Neutral Citation Number: [2019] EWHC 669 (Fam)

Case No: ME16C01627

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/02/2019 and 6/03/2019

Before:

MRS JUSTICE THEIS

- -

Between:

Medway Council	**Applicant**
- and -	
Sara Jayne Root	**Respondent**

- -
- -

Mr Edward Elliott (instructed by **Medway CC**) for the **Applicant**

Mr William Dean (instructed by **Sternberg Reed**) for the **Respondent**

Hearing dates: 20th & 25th February & 6th March 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Mrs Justice Theis DBE:

Introduction

1. This matter concerns a committal application by Medway Council (the applicant) relating to alleged breaches of orders made by this court prohibiting Ms Root from publishing material relating to two of her children.

2. There is, sadly, a long history to this matter. For a number of years Ms Root has been campaigning against the applicant in which she seeks to complain in the strongest terms about the council's actions in applying for in 2010 and obtaining in 2011 a care order in respect of two of her children and thereafter, limiting with the approval of the Family Court, the amount of contact she has had with her children.

3. As a result of Ms Root's actions, the applicants have had to apply for orders prohibiting Ms Root from certain behaviour. The relevant parts of the orders this hearing is concerned with are as follows:

(1)Paragraph 9 of a non-molestation order dated 15 March 2018:

The Respondent, SARA ROOT, is forbidden whether herself or by encouraging others from displaying to the public in any way the name, contact details or photograph of the applicant, [X]. For the avoidance of doubt in public includes all social media platforms including Facebook and Twitter.

(2)Paragraph 3 of an injunction order dated 11 May 2018

The respondent mother is prohibited whether herself or by encouraging others from making any publication of court papers in any family proceedings relating to her children, [X] and [Y], initiated when they were minors to which the respondent mother was also a party or from publishing any details relating to those proceedings. For the avoidance of doubt such proceedings include the following case numbers: ME10C00342; ME12C00155; B4/2012/1266; ME13C00809; B4/2013/3131; ME14P00297; B4/2016/2349; B4/2017/2527; and ME16C01627. FOR THE AVOIDANCE OF DOUBT MS ROOT MAY NOT PUBLISH HERSELF ON FACEBOOK OR ANY OTHER FORM OF SOCIAL MEDIA THE JUDGMENTS OF 17/07/17, 18/07/17, 30/08/17 (HHJ POLDEN), 15/03/18 AND 11/05/18 (THE HONOURABLE MRS JUSTICE THEIS) THAT ARE TO BE PUBLISHED ON THE TERMS SET OUT IN A REPORTING RESTRICTIONS ORDER MADE ON 11/05/18.

(3)Paragraph 2 of a suspended sentence dated 11 May 2018

The execution of the order of six month imprisonment, by issue of a warrant of committal, shall be suspended until 10 May 2019 upon the following terms, namely compliance with the injunction order of Mrs Justice Theis dated 11 May 2018 which at paragraph 3 provides [as above].

(4)Paragraph 16 of the Reporting Restrictions Order ('RRO') dated 11 May 2018

> *... this order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast or cable or satellite program service of any information or details in relation to:*
>
> *(a) The committal applications brought by Medway Council against Sara Root under case number C00ME422 [heard by His Honour Judge Polden].*
>
> *(b) The application of Medway Council for [the] injunction pursuant to section 12 of the Administration of Justice Act 1960 ... determined on 15/03/18 by the making of an order to last until 20/11/23.*
>
> *(c) The application of X for a non-molestation order [as above].*
>
> *(d) The application made by the local authority for a non-molestation [order as above].*
>
> *(d) [sic] The committal application brought by Medway Council against Sara Root under case number ME16C01627 as determined on 11/05/18.*
>
> *(e) The oral and formal applications for reporting restrictions order and the orders made on those applications.*
>
> *save (a) [sic] that it is permissible to publish [certain specified summaries]*
>
> *AND it is permissible to publish the [five judgments of 17/07/2017, 18/07/2017, 30/08/2017, 15/03/2018 and 11/05/2018] save that the judgments are not to be published:*
>
> *in conjunction with any other material that names the children or identifies them by photograph or any other image; or*
>
> *on any online page containing any other material that names the children or identifies them by photograph or any other image where the existence of that material is known to the publisher.*

4. This application relates to 14 alleged breaches of the above orders between 27 June and 12 November 2018 where the applicant states Ms Root has posted material on internet sites which breaches the terms of these orders.

Relevant Background

5. This is set out in the previous judgments and can be summarised as follows.

6. The applicant issued care proceedings in relation to two of Ms Root's children in 2010 and final care orders were made in 2011. Ms Root has not seen the children since 2010.

7. Between 2012 and 2016 Ms Root made several applications, each of which was refused:

   (1) An application to discharge the care orders, dismissed by HHJ Cameron in March 2012.

   (2) An application for permission to appeal that order, refused by Munby LJ (as he then was) on 3 October 2012.

   (3) An application to discharge the 2011 injunction which was determined by HHJ Polden on 11 June 2012. He discharged paragraph 2 of the order dated 13 December 2011 (which required Ms Root to deliver any documents she had relating to the care proceedings to the Local Authority). In paragraph 3 of that

order it confirmed paragraph 1 of the order dated 13 December 2011 and the penal notice remained in force.

(4) A second application to discharge the care orders, refused by HHJ Cameron on 10 September 2013.

(5) Permission to appeal that order was refused by McFarlane LJ on 20 January 2014.

(6) A second application to discharge the injunction was dismissed by HHJ Murdoch QC on 24 April 2014 although he did vary the injunction to allow for any communication of information as permitted by rule 12.73(1)(a) and (c), r 12.75 and PD12G Family Procedure Rules 2010 (FPR).

(7) An application for contact to the children was refused by HHJ Scarratt on 11 September 2014, when orders were made under s 34(4) giving the Local Authority permission to refuse contact and an order under s91 (14) Children Act 1989 was made to last until 20 November 2016.

(8) An application for permission (out of time) to appeal the order of HHJ Polden in December 2011 and HHJ Scarratt in September 2014. Both those applications were dismissed on paper by Macur LJ on 28 July 2016 as being without merit.

8. During 2014 and 2015 the Local Authority became increasingly aware of information relating to the care proceedings being put on the internet by Ms Root.

9. The Local Authority wrote to Ms Root and asked her to stop such publication of that information. Ms Root ignored that request and did not change her behaviour.

10. In June 2016 the Local Authority issued a committal application with evidence in support setting out the distress Ms Root's behaviour was causing to the children, that it was unsettling for their placements and reporting their express wish for her to cease putting information about them on the internet. The elder child wrote to the court setting out how upsetting the information Ms Root had put on the internet had been, and the adverse impact it had.

11. The committal application took several months to be determined, due to a combination of factors including lack of court time and Ms Root's ill health. On 28 March 2017 the Local Authority issued a further committal application based on the breach of her undertaking in failing to remove material concerning her children, and in continuing to publish material arising from the care proceedings concerning her children.

12. In July 2017 HHJ Polden dealt with the two committal applications and found the alleged breaches proved, namely 10 breaches of the injunction dated December 2011 and two breaches of the undertaking given by Ms Root in December 2016. HHJ Polden gave a detailed judgment and adjourned sentence until 30 August 2017 to enable Ms Root to secure legal representation. HHJ Polden's order continued the injunctions in the same terms and transferred the various applications concerning the injunctions to be determined by a High Court Judge. On 30 August 2017 he sentenced Ms Root to 6 months' imprisonment, suspended for 12 months on condition she complied with the terms of his order made in December 2011.

13. On 30 August 2017 HHJ Polden transferred the issue of any ongoing reporting restriction orders in relation to the committal hearing to a High Court Judge and in the interim he followed the Practice Direction: Committal for Contempt of Court dated 26 March 2015 (paragraph 13) and issued a short statement as to what could be published, which was set out on the face of the order as follows:

> (1) *'In relation to C00ME422. On 30th August 2017, at Maidstone County Court, His Honour Judge Polden sentenced Sara Root to a custodial sentence of six months, suspended for twelve months, for contempt of court. The basis of that sentence was that: (a) she had breached an injunction made under section 12 of the Administration of Justice 1960 on 13th December 2011 on ten occasions; (b) she was in breach of an undertaking she gave to the court on 12th December 2016; and (c) she failed to comply with reporting restrictions made at the same hearing. All of the breaches were occasioned by publishing material relating to care proceedings on Facebook and failing to remove it. '*

14. In September 2017 Ms Root appealed the findings made by HHJ Polden.

15. On 28 September 2017 the matter came before Gwynneth Knowles J; she made directions leading to a two-day hearing before me in February 2018. She continued the injunction against Ms Root with a penal notice attached and extended the reporting restrictions order made on 12 December 2016. The relevant parts of her order are as follows ('the 2017 order'):

> *'The Respondent mother is prohibited whether by herself or by encouraging others from making any publication of court papers in all of the public law proceedings relating to her children or from publishing any details relating to those proceedings. For the avoidance of doubt such proceedings include the following case numbers…'*

16. On 22 November 2017 Ms Root's appeal was considered by McCombe and McFarlane LJJ. As before, she was reminded of her right to legal representation, which, according to Mr Elliott, she declined preferring the hearing to proceed. Her appeal was dismissed and the short statement given by HHJ Polden was repeated in the order with the following addition:

> *'Sara Root subsequently appealed the order of His Honour Judge Polden in an appellant's notice dated 12th September 2017. The appeal was heard by the Right Honourable Lord Justice McFarlane and the Right Honourable Lord Justice McCombe on 22nd November 2017. They gave judgment the same afternoon dismissing the appeal.'*

17. Following the Court of Appeal hearing the applicant issued a further committal application on 21 February 2018. That application alleged breaches set out in the attached Annex and was listed before me for directions on 26 February. On the first day of that hearing I directed the Local Authority to give notice to the press of the application for a reporting restriction order relating to the committal application; that was done on 26 February. I gave directions on the committal application on 27 February. Ms Root said she wished to make enquiries about legal representation in relation to the committal application. Mr Elliott helpfully gave her the name of solicitors near to her home. The court was informed on 12 March she was going to

be represented on 15 March by Sternberg Reed, who instructed Mr Dean to attend that day.

18. On the morning of 26 February, Ms Root filed a skeleton argument and a statement. I heard oral evidence from 3 witnesses called by the Local Authority in relation to the applications to continue the injunction preventing Ms Root from publishing information about the care proceedings, a RRO and the application for non-molestation orders.

19. I reserved judgment until 15 March 2018. Ms Root's statement prepared for the March hearing raised several matters that had been previously determined by HHJ Polden. I dealt with those matters in the judgment given on that day. I made a further injunction order until the younger child was 25, a non-molestation order in favour of the older child and an interim RRO pending the hearing on 11 May 2018.

20. The directions in the committal application provided for an amended committal application to be served. On 15 March I directed (i) the deletion of a number of alleged breaches from the committal application on the basis that Mr Elliott conceded they related to alleged breaches of orders that did not have a penal notice on them; (ii) personal service on Ms Root of the amended application by 20 March; (iii) the amended application to detail the remaining breaches cross referenced to the evidence and how it was said they breached any orders, and other directions leading up to the May hearing.

21. At the hearing on 11 May I found 4 breaches established relating to postings on Ms Root's Facebook between September 2017 and January 2018. None of those findings breached the terms of suspended sentence order made by HHJ Polden in 2017. Having considered the mitigation advanced on Ms Root's behalf by Mr Dean, I concluded there should be a sentence of 6 months each for two of the breaches and 3 months each for the other two, all to run concurrently and the 6 month term was suspended for 12 months on condition Ms Root complied with the terms of the injunction order I made that day. I continued the RRO and the judgments were placed on Bailii, making it clear on each judgment they were subject to the restrictions in the RRO.

22. This latest committal application is dated 12 November 2018. It alleges 14 breaches between June and November 2018 relating to alleged posts Ms Root has made on her own Facebook, on one she controls called 'stop UK social services from snatching children from innocent parents now' ('the campaigning page'), on a website called **www.medioq.com** and she has Tweeted. On 12 December I made directions which lead to this hearing.

23. At the commencement of this hearing Mr Elliott applied to admit some further material and for the court to view the video that is the subject of allegation 2, 2A and 2B. There was no objection to viewing the video. Mr Dean objected to the admission of C94A (an enhanced image of what was relied upon in relation to allegation 14) and C71A (a screenshot of the Facebook page in Ms Root's name which showed sharing a post on 10 January 2019 with reference to **www.medioq.com**). Mr Elliott submitted this was relevant when the court was considering what Ms Root said in her statement about **www.medioq.com** . Mr Dean objected on the basis that it was too late to admit this information. I granted Mr Elliott's application and gave Mr Dean time to consider the documents; he did not seek any further time.

24. I heard oral submissions from Mr Elliott and Mr Dean on 20 February. Mr Dean did not seek to cross examine the Team Manager who had filed the evidence in support of the application, and Mr Dean did not call Ms Root. She had filed two statements neither accepting nor denying the alleged breaches. I reserved my judgment until today.

Legal Framework

25. This application is governed by Part 37 Family Procedure Rules 2010, which provides a comprehensive framework governing an application for contempt of court.

26. There is a large measure of agreement between the parties as to the applicable legal framework. The relevant matters that are agreed can be summarised as follows:

(1) The burden of proof is on the applicant to establish each of the alleged breaches relied upon to the criminal standard of proof, namely the court must be sure.

(2) There is a mandatory requirement in rule 37.10 (3) for the applicant to set out in full the grounds on which the committal application is made; the applicant '*…must set out in full the ground on which the committal application is made and must identify, separately and numerically, each alleged act of contempt…'* (r 37.10 (3) (a)).

(3) Rule 37.27 (1) provides that unless the court permits the applicant may not rely on '*any grounds other than those set out in the application notice…'.*

(4) Whilst the court does have power to waive procedural requirements it would need to have regard to the guidance given in *Nicholls v Nicholls [1997] 1 FLR 649* by Lord Woolf MR at 661E

'(1) As committal orders involve the liberty of the subject it is particularly important that the relevant rules are duly complied with. It remains the responsibility of the judge when signing the committal order to ensure that it is properly drawn and that it adequately particularises the breaches which have been proved and for which the sentence has been imposed.

(2) As long as the contemnor has had a fair trial and the order has been made on valid grounds the existence of a defect either in the application to commit or in the committal order served will not result in the order being set aside except insofar as the interests of justice require this to be done.

(3) Interests of justice will not require an order to be set aside where there is no prejudice caused as the result or errors in the application to commit or in the order to commit. When necessary the order can be amended.

(4) When considering whether to set aside the order, the court should have regard to the interests of any other party and the need to uphold the reputation

of the justice system.

(5) If there has been a procedural irregularity or some other defect in the conduct of the proceedings which has occasioned injustice, the court will consider exercising its powers to order a new trial unless there are circumstances which indicate that it would not be just to do so.'

(5) The Respondent to a committal application is not a compellable witness (see Lewison J (as he then was) in *Great Future International Ltd v Sealand Housing Corporation [2004] EWHC 124 (Ch)* at [25]).

(6) The provisions in section 35(2) and (3) of the Criminal Justice and Public Order Act 1994 as to any inference that may be drawn from failure to give evidence is not available in civil contempt as the proceedings are not a *'trial…for an offence'.* However *'[a]t common law adverse inferences can be drawn from silence in civil proceedings, and, as the Comet case shows, an affidavit on which the defendant refuses to be cross-examined may be given little weight'* (per Lewison J [30] in *Great Future International Ltd (ibid)*).

(7) The test in *DPP v Boardman [1975] AC 421* is applicable in that similar fact evidence can be admissible because of its *'striking similarity to other facts being investigated'* and the court is required to weigh up if the probative value is outweighed by any prejudice to the respondent to the application.

27. Where Mr Elliott and Mr Dean part company centres on two issues:

(1) Whether posting a hyperlink to a judgment constitutes 'publishing' that judgment.
(2) Whether speaking words in the audio of a video recording can constitute 'displaying' that material.

28. In relation to the issue of the hyperlink both counsel agree there is no binding authority on this issue in this jurisdiction in the context of contempt. Mr Dean's assiduous researches have produced two cases from other jurisdictions; a decision of the Canadian Supreme Court (*Crookes v Newton [2011] 3 S.C.R. 269)* and an Australian decision of the Supreme Court in NSW (*Visscher v Maritime Union of Australia (No 6) [2014] NSWSC 350)*. They both involved defamation actions. *Crookes* concerned an action against the person who owned and operated a website which posted an article which contained shallow and deep hyperlinks to other websites which in turn contained information about the applicant, two of which the applicant alleged connected to defamatory material. In *Visscher* the applicant sued the owner and operator of a website that contained information on the website and a link to an article, both of which the applicant alleged was defamatory.

29. In *Crookes* the majority judgment was given by Abella J. Justice Abella considered that hyperlinks bear the same relationship to the content of the impugned publication as references in that

'[30]…both communicate that something exists, but do not, by themselves, communicate its content. And they both require some act on the part of a third

party before he or she gains access to the content. The fact that access to that content is far easier with hyperlinks than with footnotes does not change the reality that a hyperlink, by itself, is content neutral – it expresses no opinion, nor does it have any control over, the content to which it refers.'

She concluded that

'[42] …making reference to the existence and/or location of content by hyperlink or otherwise, without more, is not publication of that content. Only when a hyperlinker presents content from the hyperlinked material in a way that actually repeats the defamatory content, should the content be considered to be 'published' by the hyperlinker.'

30. Whilst McLachlin C.J. and Fish J agreed with the majority *'substantially'* they considered a hyperlink should constitute publication if, read contextually, the text that includes the hyperlink constitutes adoption or endorsement of the specific content it links to. A mere general reference to a web site is not enough to find publication. Deschamps J observed that excluding hyperlinks from the scope of the publication rule is an inadequate solution to the novel issues raised by the Internet. The blanket exclusion exaggerates the difference between references and other acts of publication, and treats all references, from footnotes to hyperlinks, alike, thereby disregarding the fact that references vary greatly in how they make defamatory information available to third parties and, consequently, in the harm they can cause to people's reputations.

31. In *Visscher* there was reference to the judgments in *Crookes* but Beech-Jones J considered that decision was not consistent with Australian authority and that the approach of McLachlin C.J. and Fish J in *Crookes '[29]…can be readily adopted to circumstances in which a person is alleged to the publisher of material by inserting a hyperlink directing viewers to its web location. In particular, the question is whether, by the inclusion of the hyperlink, the defendant accepted responsibility for the publication of the hyperlinked material. This could be answered in the affirmative if, amongst other ways, it was concluded that there was an approval, adoption, promotion or some other form of ratification of the content of the hyperlinked material'*

32. Mr Elliott relies on the *Visscher* case submitting that the court can, if the circumstances of the case permit, find that the hyperlink equates with publication of the judgment. Mr Dean prefers the analysis in *Crookes* which he submits is more clearly reasoned and was not bound by any domestic authority.

33. Whilst acknowledging both of these cases have to be viewed in the context of the proceedings they were concerned with, namely defamation, and, in any event, are not binding on this court I prefer the approach taken in *Crookes* in that making reference to the existence of something by hyperlink, without more, is not publication of that content. As Abella J observed the hyperlink communicates something exists but a further act is required before access is gained to it. In *Visscher* the factual position was different in that the website contained an article on the website as well as the hyperlink (indicating some adoption or promotion of the content of the hyperlinked material) and there was previous Australian authority

that reached an analogous conclusion. That previous Australian authority cited an English Court of Appeal decision (*Hird v Wood (1894) 38 Sol J 234)* which was said in *Visscher* to be an example of a person approving, adopting or promoting a defamatory statement of another and thereby accepting responsibility for it. Mr Dean rightly referred the court to this decision but it does not assist in the situation this court is dealing with, as the context was limited to what facts could be left to a jury in a defamation action. I accept it could be said that the publication of the judgment citation together with the hyperlink is sufficient but, in my judgment, that does not equate with publishing the full judgment in connection with any identifying information relating to the children. It comes very close, but in the circumstances where this court is dealing with in proceedings involving contempt the position needs to be unambiguous.

34. In the future when considering orders such as those made in this case it may be sensible for the court to actively consider whether there should be an express prohibition of publication of hyperlinks.

35. As to the question of whether something can be *'displayed'* when it is read out that is, in my judgment, fact dependent and will need to be considered on a case by case basis.

Submissions

36. I am extremely grateful to both Mr Elliott and Mr Dean for their excellent written and oral submissions. They have each provided a careful analysis of the relevant legal framework and the facts in this case which have been of great assistance to the court.

37. In his detailed written and oral submissions Mr Elliott makes the following points:

(1)The court can be satisfied to the required standard in relation to each of the alleged breaches what Ms Root is said to have done, what order that behaviour breached and why that behaviour was a breach of that particular order. He relies on the evidence of the team manager where she exhibited the material as it appears on Facebook, Twitter and the website www.medioq.com

(2)Mr Elliott relies on the following particular features of the exhibits to the Team Manager's statement.

(1) The Facebook posts relied upon are said to be published by Ms Root, they have her name or it can be established she has close connections with the Facebook page (such as her campaigning page), each page has a small photo of her next to the post and the post is written in the first person.

(2) The small photo is taken from one of the photos of Ms Root on the Facebook page.

(3) The names and photographs of X and Y appear on the Facebook pages.

(4) Whilst the court should consider Ms Root's evidence in neither accepting or denying these matters it is of no weight when balanced with the other evidence.

(3) In relation to the submission by Mr Dean that publishing a hyperlink to the judgments does not amount to a breach of the orders in his written submissions Mr Elliott states *'If the link does not amount to publishing a judgment then it is just information in relation to the proceedings and it is caught by the [RRO]. If the link does amount to publication of a judgment then it is in breach of paragraph 16 as there is other material on the Facebook page that allows the children to be identified by name and/or photograph'.*

(4) The submission made by Mr Dean that the verb 'displaying' in the non-molestation order can't be sustained. It means to put something in public so it can readily be seen. Mr Elliott submits Ms Root has put the video in a public place so it would be seen to promote her position. He submits the video is displayed on the Facebook page so it will be played.

(5) In relation to the website **www.medioq.com** Mr Elliott submits the evidence supports the finding that Ms Root has breached the orders by putting information on there. He invites the court to reject her written evidence that she does not know anything about it for the following reasons; (i) on her Facebook page she has shared a link with this website; (ii) this has to be seen in the context of the material on the Facebook page that links Ms Root with it, in conjunction with the material that appears on **www.medioq.com** that can only have come from Ms Root; and (iii) she has very recently (10 January) shared a link with this website on her Facebook page, thereby undermining her statement that she has no knowledge of the website.

38. In his written and oral submissions Mr Dean makes the following points:

(1) He emphasises the general points about the burden of proof being on the applicant in relation to each alleged breach and the need for the court to be satisfied to the criminal standard in relation to each allegation. He makes it clear Ms Root does not accept anything.
(2) In relation to some of the issues identified below where there is uncertainty about the position, for example whether a hyperlink amounts to publication, Ms Root should have the benefit of any doubt due to the nature of these proceedings.
(3) He acknowledges the ability of the court to consider the issue of similar fact evidence but cautions where there are several alleged breaches (as here), that they are not relied upon in any cumulative way to the prejudice of Ms Root.
(4) He identifies the issues for the court as:

(i) Whether the applicant has proved as a matter of fact that Ms Root made the internet postings relied upon. This relates to all the alleged breaches. He submits the screen shots relied upon show Facebook pages called 'Sara Root' and 'Stop UK Social Services from snatching children from innocent parents now' ('the campaigning page'), and a Twitter page bearing the handle 'SaraRoot50'with images of Ms Root. He submits

without more that is not proof to the criminal standard Ms Root posted the messages and/or images.

(ii) Whether Ms Root is responsible in any way for the content of **www.medioq.com** (allegation 6). He submits this appears to be a stand-alone website which collates information and links. There is nothing to suggest Ms Root is responsible for the postings on this website and it appears to be an aggregating or link-collating site, as the material is interspersed with unrelated advertisements. There is nothing to suggest Ms Root has ties with or control over this website.

(iii) Whether posting a hyperlink to a judgment constitutes 'publishing' that judgment for the purposes of paragraph 16 of the RRO (allegations 1, 3, 4, 5, 6, 12A and 12B). The question is whether if a person publishes a hyperlink to material is that equivalent to publishing the material itself. He submits it doesn't for the following reasons. The publisher of the hyperlink does not, in fact, publish the material. The publisher has no control over the content of the material, which may be changed or removed at any time and the publisher of the hyperlink did not cause the material to be published. He prefers the analysis in the Canadian *Crookes* case.

(iv) Whether speaking words in the audio of a video recording constitutes *'displaying'* material to the public in contravention of the non-molestation order (allegation 2, 2A and 2B). He submits the allegation is framed to be a breach of the non-molestation injunction in that X is named, but he submits that is not the language of the non-molestation order. The Oxford Dictionary (online) defines *'display'* as *'put (something) in a prominent place in order that it may readily be seen'*. He submits spoken words are not displayed, and it is an essential quality of the verb that there is a visual presentation. The displaying element is the video image only, not the spoken word. This is consistent, he submits, with the intention behind the non-molestation order which was to prevent the publication of scanned images of court documents.

(v) The question whether publication of certain documents actually contravened the injunction order turns on whether those documents constituted '*court papers'* for the purposes of the injunction (breaches 8, 9, 10A and 10B) and/or *'information or details'* for the purposes of RRO (allegations 8, 11 and 13). He submits there is uncertainty about whether the minutes of the professionals meeting in 2010 (allegation 8), a note of the contact session between Ms Root and Y (allegation 9) and the two section 46 forms (allegations 10A and 10B) are either court paperwork or have information or details relating to the proceedings. He accepts there is no issue that the first page of written submissions (allegation 10A and 10B) are court papers. In relation to the material relied upon in allegation 11 the information on the Facebook page contains information and discussions which occurred around but not, he submits, within the relevant proceedings.

Discussion and Decision

39. The court must remain focussed on the evidential burden on the applicant to establish the breaches to the required criminal standard. Ms Root has to prove nothing. If there is any uncertainty, Ms Root must be given the benefit of any doubt.

40. I propose to consider each allegation in turn:

Allegation 1 – on 27/6/18 Ms Root published a link to the judgment of Mrs Justice Theis from 15.3.18

41. This is based on the screenshot of a Facebook page with Ms Root's name on it, with her photo (which is one of the profile pictures) on a page which contains other material featuring Ms Root (such as a video posted on 6 December 2017).

42. Even if the court accepts this is Ms Root's Facebook page the issue in relation to this allegation is does the posting of the hyperlink amount to a breach of the restriction in the injunction order and the RRO to *'publish'* the judgment in conjunction with material that names X or Y (which the Facebook page does).

43. Mr Elliott submits this is sufficient, when taken with everything else, for the court to conclude, if the court is satisfied Ms Root put the hyperlink there, she was publishing the judgment in circumstances where there was material identifying the children. That is how it is set out in the committal application why that amounted to a breach; in paragraph 1 (c) he nails his colours to the mast of the second part of paragraph 16 of the RRO. In his written and oral submissions, he sought to submit that Ms Root can't have it both ways in that if it did not amount to publication, it was caught by the first part of paragraph 16 of the RRO as being *'any information or details'* in relation to the hearing on 15.3.18.

44. Mr Dean submits that the requirements of rule 37.3 make it clear there is a mandatory requirement on the applicant in committal applications to set out separately each alleged act of contempt. It is not appropriate or fair for the applicant to put the case in a way that is not set out in the application. Mr Elliott prays in aid the guidance given by Lord Woolf MR in *Nicholls* that the court should consider what prejudice there is to Ms Root when the position had been made clear in the skeleton argument.

45. I am satisfied this breach is **not** proved to the required standard, for the following reasons:

(1) It is clear the applicant's case is founded on the hyperlink being a breach of the prohibition to publish, in both the injunction order and RRO. It says in terms under the reasons for this amounting to a breach Ms Root was *'expressly forbidden from publishing this judgment'* (para 1A) and similar in para 1C. There is no mention or reference in the relevant part of the application to being prohibited from '*publishing…any information or details'* and Mr Elliott did not apply to amend his grounds.

(2)Whilst there may be an argument that publishing a hyperlink does equate to publishing the judgment that has not been decided before in this jurisdiction. I consider there is some force to the argument (as accepted by the Supreme Court of Canada in *Crookes*) that a hyperlink is a reference to the existence and/or location of the content, rather than publication of that content. To get to the content, a further step needs to be taken, namely, to click on the link. It is arguable that without clicking on the link there is no publication of it.

(3)I agree with Mr Dean, that if there are competing arguments in an, as yet, undecided area of the law Ms Root should be given the benefit of that uncertainty.

Allegation 2 – on 6/9/18 Ms Root went live in Facebook to record a video which she read out the supplemental skeleton argument she had handed up to the Court of Appeal hearing on 22/11/17. Allegations 2A and 2B rely on the video being shared on 20 and 24/9/18, allegations 2C and 2D rely on publishing the skeleton argument on 6/9/18 and 24/9/18

46. This is based on both the Facebook page and the campaigning page being either in Ms Root's name or one closely associated with her, supported by the photographs on each site of Ms Root and other identifying details (such as her address) and any posts being written in the first person. In addition, the videos on the pages are of Ms Root reading from material that is then posted. The combination of these, Mr Elliott submits, means the court can be sure these are pages controlled and used by Ms Root. He submits if the court is satisfied of that then there are breaches of the injunction, the terms of the suspended sentence and the RRO as (i) the video publishes details relating to the appeal (B4/2017/2527) which she was prohibited from doing by the orders and (ii) the actual document that was being read from was then posted on both Ms Root's page and the campaigning page.

47. In relation to the non-molestation order he submits that is breached as the video displayed the names of the children through reading them out.

48. Mr Dean relies on his general points about the need for the court to be satisfied on the evidence to the required standard in relation to the alleged breaches of the injunction and RRO order. In relation to the non-molestation order he submits the word *'displayed'* in the order inherently involves something visual and in those circumstances the court can't be satisfied to the required standard about the breach of the non-molestation order based on oral communication only.

49. I am satisfied that allegations 2, 2A, 2B, 2C and 2D are breaches of the injunction order, the suspended sentence order and the RRO and allegations 2C and 2D are breaches of the non-molestation order, but I am **not** satisfied allegations 2, 2A and 2B are breaches of the non-molestation order. This is for the following reasons:

(1)It is clear both the 'Sara Root' Facebook page and the campaigning page are operated by and in the control of Ms Root. This conclusion is based on the fact that her name, her photo and home address are there, the postings are in the first person and she is reading the material that is then posted and/or shared on the pages.

(2)The skeleton that was shared relates to the appeal hearing and contains information and details about the proceedings (prohibited from being identified in the injunction and the RRO order).

(3)Whilst I agree X's name was repeated in the video I am not satisfied to the required standard that an audio recording can amount to *'displaying'* as there was nothing on the image of the video which identified X.

Allegations 3, 4 and 5 – these each relate to three separate allegations of publications of links to 3 separate judgments on 23/9/18 on Ms Root's facebook page

50. It could be said these are in a different category to allegation 1 above as on these links the first few lines of the judgment appear on the page, not just the link. However, the allegation is made limited to the link and for the reasons set out in relation to allegation 1, I do **not** find these three allegations proved to the required standard for the same reasons.

Allegation 6 – Ms Root published a link to another page on www.medioq.com entitled by her campaigning page

51. Mr Elliott submits by publishing this link with information identifying the children means it not only breaches the RRO but also the non-molestation order. This is supported by the information written in the first person, that further connects it with Ms Root.

52. Mr Dean submits there is insufficient evidence to establish this, as **www.medioq.com** could easily be what he terms a harvesting website which draws information from other websites or internet sites which could act independently of Ms Root.

53. I agree with Mr Dean there is insufficient evidence to find this allegation proved, in particular to connect Ms Root with what is on **www.medioq.com** through publishing this link. I am therefore **not** satisfied it is established as a breach.

Allegation 7 – on 29/10/18 Ms Root published a post on Facebook following X's 21st birthday

54. This is based on the screenshot of Ms Root's Facebook page, the post is written in the first person containing information personal to Ms Root, the pictures on the page are of the allocated social worker, the Assistant Director of the local authority, counsel for the local authority and a photograph of a listing of the case before this court. All of this information, submits Mr Elliott, supports the conclusion the post is from Ms Root.

55. Mr Dean relies on the need for the court to be satisfied to the criminal standard and questions whether the applicant has discharged this burden.

56. I am satisfied this alleged breach is proved to the required standard and is in breach of the terms of the injunction, the suspended sentence, the RRO and the non-molestation order for the following reasons:

    (1)I agree with the applicant's submissions that the combination of the features on the Facebook page mean the court can be satisfied to the required standard it has been published by Ms Root. This includes Ms Root's name, her photograph by her name, the detail in the post, the fact it is written in the first person, the photos on the post and that her name appears below what is written in response to a comment on the post.

    (2)The post contains details of the proceedings and identifies X.

Allegation 8 – on 31/10/18 Ms Root published a Facebook post where she discussed detail of a professionals meeting and attached to the post were various photographs including a copy of the minutes of the meeting.

57. Mr Elliott relies on the detail in the post, that it is written in the first person, has Ms Root's name and photograph and names the children. He submits the minutes of the professionals meeting make clear reference to the proceedings concerning the children.

58. Mr Dean reminds the court of the need to be satisfied to the criminal standard and takes issue with the suggestion that the minutes are *'court papers'* within the terms of the injunction order as there is no evidence they were filed within the proceedings.

59. I am satisfied this alleged breach of all three orders and the suspended sentence is proved for the following reasons:

    (1)The combination of Ms Root's name, her photograph, the post being written in the first person and the detail in it establishes to the required standard that the post was published by Ms Root.

    (2)The detail in the post combined with the photographs of the minutes of the professionals meeting publishes details relating to the proceedings and information about them; in particular the reference to professional witnesses in the proceedings, to the father not attending court and to an application under section 34 (4).

    (3)I accept Mr Dean's submissions that the court can't be satisfied the minutes are court papers, but I am satisfied that the information publishes details about the proceedings and information about them in breach of the terms of the injunction and the RRO.

    (4)X is named in the post in breach of the non-molestation order.

Allegation 9 – on 4/11/18 Ms Root published a Facebook post within which she discussed in detail the last time she had contact with Y within the initial care

proceedings and attached to the post were photographs of the contact note of that session.

60. Mr Elliott relies on the post having Ms Root's name, her photograph, being written in the first person and containing details of events surrounding the removal of the children from her care as supporting the conclusion that it has been published by Ms Root. He relies on the contact note as being court papers due to its content and the fact that it has pagination consistent with having come from a court bundle.

61. Mr Dean reminds the court of the need to be satisfied on the evidence to the required standard. He does not take issue that the children are named but submits that what is set out doesn't necessarily publish details relating to the court proceedings as the information could equally apply to the local authority exercising its statutory child protection functions without the need for court proceedings. In relation to the point about pagination on the contact notes he submits that is not a secure foundation to base a finding of the document being court papers as there is no evidence to connect the pagination to the court, for example no index has been produced.

62. I am satisfied this alleged breach is established as a breach of the non-molestation order and that it publishes details and/or information relating to the proceedings in breach of the injunction, the suspended sentence and non-molestation order. I am **not** satisfied to the required standard the contact note is court papers. I have reached this conclusion for the following reasons.

    (1)The post has Ms Root's name, her photograph, is written in the first person and contains considerable detail about the circumstances of the removal of the children from her care.

    (2)The post names the children.

    (3)The conclusion about details of and/or information relating to proceedings concerning Ms Root's children is supported by the detail in the post and the reference to a court hearing in the contact recording.

    (4)I accept Mr Dean's submission that there is insufficient evidence to establish that this contact note is a court paper as there is no evidence to connect the pagination to any court bundle.

Allegation 10A and 10B – on 6/11/18 and 12/11/18 Ms Root published a post within which she discusses the removal of her children in 2010. She names the children and refers to the report of Mr Flatman and decisions of District Judge Green. Ms Root attaches to the post the first page of written submissions on her behalf in the original care proceedings in 2011 and front pages of the police protection papers in relation to both children

63. Mr Elliott relies on the posts having Ms Root's name, her photo and being on a page with other profile photos of Ms Root and photos of the children. He submits the photograph of the submissions are clearly court papers and the police protection documents relate to the children being taken into care as they include allegations

that featured in the care proceedings. He submits when taken together Ms Root was publishing details and/or information relating to the proceedings.

64. Mr Dean acknowledges if the court finds that the post is made by Ms Root that the written submissions are court papers. He submits the position is less clear in relation to the police protection record as to whether that contains any information or details relating to the proceedings or whether those documents were court papers; taken on their own they could equally apply to the applicant exercising their general duties in relation to child protection.

65. I am satisfied that these posts were made by Ms Root, that they do contain details and/or information relating to the proceedings, the posts publish court papers (the written submissions) and name the children. I have reached that conclusion for the following reasons:

(1)The posts have Ms Root's name, her photograph and are on pages with other identifying and personal information relating to Ms Root including photographs of her children and the copy of written submissions on behalf of the children. When the post is taken together with the other material it clearly publishes information and/or details relating to the proceedings as it is in the context of the removal of the children from Ms Root's care and refers to court directions, threshold document and Judge Green.

(2)The written submissions are clearly court papers as they have the name and case details on the document and contain information and details about the proceedings.

(3)Both children are named in the written submissions posted by Ms Root.

Allegation 11 – on 31/10/18 Ms Root published a tweet where she names the children and alleges they have been illegally kept from her care for 9 years and refers to what she says are false allegations against her

66. Mr Elliott submits this is published by Ms Root as it has her name, her photograph and other personal photographs on the same page as well as naming the children in the court document posted, namely the first page of the written submissions on behalf of the children in the original proceedings.

67. Mr Dean submits if the court is satisfied to the required standard this is from Ms Root, he takes no point in relation to the names of the children. In relation to any breach of the RRO he submits the information or details in the tweet are not information or details in relation to the proceedings.

68. I am satisfied that this tweet was posted by Ms Root, that it names the children in breach of the non-molestation order, but I am **not** satisfied to the required standard that the tweet publishes information or details relating to the proceedings. I have reached that conclusion for the following reasons:

(1)The information on the screenshot of the page shows Ms Root's name, her picture as well as pictures of her children and a picture of the first page of the written submissions on behalf of the children.

(2)X is named on the post.

(3)The references in the post to matters such as personality disorder may not necessarily be connected to information or details relating to the proceedings concerning the children.

Allegation 12A and 12B – on 25/8/18 and 21/10/18 Ms Root tweeted a link to the judgment dated 11/5/18

69. In the light of my conclusion regarding allegation 1 this is **not** established to the required standard for the reasons I have already set out

Allegation 13 – on 29/10/18 Ms Root tweeted that the local authority 'illegally prevented her contact with the children, claim she is a danger to them, illegally stopped contact 8+ years ago and gag her until 2023'. Ms Root attached to the post an email about contact from the IRO.

70. Mr Elliott accepted the email was not court papers. He maintained it was established this tweet was published by Ms Root as it had her name, her photograph and was accompanied by the post of the email addressed to Ms Root. He submits it breaches all the orders as it contains details and/or information about the proceedings and names the children.

71. If the court was satisfied to the required standard this tweet was published by Ms Root Mr Dean did not take issue with the fact that the children were named, and details or information was given about the injunction proceedings, because of references to the injunction lasting until 2023.

72. I am satisfied this tweet was posted by Ms Root, it named the children and gave details and/or information about the proceedings. This is for the following reasons:

(1)The tweet was posted by Ms Root as it has her name, her photograph and on the same page is other identifying information of Ms Root, including other photographs and documents addressed to her.

(2)The children are named in the tweet.

(3)The tweet refers to the injunction proceedings.

Allegation 14 – on 6/11/18 Ms Root tweeted referring to the removal of the children by the local authority, Mr Flatman, Judge Green, threshold document and published the first page of the written submissions made on her behalf.

73. Mr Elliott submits the tweet was made by Ms Root due to the identifying features such as her name, the photographs and the posting of the written submissions made on behalf of the children at the original care proceedings.

74. Mr Dean submits that if the court is satisfied the tweet was from Ms Root he does not take issue with the first page of the closing submissions being court papers. He submits the tweet itself is not sufficient to found a breach as there is no specific reference to the proceedings.

75. I am satisfied that this tweet did come from Ms Root, that it is in breach of the injunction, the suspended sentence and the non-molestation order. I have reached that conclusion for the following reasons:

(1)The tweet has Ms Root's name, her photograph is next to photos of her children and above the posting of the closing submissions on behalf of the children in the original proceedings. I am satisfied she is responsible for posting the closing submissions below the tweet.

(2)X is named in the posting of the written submissions.

(3)The combination of the text written in the first person, referring to Judge Green, the threshold document and its placement above the posting of the written submissions mean I can be satisfied that the tweet contained details relating to those proceedings.

76. In summary I find the following breaches proved and have set out the orders they contravene:

(1) Breach 2, 2A, 2B, 2C and 2 D: injunction order, suspended sentence order, RRO and non-molestation order (breaches 2C and 2D only)

(2) Breach 7: injunction order, suspended sentence, RRO and non-molestation order.

(3) Breach 8: injunction order, suspended sentence, RRO and non-molestation order.

(4) Breach 9: injunction order, suspended sentence and non-molestation order.

(5) Breach 10A and 10B: injunction order, suspended sentence and non-molestation order.

(6) Breach 11: non-molestation order.

(7) Breach 13: injunction order, suspended sentence, RRO and non-molestation order.

(8) Breach 14: injunction, suspended sentence and non-molestation order.

COURT ADJOURNED TO 6TH MARCH 2019 FOR SENTENCE

MR E. ELLIOTT (instructed by Medway Council Legal Services) appeared on behalf of the Applicant.

THE RESPONDENT appeared as Litigant in Person.

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J U D G M E N T

6th March 2019

Transcript prepared without the aid of documentation)

MRS JUSTICE THEIS

1 This court has the unenviable task of determining what order should be made following the findings made on 25 February relating to breaches of three orders that prohibit Ms Root from publishing information about two of her children, who were the subject of care proceedings in 2010 and 2011, together with breaches of a suspended sentence order made on 11 May 2018. That order imposed a sentence of six months suspended for twelve months on condition that Ms Root complied with the terms of the ongoing orders.

2 I acceded to the application last Monday to adjourn the matter to today to enable Ms Root (and her then legal team) to be able to gather the extra information they required to ensure this court had the fullest information in relation to mitigation. The matter was listed at 9.45 this morning. There has been a delay because when the court convened at 9.45, Ms Root indicated that she had decided to represent herself and to discharge her counsel and solicitors who have represented her since March 2018.

3 On a number of occasions this morning the court has had short adjournments having invited Ms Root to reflect on her decision to discharge her legal team, she initially

said she had made on the Tube coming here. Then that it was an 'off-the-cuff decision' followed by saying that she had thought about it last night. She confirmed she had no criticism of her legal team, accepted they had done a good job and that she wanted to rely on the written submissions from Mr Dean. After about three adjournments, Ms Root confirmed that she wanted to represent herself. Having sought confirmation from Mr Dean and his solicitor that it did not put them in a difficult position Ms Root accepted the invitation of the court that they remain in court, available to her if she required them. The court is enormously grateful to Mr Dean and his instructing solicitor, Ms Weir, for their assistance today. They have both been present during this hearing. After Ms Root had finished her oral submissions, the court gave her a short adjournment to enable her to seek any further advice or guidance from them. They rightly reminded her to refer to Mr Dean's written submissions, which Ms Root fully supported and did not take any issue with their content.

4 The hearing proceeded after Ms Root had time to be able to read the document that had been produced this morning by Mr Elliott, counsel for the local authority. I am quite satisfied Ms Root has been given sufficient opportunity to consider the documents and her decisions about legal representation. In her oral submissions she has powerfully and eloquently explained to the court what her position is, why she has taken the position that she has, and has referred to Mr Dean's written submissions.

5 The long history of this matter is set out in the detailed judgment given on 25 May. Two of Ms Root's children were removed from her care in 2010 by Medway Council and were the subject of care proceedings. Ms Root was a party to those proceedings

and had legal representation, as did the children. Final care orders were made in 2011 and the children, now young adults, are still in receipt of support and guidance from the local authority. Ms Root has never accepted that decision and, between 2011 and 2016, sought to challenge it by making applications to discharge the care order and for contact, and unsuccessfully pursued appeals against the refusal of her applications.

6 Following that, Ms Root has conducted a campaign against what she regards as an injustice through what she views as the wrongful removal of the children from her care. Injunction orders have been in place since December 2011, in effect prohibiting publication of court papers and information relating to the proceedings about the children, in particular in a way that would identify them. Those orders have been varied since, but the message that underpins them is the same. This court and the previous courts which have dealt with this have been satisfied that such material (including quite personal information) being made public has caused each of the children enormous distress. The updated statement from the team manager responsible for both the children, confirms that it continues to do so.

7 This is the third committal application the local authority has made relating to breaches of the injunctions. The first application was before HHJ Polden, which concluded with ten breaches being established, between September 2014 and April 2016, as well as breach of an undertaking to the court to remove posts on Facebook. On 30 August 2017, a total sentence of six months' imprisonment was imposed suspended for twelve months on condition that the injunction orders were complied with. In his judgment at that time, Judge Polden stated:

> *"I make it clear to you [Ms Root] that this is the final opportunity that you will be given to comply with the order. If you do not comply with the terms of the suspended order that I make today, then the matter will be brought back to the court and, if any further breach is proved, then the sentence of six months will be implemented. If that happens, you will only have yourself to blame and you will have to take responsibility for it."*

8 The second application to commit was issued in February 2018. I concluded that application on 11 May and found four breaches proved relating to four Facebook posts between September 2017 and January 2018. Those were breaches of an order made by Mrs Justice Gwynneth Knowles on 28 September 2017, and consequently did not activate the previous suspended sentence order made by Judge Polden. On 11 May having considered the mitigation from Mr Dean, who represented Ms Root, I imposed a six-month prison sentence for each of the two breaches I considered to be the more serious and a three-month sentence for the other two breaches, all to run concurrently. The total sentence imposed was six months, suspended for twelve months on condition of compliance with the orders I made that day. In my judgment I stated the following:

> *"I make it clear to Ms Root that this is probably the final opportunity she will have to comply with the order without being at serious risk of an immediate custodial sentence if further breaches are found proved. This is not what anyone wants and it is in Ms Root's hands to ensure that does not happen."*

Finally, I said:

> *"It is important to stress that the order preventing Ms Root from publishing material relating to the care proceedings remains in force. No matter how strongly she may feel about the circumstances relating to her children, she should be in no doubt that, if there is any further repeat of the conduct which has led to the findings in this case, Ms Root is liable to be brought back before the court again and, if further breaches are proved, she is at risk of an immediate custodial sentence."*

9 The current application is dated 12 November 2018. The thirteen breaches found proved cover the period from 6 September 2018 to 12 November 2018. They include the posting of videos of Ms Root reading material from the proceedings, posting documents from the proceedings or that give information about the proceedings, and messages repeatedly saying what she says are the injustices of the case. Many of these are done with identifying material about the children, either by naming them or posting photographs, sometimes both.

10 The local authority has repeatedly made clear they do not wish to bring these proceedings or for Ms Root to go to prison. What they want is for Ms Root to stop breaching the orders. The team manager's most recent statement has set out updated information about the impact on the children of Ms Root's continued behaviour, in particular of detailed personal information about them being made available, linked to identifying information about them.

11 Ms Root has had the benefit of excellent legal representation through her solicitors Sternberg Reed and her counsel Mr Dean. Even though Ms Root decided to represent herself this morning, she does not disagree with anything they have said or seek to criticise them in any way. She wanted to be able to address the court herself and that is what she has chosen to do, as she is entitled to. She rightly relies on Mr Dean's written submissions submitted to this court in advance of this hearing and Mr Dean reminded her of this in the short adjournment.

12 Mr Dean's written submissions rightly drawn the court's attention to a number of important authorities, importantly reminding the court of what Ormrod LJ stated in *Ansah v Ansah* [1977] Fam 138, at 144, that "the real purpose of bringing the matter back to court in most cases is not so much to punish the disobedience as to secure compliance with the injunction in the future". Committal orders are remedies of "last resort" and should be made "very reluctantly and only when every other effort to bring the situation under control has failed or is almost certain to fail". He has reminded the court of the ten guiding principles set out by Hale LJ (as she then was) in *Hale v Tanner* [2000] 2 FLR 879, at 884 to 885. There, Hale LJ emphasised the heightened emotional tension that is often a feature of family cases; the context in which the breaches took place; the powers of the court; and a reminder of the twin objectives of a committal order. One is to mark the court's disapproval of the disobedience to its order: the other is to secure compliance with that order in the future. I bear all those matters in mind.

13 In his eloquent written submissions Mr Dean made the following points. First, Ms Root's actions and her underlying motivations for them: she considers there has been an injustice, that her children should not have been removed from her care and she has

not wavered in that view. Second, he draws the court's attention to her personal circumstances. Her health is not good. The court has a detailed report from Dr Stein, the consultant psychiatrist, her GP, and Dr Michael Mulcahy, the consultant in diabetes and endocrinology. These documents set out her hypothyroidism and her autoimmune thyroid condition, which Dr Stein considers are both serious conditions. Dr Stein expresses some concern whether the Prison Service could monitor her calcium levels and hormonal levels at an appropriate frequency. The report from Dr Mulcahy in an e-mail confirms Ms Root's current medication and that she is taking part in ongoing thyroid hormone replacement therapy. He confirmed the importance for Ms Root to receive medication at the right times and in the right doses. He sets out in that e-mail details in relation to what Ms Root's current medication is.

14 Ms Root's personal circumstances are that she continues to live with her older son. He is dependent on her for housing. The property is a rental property in her name and if she is subject to a custodial sentence, there is some suggestion that she would be at risk of losing her tenancy. She has limited financial means, is in receipt of state benefits, and spends time with her two other children and two grandchildren.

15 Mr Dean, in his written submissions, submits the court must weigh carefully risk to Ms Root's health and the impact on others in considering what sentence to impose.

16 Mr Elliott drew the court's attention, in his written submissions, to a number of matters which I have considered. In his oral submissions he referred to the distinction that the court made last May between the different categories of breaches: the ones concerning the posting of videos the court considered more serious, and the less

serious ones, which were reflected in the lesser sentence. He has submitted that the court could, if it considered it appropriate, categorise the breaches in this case into three categories: the video posting were the more serious (breaches 2, 2(A) and 2(B)); the second category, slightly less serious, is the posting of documents and details about the case (breaches 2(C) and 2(D), 8, 9, 10(A) and 10(B) and 14); and then the lesser category, the third category, he would submit, are breaches 7, 11 and 13, which he submits have the mitigating factor of having been posted at the time of one of the children's birthday.

17 Ms Root, in her powerful address to the court, sets out what her position is. She is resolute that she will not give up her campaign. She feels justified in putting the material into the public domain because she says she feels she wants the children to be able to see what she considers to be 'the truth'. When I tried to raise with her in her oral submissions that one view of her behaviour is that by continuing what she is doing is likely to alienate the children for longer, so the goal that she seeks to achieve will move further away, she could not see that. Her position is that by posting the material that she does, that may assist the position, to enable the children to see what she terms as 'the truth' and she will not accept any evidence or suggestions that by doing that it is causing them continuing distress and emotional harm.

18 In reaching my decision I have to carefully weigh the following matters. Firstly, Ms Root has maintained her position that an injustice was done, and she has shown no sign of changing or modifying her behaviour to comply with the terms of the injunctions. As Dr Stein observed in the report:

> *"The defiance of the court orders is something she chooses to do and I do not think that it is something caused by her metabolic disorders."*

He then comments a little later in his report:

> *"She has some insight into the severity of what the court could do, but it is strange that she has defied it so often and almost invited a prison sentence."*

He states that:

> *"It was difficult to see how her feelings could be channeled into a more productive and non-destructive way."*

19 That was perhaps best illustrated by what Ms Root said in court this morning when she indicated that, during a conversation with one her older children who has a young grandchild she sees, there had been a discussion about Ms Root having been at risk of a possible custodial sentence and that she would then not be able to see her grandchild as regularly as she does. Ms Root could not see the force of what was being said by her older child as she remains so fixated on what she sees as the course that she has taken.

20 Secondly, the court has given Ms Root every opportunity to comply with the orders, on two previous occasions suspending prison sentences and specifically drawing Ms Root's attention to what the consequences are of continuing to breach the orders. Nevertheless, she has continued to breach the orders, as the court found last week, and there is every likelihood that, if she remains at liberty, those breaches will continue.

21 The third matter the court must take into account is Ms Root's personal circumstances. There is no doubt they are difficult and the impact on her health, her accommodation and her wider family needs to be considered very carefully. Her health needs are being monitored by Dr Mulcahy. He set out the details in relation to her medication and the need for monitoring, which she has and could, if required, be made available to the prison authorities. I have no doubt if the court imposed an immediate custodial sentence this would cause Miss Root some considerable anxiety, but her medical and psychological position would be monitored. I have factored in the risks that are said to be to her financial situation and her accommodation, but I have no real details of what those risks would be. I note these features have been part of her mitigation since August 2017 yet, despite that impact on others, she has chosen not to change her behaviour, despite all the efforts of the court, and possibly her wider family, to encourage her to do so.

22 It is not without some considerable hesitation that I have concluded in this case that there is no alternative but to impose an immediate custodial sentence. I have reached that conclusion because, having explored all other options, which have sadly been ignored by Ms Root, the position has been reached that only an immediate custodial sentence is likely to secure compliance with the court orders and mark what the court has said about the consequences of repeated noncompliance with court orders. I have carefully considered Ms Root's personal position, the impact on her, on her family, on her accommodation, on her health, but, as I have said, these are all matters that have been known to her for some considerable time. The position in relation to her health is that an immediate custodial sentence, whilst it will cause her some health

difficulties, she has the details of her current medication and that can be fed through to the relevant medical authorities in the prison.

23 I accept, in terms of her mitigation, that she has always attended court, has always been respectful to the court in the way that she has addressed the court. However, despite the court's efforts, there has been no change in her behaviour. On one view, there has been, and continues to be, an escalation.

24 In the light of the repeated breaches of the suspended sentence of six months that was imposed last year, that sentence will be activated and there will be an immediate custodial sentence of six months. In relation to the new breaches, I have taken the view that I will impose a consecutive sentence of three months for each of the breaches, each of which will run concurrently but consecutively to the six-month sentence, so that there will be a total immediate custodial sentence of nine months' imprisonment.

25 I have declined to differentiate between each of the different breaches having regard to the totality of the sentence, to Ms Root's personal circumstances and the background to this case.

26 Ms Root will be aware, as I am sure she will have been advised, this nine-month sentence imposed by the court is a sentence that has been brought about entirely by her own actions. It will be open to her to be able to apply back to this court at any time during the currency of that sentence to purge her contempt. I hope Ms Root will reflect on what has taken place and think carefully about whether in fact the first step to her restoring any kind of relationship with her children will be if there is any

change in her behaviour; namely for her to stop putting material that is personal and distressing to them on the internet in breach of the court orders. If that step was taken, there may be some prospect of her restoring her relationship with her children. Without Ms Root taking that step, which she would easily do and is within her control, what she seeks to achieve, namely some kind of relationship with her children, is likely to remain unfulfilled.