application to commit Mr Ireland is not to secure compliance with a court order or to bring to the attention of the court a serious contempt but rather has a collateral aim, is perhaps most clearly demonstrated by the statement made by Mr McCarren in his statement of 6 June 2022 regarding what he sees as the proper outcome of his application to commit Mr Ireland:

> "I remain strong for my son whom I hope to regain contact with in my C100 which is also before you for determination. However, off the back of a 5 year period of coercive and controlling behaviour after a marriage that involved domestic abuse and assault at the hands of Paul Ireland's client who pays him to act nothing less than a 'hired gun' for her something at some point must break. Therefore I look to you your Lordship to sufficiently deal with Paul Ireland so it can end, and I can sweep up the mess left by the 'broken system' in [Manchester Family Court] with your help in my C100 in which I must regain contact with my son who will also be damaged by the 'broken system' if not reunited with me soon."

67. I have, of course, considered the assertion by Mr McCarren, made in his statement dated 6 July 2022, that he is *not* using the contempt proceedings as a collateral attack on the decision in the family proceedings and those involved in that decision. However, in addition to the matters set out above, the fact that Mr McCarren's purpose in bringing the application to commit Mr Ireland is not to secure compliance with a court order or

to bring to the attention of the court a serious contempt in the form of disclosure without permission of (or, as contended for during submissions by Mr Chiffers, on a desire to ensure that the proceedings concerning his son remain private or a desire to protect the integrity of the court process) is further reinforced by Mr McCarren himself engaging in the conduct about which he now complains. Whilst by his current application Mr McCarren relies on what he contends is the wrongful disclosure of information from the family proceedings in the form of disclosure of court orders, as summarised above Mr McCarren has himself disclosed a range of information from the family proceedings without seeking the permission of the court in the statement in support of his most recent C2 application naming Mr Ireland as a respondent. In my judgment, this further supports the contention that Mr McCarren's purpose in bringing the application to commit Mr Ireland is other than securing compliance with a court order or seeking to bring to the attention of the court a serious contempt or, as Mr Chiffer's formulated the point on Mr McCarren's behalf, to protect the privacy of Mr McCarren and S and the integrity of proceedings under the Children Act 1989.

68. The conclusion that Mr McCarren's purpose in bringing the application to commit Mr Ireland is not to secure compliance with a court order or to bring to the attention of the court a serious contempt is also reinforced in my judgment by stepping back and placing the current application to commit Mr Ireland in the context of previous applications launched by Mr McCarren against Mr Ireland and others involved in the family proceedings. As I have noted, prior to his application to commit Mr Ireland, Mr McCarren pursued a civil action in the Kings' Bench Division for "fraud and deception" against Mr Ireland and an application under the Protection from Harassment Act 1997 against him. Within this context, Mr McCarren's latest C2 application, whilst purporting to be made in the family proceedings and aimed at excluding the evidence of Dr Hellin after the fact, names Mr Ireland as the respondent even though he is, and has never been, a party to the family proceedings. As I have noted above, on 28 October 2021, Mr McCarren applied to commit Dr Hellin for contempt of court, before replacing that application with a revised application against Dr Hellin on 15 February 2022 following the loss of his appeal on 27 January 2022. That latter application was dismissed by Deputy Circuit Judge Jordan on 24 February 2022 as totally without merit. Mr McCarren appealed that decision to the High Court, which appeal was dismissed by Mrs Justice Arbuthnot on 7 April 2022 as being totally without merit. I am satisfied that these matters further support the conclusion that Mr McCarren's purpose in pursing a committal application against Mr Ireland is a collateral one and not one of securing compliance with a court order or bringing to the attention of the court a serious contempt.

69. Finally, as also made clear by Carr LJ in *Navigator Equities v Deripaska*, the question of whether or not the application to commit is at least properly arguable will inform the question of whether the application constitutes an abuse of process. The question for the court in this respect is whether it is properly arguable to the criminal standard of proof that the alleged contemnor has committed a serious (as opposed to merely technical) contempt of court. As I have noted, Mr McCarren seeks to rely on FPR 2010 r.12.73 as the legal provision that renders Mr Ireland's provision to Mr Javaid of the orders exhibited to the latter's statement dated 11 March 2022. However, as also noted above, FPR 2010 r.12.73 is permissive in its terms and itself contains no prohibition on the communication of information relating to proceedings held in private. Whilst Mr Chiffers sought to rely on s.12 of the Administration of Justice Act 1963 in his Skeleton

Argument, as I have noted, no breach of that statute is pleaded in Mr McCarren's application, nor dealt with in the purported evidence in support of the application. In any event, it is well established under the authorities cited above that the publication of a court order made in family proceedings will not constitute a contempt of court. Again, whilst Mr Chiffers seeks, belatedly, to rely on the rubric on the order of 1 July 2022 prohibiting the identification of the parties and the children, again this is not pleaded in the application to commit (in addition to the difficulties presented by the fact that the order on which the rubric appears does not contain a penal notice and was not personally served on Mr Ireland). Within this context, I am satisfied that Mr McCarren's application to commit Mr Ireland cannot be said to be properly arguable.

70. Having regard to the matters set out above, I am satisfied on the evidence before the court that Mr McCarren has brought his application to commit Mr Ireland for an improper collateral purpose, namely, to seek to continue to litigate the proceedings under the Children Act 1989 and to pursue his various grievances against those involved in those proceedings. In the circumstances, I am satisfied that, in addition to a failure to comply with the rules and practice direction, Mr McCarren's application must be struck out as an abuse of process.

71. I am further satisfied that, having regard to the matters set out above, the application by Mr McCarren to commit Mr Ireland must be considered totally without merit and that conclusion will be recorded in the order. Within this context, I am further satisfied that it is appropriate to make and extended civil restraint order against Mr Ireland for a period of two years.

72. Having regard to the evidence before the court is beyond dispute that Mr McCarren has persistently made applications which are totally without merit, seeking to repeatedly to re-litigate in other arenas issues from the family proceedings which have been decided. Those applications include the appeal against the orders of DJ(MC) Carr dated 1 July 2021, the application to commit Dr Hellin dismissed as totally without merit on 24 February 2022 and the appeal against that decision, dismissed by Arbuthnot J as totally without merit on 7 April 2022. Further, Mr McCarren has indicated before this court his intention to launch yet further litigation against Mr Ireland in the King's Bench Division. Within this context, I am entirely satisfied that it is appropriate in this case to make an extended civil restraint order for the maximum initial period of two years.

CONCLUSION

73. For the reasons set out above, I strike out Mr McCarren's application to commit Mr Ireland for contempt on the grounds of failure to comply with the rules and practice direction and as an abuse of process. I further make an extended civil restraint order against Mr McCarren for a period of two years.

74. Finally, following the circulation of this judgment in draft I have received helpful submissions in writing from Mr Chiffers and Mr Kidd on the question of costs. In addition, the court was sent by Mr McCarren a further forty-five page statement that, whilst initially expressed to be his argument as to costs, in fact sought first to re-open the application to strike out and, thereafter, once again sought to re-open the outcome of the family proceedings.

75. Having considered carefully the submissions as to costs, I am satisfied having regard to the principles set out in *Three Rivers District Council v The Governor and Company of the Bank of England* [2006] EWHC 816 (Comm) that costs should be awarded in this case on an indemnity basis. With respect to quantum, I am satisfied that it is reasonable for Mr Ireland to claim costs at the professional rate. I do not consider that the costs claimed for the perusal of the claim, the preparation of a statement in support, the preparation of the court bundle and items concerning perusal of additional documents and preparation for the hearing can be said to be excessive. As I have noted, in this case Mr McCarren continued to file and serve, without the permission of the court, lengthy statements with multiple exhibits up to the date of the hearing re-framing and expanding his case, which statements required consideration and to be addressed. The only item I do consider excessive is the figure of £750 for perusal of counsel's skeleton arguments, which figure should be reduced to £375. I do not consider the amount claimed for a conference with counsel to be excessive having regard to the complexity of the matter. In the circumstances, I order Mr McCarren to pay the costs of Mr Ireland of these proceedings on an indemnity basis, summarily assessed in the sum of £20,090.

76. I will invite counsel to draw the order accordingly.

77. That is my judgment.