



# Committal proceedings for (allegedly) false affidavits? Permission denied.

**Arnold Ayoo**

In *Landmark Space Limited [2024] EWHC 987 (KB)*,<sup>1</sup> the High Court considered the circumstances in which applicants would be given permission to pursue contempt proceedings, and commit respondents to prison, for knowingly making false statements in an affidavit.

Mr Justice Griffiths found that where a claimant asked a defendant a question which was capable of multiple interpretations (one narrow and another broad) the defendant could not be in contempt by answering according to the narrow interpretation. Further, there was no public interest in pursuing contempt applications where the allegedly false affidavit did not alter the claimant's thinking, and where the procedure was used for pursuing private interests. Griffiths J clarified the applicable test and made a number of important observations about the proper function of committal applications.

**Arnold Ayoo acted for the successful Defendant ("D").**

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<sup>1</sup> The judgment has just become available.

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## THE FACTS

1. The Claimant (“C”) was a business which stored data, including employee human resources records, on a cloud-based system. D was a former employee in the HR department. On a number of occasions in April 2023, D’s former manager (“X”) attempted to log into the cloud systems using D’s username and password. That generated a multifactor authenticated passcode (“MFA code”) that was sent via text to D’s phone. The MFA code was then correctly entered into the device on which X was using to log in to C’s data systems. X used that access to attempt the download of over 38,000 files.
2. C applied for a breach of confidence injunction against X (D was not a party to those proceedings). Prior to the injunction proceedings against X, C’s solicitors asked D to swear an affidavit confirming: *“whether I have shared my login details to [C’s] IT systems with anyone, and if so, who I shared them with and why”*. D provided an affidavit which stated, *“I have only intentionally shared my login details to the Company’s IT systems with the Company’s IT department”* (“the Affidavit Answer”). Following the injunction against X, C claimed that a multi factor authentication code was properly part of the definition of “login details” meaning that D had knowingly made a false statement in her Affidavit Answer. D’s case, however, was that she had not understood “login details” to include “MFA codes” – but only “username and password”. Hence, she had not checked to see whether she had received MFA codes on the relevant dates and had not found any messages which showed her disclosing her “username and password”.
3. C applied: (i) pursuant to CPR 81.3(5)(b) for permission to make a contempt application against D, in order to commit her to prison, on the grounds that D had knowingly made a false statement in an affidavit.

## THE LAW

4. CPR 81.3(5) states that permission is required to make a contempt application where the allegation is of knowingly making a false statement in an affidavit. In *Patel v Patel* [2017] EWHC 1588 (Ch), at paras [17] to [20] Marcus Smith J summarised the relevant factors at [21]. Those are:
- i. **Strong prima facie case without straying into the merits:** That is, whether, applying the criminal standard of proof (i.e. beyond reasonable doubt), the evidence is sufficiently strong, without more, to satisfy a finding of contempt. This is to be decided without straying into the merits. Further, where more than one inference may reasonably be drawn at trial in relation to evidence advanced in support of a committal application, the claimant will be unable to establish a strong prima facie case to the criminal standard.
  - ii. **Public interest:** Marcus Smith J in *Patel* referred to *KJM Super Bikes Limited v. Hinton*, [2006] EWCA Civ 1280. At [16]-[17] it was said that whenever the court is asked by a private litigant for permission to bring proceedings for contempt based on false statements allegedly made in a witness statement it should remind itself that the proceedings are public in nature and should consider whether the alleged contempt, if proved, is of sufficient gravity for there to be a public interest in taking proceedings in relation to it. Such factors included the strength of the evidence, the circumstances of the case, and its significance in the proceedings. In addition, the court will have regard to whether the proceedings would justify the resources devoted to them. There is a danger of reducing the usefulness of proceedings for contempt if they are pursued where the case is weak or the contempt, if proved, trivial.
  - iii. **Proportionality/overriding objective:** The question, colloquially, is: "*Is one using a sledgehammer to crack a nut?*" (per Marcus Smith J in *Patel* at [66]).

## THE JUDGMENT

5. Griffiths J refused permission to bring contempt proceedings. He found that there was no prima facie case on the merits, and in any event no public interest in bringing the proceedings.

### (1) Case on the merits

6. At [38] to [45], Griffiths J considered whether there was a strong prima facie case on the merits. The factual issue of whether what D said in the affidavit was false turned on what was meant by login details [39]. The Judge thought (in the context of the correspondence) that login details clearly included username and password but not a subsequently received MFA code. The fact that different people could read the question (about “login details”) in different ways was a point in D’s favour. C could not show either that the statement was wrong or that it was deliberately misleading.

### (2) Public interest, proportionality and the overriding objective

7. At [38] Griffiths J found that in any event, there was no public interest in pursuing contempt proceedings, which were disproportionate and unnecessary. This was on the basis that:
  - i. C's key interest was ensuring that confidential information was not being disseminated further, and that any materials which had been downloaded were retrieved [46]. This had already been achieved by virtue of the injunction proceedings against X.
  - ii. C already had all the material upon which it now relied to suggest that D did pass on the MFA code to X. C was not persuaded, or misled, by anything that was said in the Affidavit Answer - which made no difference to its thinking, or its future actions in relation to retrieving or safeguarding confidential information and data [47].

- iii. There were employment tribunal proceedings in which C relied on D's misconduct in relation to the data breach as a reason for dismissal. The honesty, or otherwise, of the conduct of D was likely to be examined there. It was undesirable that there should be satellite litigation in the High Court, which will incur additional costs, engage additional resources in the justice system, and distract from the more essential disputes being canvassed in the employment tribunal, on an equitable and efficient basis, which is more consistent with the overriding objective as it affects the other parties in dispute with C [48].
- iv. The Parties had entered into settlement agreement which provided that, if the C believed and could prove that the statement in the affidavit was untrue, it could pursue its remedies in the High Court. It chose not to do so [49].
- v. A contempt application is a matter of public interest in defending the integrity of the justice system. It is not a means of pursuing private interests [53]. In that respect, D had put in evidence that C's chief executive officer had "boasted" that he would financially ruin X and take everything she owns, and that he intended to put D herself and others in prison. This was not denied in a witness statement by C (albeit it was denied by counsel) [54].

### **(3) General observations about contempt applications**

8. Griffiths J made some useful general observations of wider application:
  - i. It is not the function of a committal application to engage in wide-ranging scrutiny of correspondence and subsequent affidavits which he was led through. Committal proceedings based on false statements require a rigorous focus on whether the particular statement made on oath was correct or not and, if not correct, whether any error was innocently made and, if not innocently made, whether the fault is so grave as to justify action by way of contempt proceedings and further consequences [51].

- ii. It is not the case that every time a person is shown to face a *prima facie* case that they made a false statement in an affidavit, or witness statement, or other document verified by a statement of truth (such as a list of documents), there should be a contempt hearing. The case law showed that these applications are not granted in every case but are considered in every case with care, public interest being an additional requirement over and above the fact (if it could be shown to the criminal standard on a *prima facie* basis) that a false statement has been made [52].
- iii. A contempt application is not a means of obtaining redress, or information in order to support general business needs and objectives, and obligations to regulators, including the protection of confidential information. C already had all the information it needed in that respect; and it was not the function of a contempt application to pursue those objectives [53].

## CONCLUSION

9. The case serves as a powerful reminder that, where a false statement in an affidavit is alleged, the Court will not entertain contempt proceedings which do not demonstrate falsity and intent to the criminal standard. Even then, committal applications must serve the public interest and that is a high bar.

**Arnold Ayoo**

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