IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 202001074 B3, 202001366 B3
Neutral Citation No [2020] EWCA Crim 1774

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 18th December 2020

B e f o r e:

LADY JUSTICE CARR DBE

MRS JUSTICE YIP DBE

HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the Court of Appeal)

R E G I N A

- v –

FARAH DAMJI

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss C Mawer appeared on behalf of the Appellant

Mr R Hearnden appeared on behalf of the Crown

J U D G M E N T
(Approved)

Friday 18th December 2020

LADY JUSTICE CARR:

Introduction

1. On 20th February 2020, in the Crown Court at Southwark before His Honour Judge Gledhill QC ("the judge") and a jury, the appellant (now 54 years old) was convicted of two counts of breach of a restraining order, contrary to s. 5(5) of the Protection from Harassment Act 1997 ("s.5(5)") ("the 1997 Act").

2. On 30th March 2020, she was sentenced to a total of 27 months' imprisonment comprised of a sentence of nine months' imprisonment on count 1 and 18 months' imprisonment on count 2, ordered to run consecutively to the sentence on count 1. The original restraining order against her was varied, and she was ordered to pay prosecution costs in the sum of £3,500, in addition to the victim surcharge.

3. The appellant now appeals against her conviction on count 2, against her sentence, and against the restraining order as varied ("the Restraining Order as varied").

4. The appellant was convicted and sentenced in her absence. The jury had retired to consider its verdicts on 19th February 2020. The appellant, however, failed to attend court the following day when the jury returned to deliver its verdicts and again on 30th March 2020, the date fixed for her sentencing hearing. The appellant had, in fact, absconded. She was arrested in Dublin in August 2020, and we understand that there are ongoing extradition proceedings.

5. Although leave for both appeals was granted by the single judge, it remains for us to determine whether or not we are prepared to allow them to proceed, given the appellant's status as an absconder: see *R v Okedare and Others* [2014] EWCA Crim 228 at [35]. In the light of the appellant's solicitor's email of 26th July 2020, which indicates that they have the appellant's express consent for the appeals to be pursued, as confirmed by the appellant orally and in writing on four occasions in the preceding three months, we are prepared to entertain the appeals.

The Facts

Proceedings in the Crown Court at Kingston

6. Between December 2013 and April 2014, the appellant engaged in a campaign of harassment against Daniel Poulson. She stood trial in relation to offences of stalking and was convicted. Following those proceedings, a restraining order was made on 22nd November 2016, pursuant to s.5(1) of the 1997 Act ("the Original Restraining Order").

7. For the purpose of the appeal against conviction, it is paragraphs 4 and 11 of the Original Restraining Order that are relevant. Paragraph 4 reads:

> "The [appellant] is NOT to contact, directly or indirectly, Vincent CHAN. She is also NOT to refer expressly or impliedly to Vincent CHAN by communicating in written form, in typescript, by email or on social media, save in legally professionally privileged communication or by making reports to regulatory authorities of genuine concerns for the prevention of crime or the welfare of others."

Paragraph 11 reads:

> "The [appellant] is not to refer expressly or impliedly to Daniel

> POULSON, Brian CALDER, or any other prosecution witness in this case or prosecution personnel … or court staff … in the proceedings by communicating in written form, in typescript, by email or on social media, save in legally professionally privileged communication or by making reports to regulatory authorities of genuine concerns for the prevention of crime or the welfare of others."

8. Vincent Chan ("PC Chan") was the investigating officer for the proceedings in the Crown Court at Kingston. Daniel Poulson was the complainant in those proceedings, and Brian Calder was a close friend of his and a witness in the proceedings.

Proceedings in the Crown Court at Southwark

9. The appellant faced two counts of breaching the Original Restraining Order. On count 1 it was said that the appellant, on or before 15th April 2018, sent a letter to the Multi-Agency Public Protection Arrangement Team ("MAPPA") which referred to PC Chan. She demanded the minutes of meetings when the licence conditions following her release from prison in 2018 were discussed. She threatened judicial review, absent a response within seven days. She accused PC Chan of harassing her mother by telephone contact and interfering with the arrangements for the appellant's release on licence. She requested that PC Chan be barred from receiving any further information about her release. The letter went on to say that the appellant's local MP was investigating PC Chan; that there was an investigation of his conduct by the Investigatory Powers Tribunal; and that PC Chan had lied under oath, perverted the course of justice and misrepresented his rank. She stated that she was considering instigating a criminal prosecution against him.

10. The prosecution case was that the letter was sent to MAPPA in breach of the Original Restraining Order.

11. The appellant accepted that she wrote the letter – she effectively had no option but to do so, given that the letter was written in her own hand. The defence case was that she reasonably believed that she was acting within the terms of paragraph 4 of the Original Restraining Order. She believed MAPPA to be a regulatory agency and was thus entitled to make reports of genuine concern for the prevention of crime or the welfare of others.

12. Count 2 related to a tweet received on 15th June 2018 by the Crown Court at Southwark headed "Justice for Farah" from the Twitter account "@faradamji" (“the tweet”). The tweet contained a link to a crowd justice funding web page entitled "Crowdjustice.com/case/justiceforfarah" ("the crowd funding page"). The crowd funding appeal was entitled "Farah went to prison for telling the truth about a serial predator". It stated that it was written by the appellant's supporters.

13. Within the crowd funding page were hyperlinks to documents naming PC Chan and Mr Calder, namely: a letter dated 8th April 2014 sent by the CPS to a solicitors' firm acting for the appellant ("the April 2014 letter"), and a Victim Impact Statement from Mr Calder. The commentary in the crowd funding page into which the hyperlinks were embedded made a series of allegations about PC Chan and Mr Calder, albeit without naming them. In relation to PC Chan, who was identified as the investigating officer, it was said that he had acted in dereliction of his professional duties and had lied under oath. In relation to Mr Calder, it was said that he was responsible, amongst other things, for perpetrating domestic abuse.

14. The prosecution case was that the tweet had been sent by the appellant in breach of the

Original Restraining Order. The Twitter handle belonged to the appellant; she was responsible for the tweet; she controlled or contributed to the crowd funding page; and the documents uploaded were in her possession.

15. In cross-examination of the officer in charge of the investigation, it was established that there was no forensic connection between the appellant and the crowd funding page, or any subscriber information for the Twitter and crowd funding accounts. The tweet had first appeared on 9th June 2018. On a second inspection of the crowd funding page, on 26th July 2018, the hyperlink to the April 2014 letter had been removed.

16. The defence case was that the appellant was not responsible for the tweet. In a written statement to police, the appellant denied setting up or encouraging others to set up the crowd funding page. The appellant chose not to give evidence at trial.

Directions to the Jury

17. In advance of the summing-up, written directions were provided to counsel in the normal way. Miss Mawer, who appeared for the appellant in the Crown Court as she does before us today, submitted that the directions of law on count 2 did not go far enough, in that an element of knowledge of the material circumstances was missing. If the jury was sure that the appellant had sent the tweet, it was submitted, it would also have to be sure that when she sent the tweet, the appellant knew that the crowd funding page contained material in breach of the restraining order. The judge was invited to amend the direction to reflect this, but declined to do so. He stated that the defence suggestion would make the direction "hugely complicated".

18. The final written direction to the jury on count was in the following terms:

> "Before you could convict the [appellant] of this count the prosecution must make you sure:
>
> (1) [That the Original Restraining Order was made];
>
> (2) That she referred to Vincent Chan and Brian Calder in a feed she posted on Twitter. There is no dispute that such a feed was posted on Twitter, [but] the [appellant] denies that she posted it. … If you are sure that she posted it, then this element is proved. If you are not sure that she posted it herself, but are sure that she knew beforehand that somebody else was going to post it, and that she agreed they should post it, then this element would be proved. If, on the other hand, you think that somebody else posted it without her knowledge and agreement, you would acquit;
>
> (3) That the reference to Vincent Chan and Brian Calder was prohibited by the restraining order;
>
> (4) That she had no reasonable excuse for doing so."

Sentence

19. When sentencing the appellant, the judge commented that whilst she was not being sentenced for breaching her bail, there was a proper inference to be drawn that she had misled and indeed lied to her GP in order to persuade him to say that she was not fit to attend court. Further, there were actions of the appellant after she had deliberately decided not to return to

court that would affect the sentence: first, she knew that the hearing was taking place on 30th March 2020 but had no intention of attending; secondly, she had tweeted about the hearing and the tweets demonstrated an absence of remorse; and thirdly, the content of several of the tweets appeared to breach the Original Restraining Order. The judge commented that, as the appellant had chosen to absent herself and that there was already a full psychiatric report upon her, he would refuse the application to adjourn in order for one to be obtained.

20. The judge commented that the appellant's behaviour over many years demonstrated that she had no respect for anyone but herself. Her criminal record showed that she paid no heed to her obligation to obey the law. She was 53 years old and had appeared before the courts in England on five previous occasions. The offences of stalking in 2016 were so serious that a sentence of five years' imprisonment had been imposed.

21. For the purpose of the Sentencing Council Guideline on Breach Offences ("the Guideline"), the judge placed the offending on count 1 in category 2B, with a starting point of 12 weeks' custody. This, he said, was a serious but not a very serious breach and there was more than little or no harm. Although there was no evidence that PC Chan had suffered any harm or distress, that was only because the April 2014 letter had not been drawn to his attention at the time. The statutory aggravating factor was the appellant's record of convictions. Other aggravating factors were that the letter had been sent shortly before the appellant was released from prison. Recent tweets showed no remorse, but continued slanderous accusations against a number of people.

22. The judge categorised the offending on count 2 as category 2A offending, with a starting point of one year's custody. This, he said, was a very serious breach. The matters disseminated went to a number of people, and potentially a very large number. Harm was again at category 2. The aggravating factors identified for count 1 applied equally to count 2. A further aggravating factor for count 2 was that the tweet was disseminated to potentially a very large number of people.

23. The only mitigating factor identified by the judge was the appellant's mental health. Aspects of her cognition were impaired, and she suffered a mix of depression, anxiety, post-traumatic stress disorder and from an obsessive compulsive behaviour disorder. The post-traumatic stress disorder determined her daily functioning. But, he said, however complex her psychological position, she was an intelligent woman who knew what the law permitted her to do and what it prevented her from doing.

24. As already indicated, the judge imposed a term of nine months' imprisonment on count 1 and 18 months' imprisonment on count 2. He commented that the offences were separate offences of the deliberate breach of a court order. The sentences were ordered to run consecutively.

25. The crowd funding appeal had raised some £5,000. There was no reason, in the judge's view, why the appellant should not pay the prosecution costs accordingly.

26. The judge also granted an application by the prosecution to amend the Original Restraining order so as to cover the proceedings in the Crown Court at Southwark. Term 9, which prohibited the appellant from contacting, directly or indirectly, any prosecution personnel concerned with the proceedings in the Crown Court at Kingston was extended to prohibit contact with prosecution personnel concerned with any proceedings in any court in which the appellant was or had been a defendant.

27. Term 10, which prohibited the appellant from contacting, directly or indirectly, any court

staff in the Crown Court at Kingston, was extended to prohibit contact, directly or indirectly, with any court staff in the Crown Court at Southwark connected with the proceedings in the Crown Court at Southwark. Any request of the court had to be made by application in the jurisdiction where an appeal or a complaint was proposed.

28. The judge commented that the purpose of the original restraining order was to stop the appellant harassing or stalking anybody connected with the courts or police. He stated, however, that nothing in the order was intended to prevent solicitors approaching the courts or the police for appropriate documentation on the part of the appellant. He stated that the variation was necessary as there was no lawful reason for the appellant to contact anyone named in the amended order, and that if it was not amended, the appellant would be likely to turn on those people, just as she had done after the making of the restraining order in the Crown Court at Kingston.

Grounds of Appeal

Conviction

29. As set out above, the appeal relates only to the conviction on count 2. Miss Mawer submits that the conviction in this regard is unsafe for the simple reason that the judge erred in failing to direct the jury that, for the appellant to be guilty, it needed to be satisfied that at the time that she published the tweet, she knew that the embedded link to the crowd funding page contained documents referring to Mr Calder and PC Chan. Miss Mawer submits that the offence of breaching a restraining order is not an absolute offence; it requires the prosecution to prove a defendant's knowledge of the material circumstances of the offence. Those circumstances included that the crowd funding page promoted within the tweet contained documents referring to PC Chan and Mr Calder. A knowledge direction was particularly important, given the facts of the case, with the references to the names of PC Chan and Mr Calder being made only via the hyperlinks. In any event, submits Miss Mawer, whatever the position as a matter of law, on the facts of this case a tailored direction on the need for knowledge of the references to PC Chan and Mr Calder was required, given that the references to those individuals were not evidenced within the body of the tweet. A number of steps were required in order to see the references to PC Chan and Mr Calder. Miss Mawer submits that it is not established that, as a matter of fact, there is an artificial distinction between a tweet and a material reference within a web page to which a tweet provides a hyperlink. It is not at all uncommon for individuals with high profile Twitter accounts to apologise for providing hyper-links to material not first checked. The position on the facts on count 2, she submits, is very different to the factual position on count 1.

30. Miss Mawer also submits that the strength of the evidence against the appellant is no answer to a criticism relating to the absence of a necessary direction. In relation to the direction as to reasonable excuse, greater clarity was required. The direction given was not capable of remedying the absence of the necessary direction on knowledge.

Sentence

31. As for sentence, Miss Mawer submits that the sentences imposed on counts 1 and 2 were manifestly excessive as a result of the judge erring in his categorisation of culpability. It is said that the judge should not have categorised the offending in count 2 as culpability A: that culpability A is reserved for very serious or persistent breaches, such as attending the victim's home, a drive-past, or other direct harassment. This was not the most serious breach; it was indirect and made to third parties. The highest level of culpability is reserved for offending typically containing hallmarks such as constant, persistent and direct contact; behaviour that is violent or intimates violence; threatening and extremely abusive behaviour; and behaviour causing substantial trauma. Reference is made to *R v Green* [2018] EWCA Crim 2682 and *R v O'Hagan* [2018] EWCA Crim 272. Nor, it is said, was there any proper evidential basis for

the judge's conclusion that there was a sufficiently large audience for the breach, such as to render the offending very serious.

32. Miss Mawer submits that the breach reflected in count 1 was only a minor breach and should have been categorised as culpability C: the contact was neither threatening nor direct; it was received by a limited number of criminal justice professionals; the breach fell just short of a reasonable excuse; and the context was the appellant's grievances as to her post-release living arrangements.

33. Miss Mawer also submits that the sentences passed in relation to counts 1 and 2 were manifestly excessive because the judge erred in his categorisation of harm. There was no basis for a finding of category 2 harm on either count. There were no Victim Impact Statements, even though the judge had adjourned the sentencing hearing for a statement from PC Chan to be obtained. There was no basis for the finding that there was an intention to cause harm, or to reach a large audience.

34. Further, Miss Mawer submits that the sentences are manifestly excessive because the judge erred in failing to adjust the overall sentence to account for the totality principle.

35. Separately, and additionally, Miss Mawer submits that the extension of terms 9 and 10 of the Original Restraining Order was wrong in principle. Neither extension was necessary or proportionate in the absence of any evidence of inappropriate contact with anybody in the Crown Court at Southwark. Further, in relation to term 10, although in his sentencing remarks the judge stated that the extension was not designed to stop the appellant's solicitors from contacting the court, that was not reflected in the order.

Grounds of Opposition

Conviction

36. On the question of conviction, Mr Hearnden, who appears on behalf of the respondent, submits that the distinction between knowledge of the tweet and the crowd funding page is wholly artificial. Tweeters could otherwise escape prosecution for crimes arising out of the publication of hateful or malicious material simply by linking to another website and claiming ignorance of what was in that web page. In any event, if the judge's direction on the law was wrong, the case against the appellant was sufficiently strong that any misdirection made no difference. On the facts of this case there was little doubt that the appellant was fully aware of the contents of the crowd funding page.

Sentence

37. As for sentence, the judge agreed with the prosecution's categorisation of count 1. He placed the offending in count 2 into a higher category than had been suggested by the prosecution, but did not act unreasonably in placing the offending into that category. The sentence was neither manifestly excessive nor wrong in principle.

38. The imposition of consecutive sentences, Mr Hearnden accepts, was unexpected. They were committed within a short period of time, but he notes that they were committed in materially different ways.

Analysis: Conviction on Count 2

39. S.5(5) provides:

> "If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence."

40. The particulars of count 2 read as follows:

> "FARAH DAMJI on or before the 15th day of June 2018, without reasonable excuse referred to Vincent Chan and Brian Calder in a feed posted on Twitter, an action from which she was prohibited by [the] restraining order …"

41. It is for the prosecution to prove beyond reasonable doubt that there was no reasonable excuse: see *R v Evans* [2004] EWCA Crim 3102 at [21].

42. It is common ground that s.5(5) does not create a strict liability offence as such. In *R v Nicholson* [2006] EWCA Crim 1518 at [19] the court noted that it may not be helpful to characterise an offence as one of strict liability where the prosecution does not have to prove any sort of *mens rea*, but where there is a statutory provision for a defence or an evidential issue to be raised, based on the presence or absence of some state of mind on the part of the defendant. The elements of the offence there under consideration, namely s.1(10) of the Crime and Disorder Act 1998 (now repealed), is strikingly similar to s.5(5) and provides:

> "If without reasonable excuse a person does anything which he is prohibited from doing by an antisocial behaviour order, he is guilty of an offence …"

The court confirmed at [14] that the prosecution in that context did not have to prove a knowing breach of the order.

43. Here the appellant suggests that, on materially identical wording and in a similar context, proof of such knowledge is nevertheless required. This is to set the bar high.

44. As a general observation, there is force in the submission that, as a matter of public policy, it is incumbent on people who publish material on Twitter to ensure that no offence is being committed by the sending of that material. Whether or not criminal liability will arise is likely to be heavily fact-dependent (see, in the context of malicious communications and the Communications Act 2003, *Chabloz v CPS* [2019] EWHC 3094 (Admin) at [25]. There the court stated that what mattered was "not the broad question of whether the posting of a hyperlink can ever be defamatory, but the much more nuanced question of the extent to which, on the facts, the posting of the hyperlink involved an endorsement of the message revealed by clicking on the link").

45. As to the law, it is right to say that the absence of a knowledge requirement in the wording of the statute is not necessarily an indication that the requirement does not apply: see, in particular, the reasoning of Lord Reid in *Sweet v Parsley* [1970] AC 132 at 149. However, the fact remains that s.5(5) does not state in terms that (actual or constructive) knowledge (of the conduct amounting to the breach) is required (see, by way of contrast, the express use of the words "knew or ought to have known" in ss. 1, 2 and 4 of the 1997 Act (albeit dealing with different offences)). Further, as Lord Diplock identified in *Sweet v Parsley* at 164, the rationale for disavowing offences of strict liability is that the courts will be "less ready to infer an intention of Parliament to create offences for which an honest and reasonable mistake was no excuse". In such circumstances words importing *mens rea* can be read into the statute. The force of this presumption, namely that Parliament would not intend to punish a blameless individual and its status as a matter of "constitutional importance", was re-asserted in *CPS v M* [2009] EWCA Crim 2615; [2010] 4 All ER 51 at [13]-[18].

46. Here, by the inclusion of the words "without reasonable excuse", s. 5(5) meets the inherent objection to punishing a blameless individual: an honest mistake may be a reasonable excuse. That is to say, s.5(5) provides expressly that an offence is committed only if the defendant does not have a "reasonable excuse" for committing the prohibited act. This is the extent to which, in our judgment, Parliament intended to introduce any element of *mens rea* into the offence. It would allow for a situation in which a defendant does not know the circumstances which give rise to a breach of a restraining order, while also allowing the jury to convict where a defendant ought to have known – i.e. where the lack of knowledge is not reasonable. It provides for what could be described as "the middle ground" between full *mens rea* and strict liability (as explored in Blackstone's Criminal Practice 2021 at A2.23 and A3.6).

47. There is, thus, no need to read into the statute any words importing a requirement of knowledge or additional *mens rea*.

48. As set out above, the burden of proof was on the prosecution to establish that there was no reasonable excuse. The question of reasonable excuse was left to the jury, albeit in bald terms. But there was no sensible basis, on these particular facts, to suggest, nor was it ever suggested by anyone, including on behalf of the appellant, that in the circumstances in which she found herself, not least bound by the terms of the Original Restraining Order, that the appellant had, or might have had, a reasonable excuse for the prohibited references to PC Chan and Mr Calder (through ignorance or otherwise).

49. For these reasons we would reject the appellant's submission that the prosecution needed to prove as a separate element that the appellant had actual knowledge of the contents of the hyperlinks embedded into the crowd funding page.

50. For the sake of completeness, we also consider the safety of the conviction on count 2 in the alternative, on the basis that the appellant's contention is correct and that the prosecution did need to prove knowledge on her part of the hyperlinks and their contents, in which case the direction to the jury, to the effect that the mere posting of the tweet would establish the necessary element of "referral to Vincent Chan and Brian Calder", could be said to be inadequate.

51. Any shortcoming in the judge's direction could not, in our judgment, be said to have been material on the facts or to have rendered the conviction on count 2 unsafe. The distinction on the facts here was entirely artificial (which may explain why the judge gave the narrow direction that he did). It is a common feature of the Twitter platform, which carries a character limit for any tweet, that links are included to other parts of the internet. The tweet made little or no sense without the link to the crowd funding page.

52. Further, as a matter of fact, the crowd funding page itself, without more, referred, at least indirectly, to PC Chan and Mr Calder. This is now accepted by the parties, although does not appear to have been identified or explored by anyone at the time of trial. Access to the hyperlinks was not necessary for there to have been a breach of the restraining order, which prohibited reference, not only express but also "impliedly", to PC Chan and Mr Calder. The crowd funding page referred in terms to the investigating officer for the Metropolitan Police – i.e. PC Chan – and also to an individual property investor with characteristics relating particularly to Mr Calder.

53. Miss Mawer submits, and Mr Hearnden has not disputed, that this is not how the prosecution case was put below. However, this fact does emphasise the total lack in reality of

any suggestion of ignorance on the part of the appellant of the contents of the hyperlink, inextricably linked, as those contents were, to the express terms of and matters set out on the face of the crowd funding page.

54. Further, as is acknowledged on behalf of the appellant, the question of the appellant's involvement with, and knowledge of, the crowd funding page was addressed at trial. The crowd funding page was all about the appellant. It was authored in her style. The appellant was in possession of both documents linked through the hyperlinks and so was able to post them or to make them available. The appellant did not give evidence to assert that she did not know the contents of the crowd funding page. As already indicated, in neither the defence statement nor the addendum to it did she in fact deny any such knowledge.

55. Given the nature of the appellant's defence, namely that is was not she who sent the tweet, the appellant's knowledge of the hyperlinks was not a central issue for the jury to decide. In any event, her case on that knowledge was, at best, confused. In her first defence statement she appears to have accepted, without qualification, knowledge of the contents of the crowd funding page. In her second she stated that she denied knowledge of the "presence of the hyperlinks attached" to the crowd funding page. It is unclear to us precisely what was meant by that. But, in any event, this is a case where the jury was sure that the appellant had composed or sanctioned the composition of the tweet. She was not just re-tweeting someone else's messages. It appears fanciful to us on the facts of this case to separate out the hyperlinks and their contents from the crowd funding page itself.

56. The appellant did not suggest that she had a reasonable excuse for having posted the material (through ignorance or otherwise). As the judge put it at the time of sentencing: how could she not know? It was a crowd funding page designed to raise money to finance her renewed appeal against her convictions in the Crown Court at Kingston. The judge commented that not only did she agree to it, but she must have provided much of the content, including the names of PC Chan and Mr Calder, and the material relating to them.

57. In the circumstances of this case, the jury being sure that the appellant had posted the tweet, or that someone else had posted it but with her agreement, there was no sensible basis on which to conclude that she was not aware of the contents of the crowd funding page and the hyperlink references to PC Chan and Mr Calder.

58. For these reasons, on the question of law, and in any event on the facts, the appeal against conviction on count 2 falls to be dismissed. It is not unsafe.

Analysis: Sentence

59. Like the judge, we do not consider that a pre-sentence report was necessary at the time of sentence. A consultant psychologist's report, dated 30th September 2019, was available to the judge. It recorded that the appellant had been a victim of sexual abuse, domestic violence and rape, and suffered post-traumatic stress disorder.

60. We turn first to the criticisms made of the judge's approach to categorisation within the Guideline. The judge, who conducted the trial, was very well placed to assess both culpability and harm, and the conduct of the appellant more generally. He was fully entitled to conclude that the appellant was both "devious and manipulative". She was "acutely aware of her rights and entitlements and if she thinks she is being denied her rights, she fights ferociously to get what she considers to be her due". He described her "deliberate disregard of the law" as "flagrant". She was "thoroughly self-centred".

61. There are no fixed categories of what does and does not amount to a very serious breach

for the purpose of the Guideline. Whilst the offending did not involve direct contact with the complainants, for example, the judge was entitled to take the view that this was very high culpability offending when set in its proper context. The appellant had an egregious pattern of offending. Further, by way of aggravation, the letter to MAPPA was sent shortly before the appellant's release from prison. She was also wholly lacking in remorse.

62. As for harm, the appellant's submissions overlook the fact that the level of harm is to be assessed not only by reference to actual harm but also by reference to intended harm. Miss Mawer referred, by way of example, to the appellant's motivation behind the letter sent to MAPPA. However, it is important to note that what is in issue is the question of intention.

63. Again, we can well understand why, given the gravity of the matters being alleged by the appellant against PC Chan and Mr Calder, the judge concluded that this was category 2 harm. It could not possibly have been seen as a case involving an intention only to cause little or no harm. Against this background it is, therefore, easy to understand why the judge concluded that a significant custodial sentence was warranted.

64. We consider that the judge would have been entitled to pass concurrent sentences, since this was, effectively, a course of conduct in a relatively short period of time. Alternatively, he would have been entitled to pass consecutive sentences, subject to the principle of totality.

65. In circumstances where the judge identified terms on each offence towards the very upper end of the category range on each and then imposed consecutive sentences, care needed to be taken to ensure that the overall sentence being imposed was just and proportionate in all the circumstances. However, totality is something to which the judge made no express reference; as a matter of substance it is not something which he appears to have considered adequately or at all.

66. On this basis, and taking into account the mitigation afforded to the appellant relating to her mental health difficulties, in our judgment the overall sentence of 27 months' imprisonment was manifestly excessive.

67. We would reduce the overall sentence by ordering the sentences to run concurrently, not consecutively. The overall custodial sentence is, therefore, one of 18 months' imprisonment.

68. Finally, we turn to the appeal against the variation of the Original Restraining Order. Given the appellant's history of offending and the circumstances of the index offending, the judge was fully entitled to conclude that the requested extension to terms 9 and 10, so as to cover the proceedings in the Crown Court at Southwark, was both necessary and proportionate.

69. However, there is force in the submission that the terms of the order as varied should have reflected the judge's intention that the extension was not intended to prevent the appellant's solicitors from contacting the Crown Court at Southwark. Restraining orders need to be drafted in clear and precise terms so that there can be no doubt what a defendant is prohibited from doing: see, for example, *R v Debnath* [2006] 2 Cr App R(S) 25 at [20].

70. We would, therefore, vary the Restraining Order as varied by adding at the end of the first sentence of term 10 the following three words: "save through solicitors".

Conclusion

71. For these reasons:

i) we dismiss the appeal against the appellant’s conviction on count 2;

ii) we allow the appeal against the custodial sentences imposed to the extent of quashing the order that the sentences should run consecutively to each other and substituting it with an order that the sentences should run concurrently with each other. The overall custodial sentence is therefore reduced to 18 months' imprisonment;

iii) we allow the appeal against the variation to the Original Restraining Order to the limited extent of adding the words "save through solicitors" at the end of the first sentence in term 10.

72. We conclude by expressing our thanks to Miss Mawer and Mr Hearnden for their submissions in this matter.
