

Extended material  
Chapter 19: Contempt of Court

**Injunctions**

The Attorney General can ask the High Court to grant an injunction forbidding publication of material which is about to be published and which could in the Attorney General's view create a substantial risk of serious prejudice or impediment to a criminal case. Such an injunction could also be issued to restrain other media activity seen as capable of creating such a risk, for example, reporters' attempts to interview witnesses before a trial. It has been ruled that a Crown court has some power to grant such injunctions (*Ex p HTV Cymru (Wales) Ltd, Crown court at Cardiff* (Aikens J) [2002] EMLR 184). For the contempt danger which could arise from a reporter interviewing or trying to interview a witness, see *McNae's*, 19.3.1.

**The GQ case**

In November 2015 the magazine *GQ* was found by the High Court to have breached the Contempt of Court Act 1981 by publishing an article by New York-based journalist and media commentator Michael Wolff about the trial of former News International chief executive Rebekah Brooks, former *News of the World* editor Andy Coulson and others on charges of conspiracy to hack phones. Their trial at the Old Bailey started in November 2013 and lasted until June 2014 – and the *GQ* piece appeared in March 2014, as some of the defendants were about to give evidence. In the High Court judgment the Lord Chief Justice, Lord Thomas, said: 'I am left in little doubt that the effect of the article read as a whole was very seriously prejudicial.'

The magazine's publishers Conde Nast had argued that the Act had not been breached, because the article was riddled with ambiguity and lacking in identifiable assertions or that it was difficult to search for its meaning. Conde Nast argued it was 'a highly subjective, personal and impressionistic sketch based upon the experience of visiting the trial courtroom.'

But Lord Thomas said that the article 'plainly implied' that Rupert Murdoch - chairman and chief executive of News Corp, the ultimate owner of the *News of the World* - was 'a participant in the phone hacking, that the defendants must have been aware of the phone hacking, that the defence was being funded by him and conducted on the defendants' instructions so as to protect his interests, but in a way that might also secure their acquittal.'

Lord Thomas pointed out that no such allegations against Mr Murdoch were made in the trial, and added: 'It was in my view unrealistic to expect a member of a jury who read the article to be uninfluenced by or to put out of his or her mind the contents of such an article published as it was during the trial.' The judge said that the article implied that 'Mrs Brooks was a disreputable woman' and was 'an improper attack on a defendant in the course of her trial and plainly, seriously prejudicial'.

Conde Nast had made clear to the High Court that it was a responsible publisher which prided itself in good quality and responsible journalism. But, the judge said, there was nothing to alert a juror, until beginning to read the article and its implications, that it was not conventional, fair and balanced reporting. 'There would, in my view therefore have been a seriously arguable ground of appeal that the jury should have been discharged', Lord Thomas said.

Conde Nast said the magazine took legal advice before running the piece – and was told that it was not prejudicial. The company was fined £10,000 for the contempt and ordered to pay the Attorney General's costs of nearly £55,000. Nearly 100,000 copies of the magazine were withdrawn from sale and destroyed after concerns were raised about the article.

The case was taken to court by the Attorney General, Jeremy Wright QC, who said after the judgment: 'While it is rare to bring proceedings against publishers, the *GQ* article went against the most

fundamental principle of our criminal justice system; namely that everyone is entitled to a fair trial, and it is not for the press to decide who is deserving of this protection' (*Attorney General v The Condé Nast Publications Ltd* [2015] EWHC 3322 (Admin)); *Media Lawyer*, 18 November 2015 and 4 February 2016). Coulson was convicted of the hacking. Mrs Brooks was acquitted of hacking, and reappointed as chief executive of News UK (formerly News International).

### **Prejudicial material**

**Case study:** The Scottish Daily Record was fined a total of £80,000 for what a senior judge described as two serious contempts of court after it published one story detailing an arrested man's criminal past and another illustrated with a photograph of a suspect as well as material which could feature in his trial. See *McNae's* 19.6.1 and 19.6.2, on references to previous conviction of a defendant's possible bad character. The judgment of the Appeal Court of the High Court of Justiciary was delivered in October 2017, but only made public in June 2018, the delay being thought to be because of associated criminal proceedings. Lady Dorrian, the Lord Justice Clerk, sitting with Lord Menzies and Lord Turnbull, said the stories, about two different men, referred to as A and B, appeared in the Daily Record and on its website.

The story about man A was published on February 11, 2017, and the coverage of man B appeared on May 22.

Man A had been arrested on January 20, on outstanding warrants relating to earlier proceedings, and arrested again the following day in connection with firearms charges, and was committed for trial on February 1.

Lady Dorrian said the 'sensational' article named man A and carried photographs of him.

'It associated him with drug trafficking and dealing and with a number of shootings of members of organised crime,' she went on.

'It used phrases such as 'gang boss', 'cocaine kingpin' and 'cocaine baron', and suggested that he had been 'involved in a violent turf war with rival gangsters'.

'The article contained details of the allegations against him that may form part of the evidence at any future trial, and referred to the recovery of a 'fearsome arsenal' and 'horrific array' of weapons and money.

'In addition, it revealed detailed information about his criminal history, including previous convictions and prison sentences. It referred to other live proceedings against him, suggesting that he had gone into hiding in connection therewith and describing him as 'one of Scotland's most wanted men'.'

Man B, who was the subject of a sexual offences prevention order granted in 2010, was arrested on May 20 in connection with offences said to have been committed in Falkirk the previous day, and appeared in court two days later, charged with attempting to abduct two nine-year-old girls, and other offences.

The article about him, said Lady Doprrian, named him, and carried photographs from at least one of which he might be identified.

'The photographs and captions were sensational in nature, showing him being pinned down to the ground and in handcuffs, one bearing the caption 'GOT HIM',' she said.

'The article referred to the photograph on the ground with the words 'Dramatic moment cops restrain man accused of attempting to abduct two young girls in the woods', a phrase repeated elsewhere in the article in similar terms.

'There is detail of the allegations that may form part of the evidence at trial. Detail of the broad circumstances of the alleged incident and what is said to have happened are narrated in the article.'

The story also quoted a Facebook posting said to have been made by the mother of one of the children saying 'This absolute beastie scum tried to get my daughter and her friend to go into the woods with him in broad daylight,' said Lady Dorrian, adding: 'This is a phrase suggestive of offending of a sexual or indecent nature.'

The article also implied man B's guilt, she said.

At first the newspaper's publisher, Scottish Daily Record and Sunday Mail Ltd, denied contempt, but in September last year it conceded that the articles were contempts.

The court had been told that both articles had been checked for legal issues by solicitors, 'but in very different circumstances', Lady Dorrian said.

'In the 'A' case, the solicitor had been seriously unwell, and there is a report from her doctor that she should not have returned to work,' she said.

'She was heavily sedated at the time the advice was given and the effects of the medication alone would have rendered her incapable of rational thought let alone advising clients on legal matters'.  
But there was 'no such excuse' in the second case, she said.

'Counsel, in his submission, recognised that the nature of the articles, at least in the 'A' case, might be considered so glaringly flagrant that any editor might have questioned the advice given,' said Lady Dorrian, adding: 'There is some force in that concession: in the case of 'A' the terms of the article were blatant contempt.'

In the case of man B, photographs of an untried person were printed against advice, she went on.

It had been made clear in *Stirling v Associated Newspapers* 1990 JC 5 and *HM Advocate v Caledonian Newspapers Ltd* ([1995] SLT 926) that publishing photographs of individuals arrested in criminal proceedings was an issue over which newspaper had to take the 'greatest of care'.

It was also clear that such publication could raise serious issues if identification was an issue at trial - as it was in the case of man B.

Lady Dorrian went on: 'It may be possible to discount the effect on the jury of publication of photographs, because of the time which will elapse between the publication and trial, but the matter is much less clear in relation to witnesses, even allowing for the fact that one of the photographs was taken by a witness, and published on Facebook by the mother of one of the complainers.

'In *HM Advocate v Caledonian Newspapers Ltd* the court noted that the only safe way to publish a photograph of an untried prisoner was with the consent of the Lord Advocate.'

In the case of man B, the newspaper's editor had published the photograph despite a warning by the solicitor doing the legal check on the story that doing so carried a risk of contempt.

The article about man A carried 'a severely prejudicial risk to the course of justice', said Lady Dorrian, adding: 'The clear implication of the article is that 'A' is a dangerous, violent criminal, involved in serious violent crime, including gun crime, and organised crime.'

In the case of man B, publication of the photograph was particularly serious matter - but the story also gave details of facts which might be expected to be the subject of evidence at trial, including statements made by potential witnesses.