Neutral Citation Number: [2026] EWHC 2683 (KB)

Case No: QB-2018-004997

**IN THE HIGH COURT OF JUSTICE**
**KING'S BENCH DIVISION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/10/2026

**Before**:

**THE HONOURABLE MR JUSTICE SWEETING**

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**Between:**

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| **The Ministry of Defence** | **Claimant** |
| **- and -** | |
| **Debbie O'CONNELL** | **Defendant** |

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**Niazi Fetto KC** and **Matthew Leitch** (instructed by **Keoghs LLP**) for the **Claimant**
**James Counsell KC** and **Ian Denham** (instructed by **Janes Solicitors**) for the **Defendant**

Hearing dates: 9th October 2026

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# Approved Judgment

This judgment was handed down remotely at 11.30am on 21st October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE SWEETING

## MR JUSTICE SWEETING:

1. This matter came before me for a Pre-Trial Review in a contempt application. By the time of the hearing the parties had reached agreement in relation to a number of proposed directions and other case-management matters. In respect of some remaining issues, they considered that any decision could appropriately be left to the judge who will hear the substantive trial. Accordingly, the scope of the issues requiring determination at the PTR was relatively limited.

2. The underlying proceedings arose from a personal injury claim brought by the Defendant against the Claimant, the Ministry of Defence. The Defendant served in the King's Troop Royal Horse Artillery, a unit with a ceremonial role involving horse drawn field artillery. On 4 September 2015, whilst undertaking a riding lesson in the course of her Army service, she fell from a horse and sustained a fracture of her left clavicle. She was subsequently medically discharged from the Army, in 2017, with an exemplary service record. Her intention had been to pursue a career in the Army. Her discharge and the frustration of that ambition came as a heavy blow. She has since taken steps to rebuild her life and has had success in para-athletics.

3. In September 2018 the Defendant commenced proceedings against the Claimant, alleging that the accident had been caused by the Claimant's negligence and seeking substantial damages in respect of the continuing consequences of her injury. The Claimant disputed both liability for the accident and the extent of the disabilities and losses alleged by the Defendant.

4. During the course of the litigation the Claimant asserted that the Defendant had materially exaggerated the effects of her injuries. Amongst other matters, reliance was placed upon surveillance evidence and documentary material which, it was said, was inconsistent with the case advanced by the Defendant.

5. The claim ultimately came to trial before Christopher Kennedy KC, sitting as a Deputy High Court Judge. The claim, in negligence and under the Animals Act 1971, was dismissed and findings were made adverse to the Defendant, including that the claim was fundamentally dishonest ("the Kennedy Judgment").

6. These proceedings arise from an application for committal in which the Claimant alleges that the Defendant made statements which were false and which she knew to be false or did not honestly believe to be true in the course of the substantive proceedings.

7. Against that background, the parties identified a single issue requiring determination at this PTR. The Defendant submits that the Kennedy Judgment in the substantive proceedings should not form part of the material available to the judge who determines the committal application and should be excluded from consideration altogether. The Claimant contends that the Kennedy Judgment is admissible and may properly be referred to, whilst recognising that the allegations in the present proceedings must be determined independently, upon the evidence adduced in those proceedings and to the criminal standard of proof.

8. The issue before me is therefore a narrow one. It is not whether any findings contained within the earlier judgment are binding upon the trial judge in these proceedings. Nor is it concerned with the conclusions that the trial judge may ultimately reach on the

allegations of contempt. The question is whether the judgment in the substantive proceedings is admissible and, if so, whether there is any proper basis upon which it should be excluded from the material available to the trial judge.

9. On behalf of the Defendant, Mr Counsell KC submitted that the Kennedy Judgment is inadmissible in its entirety. He relied principally upon the decision of Martin Spencer J in *Commerzbank AG v Ajao* [2025] EWHC 1914 (KB), which concerned contempt proceedings founded upon allegations that false evidence had been given in earlier employment proceedings.

10. The Defendant submitted that *Ajao* reaffirms the principle derived from *Hollington v F Hewthorn & Co Ltd* [1943] KB 587, namely that the findings and opinions of a judge in earlier proceedings are not admissible as evidence of the facts found. Particular reliance was placed upon the passages in which Martin Spencer J emphasised that, in contempt proceedings of this kind, the court is required to reach its own conclusions upon the evidence before it and that the views of another tribunal are no more than opinion evidence.

11. Mr Counsell submitted that fairness requires that the judge trying the contempt allegations should neither read nor be influenced by the Kennedy Judgment. He relied upon Martin Spencer J's observation that justice must not only be done but be seen to be done, and that a defendant facing allegations of contempt might reasonably question whether adverse findings in an earlier judgment had influenced the tribunal charged with determining the contempt allegations.

12. The Defendant also submitted that the Kennedy Judgment was reached applying the civil standard of proof and upon a body of evidence which will not be identical to that adduced at the contempt trial. It was submitted that the contempt court will hear evidence, including psychiatric evidence, which was not before the Deputy Judge and that the allegations therefore fall to be determined both afresh and on the basis of a different body of evidence which nonetheless includes all the evidence which was available at the trial. Thus, even if there was no general principle requiring exclusion there should be a direction to that effect in the present case as a matter of discretion or under CPR 32.1(2) in the exercise of the Court's duty to deal with the case justly.

13. On behalf of the Claimant, Mr Fetto KC submitted that the Kennedy Judgment is plainly admissible because it is relevant to issues arising in the contempt proceedings. Reliance was likewise placed upon *Ajao*, but for the proposition that there is no absolute rule excluding judgments given in earlier proceedings and that admissibility depends upon relevance. Particular reliance was placed upon paragraph 28 of the judgment where Martin Spencer J stated that the admissibility of a judgment in previous proceedings falls to be established by reference to relevance.

14. The Claimant further submitted that the Kennedy Judgment provides important procedural and factual context. It records the documentary, expert and other evidence deployed in the substantive proceedings and contains findings of primary fact derived from that material. It was submitted that the Kennedy Judgment is relevant to understanding the background against which the contempt allegations arise and that questions of weight are distinct from questions of admissibility.

15. The Claimant relied in support of these propositions upon the decisions, amongst others, in *Otkritie International Investment Management Ltd v Gersamia* [2015] EWHC 821 (Comm), *JSC BTA Bank v Ablyazov* [2017] EWHC 2906 (Comm), *Super Max Offshore Holdings Ltd v Malhotra* [2018] EWHC 2979 (Comm) and *Bailey v Bailey* [2022] EWFC 5. It was argued that those authorities demonstrate that earlier judgments may be referred to in contempt proceedings, at least for background purposes and, in some circumstances, in relation to findings of primary fact. Particular reliance was placed upon the observations of Cockerill J in *Super Max* that the authorities permit a judge hearing contempt proceedings to have regard to findings of primary fact and to weigh them as part of the material before the court.

16. In so far as it was necessary to do so the Claimant sought to distinguish *Ajao*. It was submitted that the earlier Employment Tribunal judgment in that case consisted largely of evaluative conclusions based upon witness credibility, whereas the present case involved extensive documentary, surveillance and expert evidence. It was also submitted that the present proceedings arise directly from findings of fundamental dishonesty made in the substantive action and therefore operate against the background of section 57 of the Criminal Justice and Courts Act 2015 ("CJCA 2015").

17. Finally, the Claimant submitted that, by virtue of section 57(6) and (7) of CJCA 2015, Parliament expressly contemplated that a court dealing with subsequent contempt proceedings would have regard to the dismissal of the original claim for fundamental dishonesty when determining disposal and sentence. It was argued that the statutory scheme is therefore inconsistent with any suggestion that the trial judge must proceed as if the underlying judgment does not exist. I should say at this point that that does not seem to me to be a dispositive argument since the statutory reference back to the earlier judgment occurs at the point of sanction, not before.

18. I had noted that the Defendant sought an order that the contempt trial be heard by "a judge who has not read the Kennedy Judgment". During the course of argument, I asked Mr Counsell whether the logical consequence of the Defendant's submissions was that the court would be required to identify a judge who was entirely unaware of the existence and contents of the Kennedy Judgment (a judgment given in the same High Court division in which the present matter is to be determined). Mr Counsell disavowed any such proposition. Rather, his submission was that the Kennedy Judgment should simply not form part of the trial bundle or the material placed before the trial judge in these proceedings.

19. That exchange appeared to me to illustrate a difficulty in the Defendant's position. If mere awareness of the existence and substance of the Kennedy Judgment is not regarded as giving rise to unfairness, it becomes less clear why the interests of justice require its formal exclusion from the documentary material before the court. The concern underlying the Defendant's submissions is presumably that the trial judge might be influenced by findings contained within the judgment. Yet a judge who is already aware of those findings is not rendered incapable of determining the contempt allegations fairly and independently. Indeed, the Defendant did not suggest otherwise.

20. In those circumstances, the issue is not whether the trial judge should be insulated from knowledge of the Kennedy Judgment. On the Defendant's own case, that is neither achievable nor necessary. The real question is the use, if any, which may properly be made of the judgment. In my view that question is more satisfactorily addressed by

recognising the distinction between admissibility and weight, and by requiring the material allegations to be proved independently to the criminal standard, than by excluding the judgment altogether.

21. Put another way, if a judge may fairly determine the proceedings notwithstanding awareness of the Kennedy Judgment, I see no principled basis for concluding that the interests of justice require the judgment's complete removal from the materials available to the court. The proper safeguard lies not in pretending that the judgment does not exist, but in recognising that its findings are not binding and that the issues arising in the contempt proceedings must be determined afresh on the evidence called before the court. That also appears to me to accord with the authorities to which I was directed.

22. In *Hollington*, which concerned a criminal conviction, Goddard LJ observed that a finding made by another tribunal is only proof that another court considered particular facts to have been established and that it is ordinarily preferable that a subsequent court should decide the issues before it "without regard to the result of other proceedings before another tribunal". Those observations remain the starting point for any consideration of the use of findings made in earlier proceedings, despite subsequent criticism and the statutory reversal of the position in relation to criminal convictions (see in particular *Rogers v Hoyle* [2014] EWHC 257 (QB) where *Hollington* was described as a "controversial case").

23. In *Super Max,* Cockerill J recognised that a court hearing committal proceeding may nevertheless have regard to findings made in an earlier judgment:

> "18. One sees a similar thing in relation to the cases dealing with the use of prior judgments, a point to which I shall return in relation to the question of prior judgments itself. I was referred to *JSC BTA Bank v. Mukhtar Ablyazov* [2016] EWHC 3081 (Comm) which stated that there is no absolute rule of inadmissibility, and indicates that the rule, despite statements in cases such as *R v. D*, is really much more nuanced. The court in that case, in giving "considerable weight" to previous findings as to ownership of certain companies held:
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> > "There can be no objection to reliance on the evidence referred to in earlier judgments, such as the contents of documents or the evidence of witnesses….. Nor can there be objection in my view to a second category of case, where the court takes into account, in a like manner as it would any other factual evidence, statements of fact in earlier judgments, giving them such weight as it thinks fit. … The rule in *Hollington v F Hewthorn & Co* turns on fairness. That accords with the Overriding Objective of the CPR of dealing with cases justly and at proportionate cost…."
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> 19. This indicates clearly that the court can consider the findings of an earlier judge and look at statements and facts and give such weight as is thought fit to those statements. The court there held that the court is entitled to have regard to matters of primary fact recorded in the judgment and, if those matters of fact justify the

> conclusions reached in the judgment, the court is entitled to reach the same conclusion."

24. She went on [25]:

> "I should add regarding the use of judgments specifically that, while I accept that there is a prima facie rule, as contended for by the defendant as encapsulated in the case of *R v. D* and as stated in Cross v. Tapper on Evidence 12th Edition p.117, I do accept the submission advanced for the claimant by reference to *Ablyazov* and *Okritie*, that the use of judgments is not precluded, where the issue is not, as in the authorities on which the defendant relied, reliance to prove a central issue in a criminal case. The approach in such a case is somewhat more nuanced. Indeed, in argument, Mr Marshall sensibly agreed that there could really be no difficulty in relying on the judgments for utilitarian purposes to provide uncontroversial background. As indicated before, however, I consider that the authorities, properly read, do go further than this and do allow the judge to have regard to findings of primary fact and to weigh them as part of the evidence before him or her."

25. As explained by Leggatt J, as he then was, in *Rogers v Hoyle*, subsequently affirmed by the Court of Appeal, the rationale underlying the rule is that judges must form their own conclusions based on the evidence before them. It was therefore "a cardinal principle" that a judge must make his or her own evaluation of the evidence and "must not defer to the opinion of anyone else".

26. In *Ablyazov,* Sir Ross Cranston stated [26]:

> "There can be no objection to reliance on the evidence referred to in earlier judgments, such as the contents of documents or the evidence of witnesses. In fact in this case the witness statements and affidavits, hearing transcripts and underlying documents from previous trials were available, so that recourse to the previous judgments for this purpose was largely unnecessary. Nor can there be objection in my view to a second category of case, where the court takes into account, in a like manner as it would any other factual evidence, statements of fact in earlier judgments, giving them such weight as it thinks fit."

27. In *Summers v Fairclough* [2012] UKSC 26, the Supreme Court considered the position of the trial judge in relation to subsequent contempt proceedings observing:

> "59... However, in the absence of special circumstances, we cannot see any difficulty in the trial judge hearing both the application for permission and, if permission is granted, the proceedings themselves. On the contrary, it seems to us that the trial judge is likely to be best placed to hear both. Such an approach is likely to be both the most economical and the most

> just way to proceed. The only circumstances in which that would not be the case would be where there was apparent bias..."

28. In *Otkritie,* Eder J had been the trial judge and proceeded to hear the committal application which included submissions as to the use to be made of the underlying judgment which he had given. He concluded [23]:

> "In relation to grounds 2 and 3, the applicants rely on my Judgment dated 10 February 2014 following the lengthy trial. In that context, Mr Stanley accepted that the Judgment did not create any issue estoppel as between the applicants and Mrs Jemai because she was not herself a named party. He also accepted that the opinions expressed in that Judgment are not, as such, admissible by virtue of the rule in *Hollington v Hewthorn* [1943] KB 587. Notwithstanding, he submitted that the Court is entitled to have regard to matters of primary fact recorded in that Judgment and if those matters of fact justify the conclusions reached in that Judgment the Court is entitled to reach the same conclusion. That submission was based on the analysis of Leggatt J in *Rogers v Hoyle* [2013] EWHC 1409 (QB), [2014] EWCA Civ 257, [2014] 2 WLR 148 especially at [53]-[55], [58]-[59] and [79]-[90] and [100]-[104] of Leggatt J's judgment and [39]-[40] of Christopher Clarke LJ's judgment. I accept that submission."

29. In *Bailey*, Peel J reviewed the case law in the context of a submission in a Family Division case that a judgment given in financial remedy proceedings was not admissible in the subsequent committal proceedings; He concluded, *inter alia*:

> "v) So far as I can tell, and consistent with these propositions, the rule in *Hollington v Hewthorn* has been applied to exclude previous judgments only in cases of separate, distinct proceedings and/or involving different parties. Even then, as both *Hoyle v Rogers* and *JSC BTA Bank v Ablyazov* demonstrate, the earlier decision may be admitted (or, perhaps more accurately, not excluded) if fairness so requires. The decision in *Hollington v Hewthorn* itself prevented a criminal conviction for careless driving being admitted in civil proceedings brought by those injured in the collision. These were two, separate sets of proceedings, with different parties since.
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> vi) By contrast, the committal applications before me are part of the same set of proceedings, namely enforcement referable to the financial remedy claims, and they are between the same parties.
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> vii) I conclude that *Hollington v Hewthorn* is not authority for the proposition that the judgment in earlier proceedings between the same parties cannot be admitted in evidence for the purpose of a contempt application arising out of the earlier judgment, and order made thereon.

> viii) The foundation of the rule is the fairness of the subsequent trial. Evidence presented in the earlier proceedings, and the contents of the judgment from the earlier proceedings, are, in my judgment, admissible in subsequent committal proceedings flowing from the earlier proceedings, and between the same parties."

30. A similar approach was taken by HHJ Russen KC, in *Advantage Insurance v Harris* [2024] 1 WLR 4135, and HHJ Tindall in *Aviva Insurance v Nadeem & Sidiqi* [2024] EWHC 3445 (KB), both personal injury claims involving fundamental dishonesty.

31. I was taken to a number of passages in the Kennedy Judgment which, it was submitted, demonstrated the difficulty inherent in allowing the Kennedy Judgment to be placed before the committal trial judge in the present case. Those passages concerned findings as to honesty, credibility and reliability which, the Defendant submitted, overlap substantially with issues that will require determination in these contempt proceedings applying the criminal standard of proof.

32. I accept that the Kennedy Judgment contains findings of that nature. However, it is difficult to see how it could have been otherwise. The Deputy Judge was ultimately required to determine whether the Defendant's claim was fundamentally dishonest. That exercise necessarily involved an evaluation of the Defendant's account, the reliability of her evidence and the honesty with which the claim had been advanced. Conclusions of that kind are not incidental to a determination of fundamental dishonesty; they lie at its heart.

33. Nor is it surprising that findings reached in that context are expressed in clear and sometimes emphatic terms. A finding of fundamental dishonesty is a serious finding carrying potentially grave consequences. It is not one which a judge is likely to make lightly or without careful consideration of the evidence as a whole.

34. In my judgment, however, the fact that a judgment contains findings in relation to honesty, credibility or reliability cannot, without more, justify its exclusion. If that were the rule, there would in practice be a de facto exclusionary rule in any contempt case following a finding of fundamental dishonesty. The same would be true of many other categories of litigation in which the court's conclusions depend upon an assessment of a witness's credibility. Yet none of the authorities cited to me suggests the existence of such a rule.

35. The proper question is not whether the earlier judgment contains evaluative findings. Most judgments do. The question is whether the existence of such findings renders the Kennedy Judgment inadmissible notwithstanding its relevance to the issues before the court. In my view the authorities support no such conclusion. Rather, they point to the need for the subsequent tribunal to reach its own conclusions, to recognise that findings in the earlier proceedings are not binding, and to determine the issues before it on the evidence adduced in the proceedings which it is charged with deciding.

36. To hold otherwise would risk converting the entirely proper caution articulated in *Hollington* and the subsequent authorities into a rule requiring automatic exclusion whenever an earlier judge had expressed concluded views on honesty or credibility. In my judgment that would be an unwarranted extension of those principles.

37. It was also submitted on behalf of the Defendant that the present case is materially different from authorities concerned with contempt arising from breaches of court orders. The argument was that, in such cases, the order and the judgment which underpins it necessarily form part of the background to the alleged contempt, whereas different considerations apply where the alleged contempt consists of the making of false statements in earlier proceedings.

38. In my judgment, no logical distinction can be drawn between the two categories of case for present purposes. In each instance the contempt proceedings arise from and depend upon earlier proceedings before the court. In each instance the earlier judgment forms part of the factual and procedural context in which the allegations fall to be considered. In each instance the court hearing the contempt application must determine for itself whether the alleged contempt has been established on the evidence before it.

39. The fact that one case concerns an alleged breach of a court order, whilst another concerns alleged false statements made in the course of litigation, does not alter the function performed by the underlying judgment. In both situations the judgment explains the circumstances in which the alleged contempt is said to have occurred, identifies the issues which gave rise to the proceedings, and provides the context necessary to understand the allegations now advanced.

40. I have considered carefully the decision of Martin Spencer J in *Ajao.* It is undoubtedly the authority upon which the Defendant's submissions principally rest. However, care must be taken not to read that decision as laying down a general rule that judgments in underlying proceedings are inadmissible in subsequent contempt proceedings.

41. The decision must be understood in its factual context. The contempt proceedings in *Ajao* arose out of findings made in earlier Employment Tribunal proceedings. The judge was plainly concerned to ensure that the contempt proceedings were not determined by impermissible reliance upon the opinions of the Employment Tribunal and, in the circumstances of that case, to be seen to be making an independent assessment, given what he had been told about the Tribunal's view.

42. Read fairly, the judgment appears to have been directed to the use which it was proposed would be made of the earlier judgment rather than to the formulation of a universal exclusionary principle. The reasoning repeatedly emphasises the need for the contempt court to reach its own conclusions and the unfairness that might arise if findings made by another tribunal were effectively treated as dispositive of the issues before it.

43. That concern is readily understandable. If an earlier judgment is deployed, not as relevant background or context, but as a means of inviting the court simply to adopt the conclusions of another tribunal, there is a real risk that the distinction between admissibility for proper purposes and proof of contempt could become blurred.

44. I do not read *Ajao* as purporting to establish any generally applicable rule that judgments in earlier proceedings are inadmissible whenever issues of honesty, credibility or reliability arise in later contempt proceedings. Had such a rule been intended, one would have expected it to have been stated in clear and unequivocal terms. Moreover, such a rule would sit uneasily with the earlier authorities to which I was referred.

45. In that regard, I accept the Claimant's submission that *Ajao* cannot be regarded as establishing an absolute principle. As the Claimant pointed out, Martin Spencer J himself had, in an earlier contempt case*, Aviva Insurance Ltd v Aleksandar Kovacic* [2017] EWHC 2772 (QB), adopted a different approach and permitted reference to findings made in previous proceedings [37]:

> "For the purposes of this application I proceed on the basis (1) that the judge's findings are evidence of the facts found, including adverse findings as to the defendant's credibility and the deliberate exaggeration of his continuing disability, and (2) that I am entitled to treat them as conclusive evidence on those matters unless there is now further material to show that the finding in question was not justified. I bear in mind that these are, in effect, criminal proceedings. The defendant cannot be shut out from putting forward material which may cast doubt on a particular finding. On the other hand, as I made clear to the defendant at the outset of this evidence, he is not entitled to reopen all the matters upon which the judge found against him."

46. The existence of those observations reinforces the conclusion that the issue in *Ajao*, as more widely, was one of relevance, purpose and weight rather than the application of a rigid rule of exclusion.

47. I also reject the submission that *Ajao* is, for present purposes, on all fours with the present case. Whilst there are obvious similarities, in that both cases involved allegations of contempt arising from statements made in earlier proceedings, the factual and procedural contexts were materially different.

48. The present proceedings arise from substantial personal injury litigation culminating in an eight-day trial in the High Court. In such cases, the underlying judgment is often the principal document which explains the issues, the course of the proceedings, the evidence deployed by the parties and the findings which gave rise to the allegation that contempt may have been committed. It performs an important contextual function. Whilst the allegations must undoubtedly be proved afresh and to the criminal standard, it does not follow that the court should be required to ignore the procedural history, including the Kennedy Judgment, from which those allegations emerge.

49. The realities of modern commercial and other substantial litigation are such that proceedings often extend over many years, involve extensive documentary material and give rise to judgments of considerable length. The judgment frequently provides the essential framework within which later allegations must be understood.

50. It cannot, in my judgment, be the position that whenever contempt proceedings follow substantial litigation the entire architecture of the underlying case must be reconstructed from first principles before the later proceedings can sensibly be understood. Such an approach would be artificial, wasteful of court resources and potentially productive of confusion. More importantly, it is not required as a matter of principle.

51. In so far as it may be necessary to do so, the authorities are capable of reconciliation. They establish that findings made in earlier proceedings are not binding and are not to be treated as evidence of the truth of the matters found. The later court must reach its

own conclusions. Whether, and for what purpose, the Kennedy Judgment may properly be considered remains a question of relevance and fairness in the particular circumstances of the case.

52. In my judgment, the starting point is that the admissibility of a judgment given in earlier proceedings is not governed by any absolute rule of exclusion. The fact that a previous judgment contains findings of fact, assessments of credibility or evaluative conclusions does not, without more, render the judgment inadmissible. The question is whether, and for what purpose, the judgment is relevant to an issue arising in the proceedings before the court. It will in many, or indeed in most, cases be relevant for the purposes described by Cockerill J in *Super Max.*

53. Equally, however, the authorities make clear that findings made by another judge are not themselves evidence of the truth of the facts found. The trial judge in contempt proceedings is required to determine the allegations independently, on the evidence adduced in those proceedings and to the criminal standard of proof. The court cannot abdicate that responsibility by treating the conclusions reached in earlier litigation as determinative of issues which fall to be decided afresh.

54. I accept the Defendant's submission that particular care is required where the earlier judgment contains assessments of credibility and reliability. Such findings are often closely linked to the totality of the evidence before the earlier tribunal and to its evaluation of witnesses whom it saw and heard. There is an obvious danger that a subsequent tribunal may, consciously or otherwise, accord undue weight to those conclusions.

55. Nevertheless, I do not accept the Defendant's broader submission that in this case the Kennedy Judgment should be excluded altogether. In my view that submission travels further than the authorities support. The present contempt proceedings arise directly out of the substantive action. The allegations concern statements said to have been made in the course of that litigation. The Kennedy Judgment forms part of the procedural history of the dispute and provides important context for an understanding of the allegations which are now advanced.

56. Moreover, the present proceedings were commenced as a consequence of findings made in the substantive action. It would be artificial to require the trial judge to approach the matter on the footing that the underlying judgment does not exist. The fact that the judgment exists, and that findings were made in it, is itself part of the factual and procedural background against which the contempt allegations fall to be determined.

57. In reaching that conclusion I derive assistance from the distinction drawn in the authorities between admissibility and weight. The fact that a judgment is admitted does not mean that any particular part of it must be accepted, nor does it permit the findings contained within it to displace the obligation on the trial judge to reach independent conclusions. The extent to which any aspect of the Kennedy Judgment may ultimately assist the court is a matter for the trial judge, having regard to the evidence before him or her.

58. I also accept the Claimant's submission that different considerations may apply to different aspects of a judgment. There may be passages which simply describe the

course of the litigation, identify the issues before the court, or record uncontroversial matters. There may be findings of primary fact derived from documentary material. There may also be evaluative conclusions based substantially upon assessments of credibility. The weight, if any, to be attached to such matters is unlikely to be identical.

59. In my judgment it would be both unnecessary and inappropriate at this case management stage to attempt to delineate in advance the precise use which may ultimately be made of every passage in the Kennedy Judgment. That exercise is better undertaken, if required, by the trial judge in the context of the evidence as a whole.

60. Nor am I persuaded that the fair-trial concerns relied upon by the Defendant require exclusion of the Kennedy Judgment. Trial judges are routinely required to distinguish between admissibility, relevance and weight and to disregard material which cannot properly influence their determination of the issues before them. I see no reason to conclude that those ordinary judicial disciplines cannot be applied in the present case.

61. Standing back, I am satisfied that the Kennedy Judgment is relevant to the issues arising in these proceedings and forms part of the background against which they fall to be determined. Any risk that findings contained within the Kennedy Judgment might be treated as determinative can be addressed by recognising, and where necessary making clear, that the allegations of contempt must be proved independently and to the criminal standard of proof.

62. It follows that I decline to order that the Kennedy Judgment be excluded from the material available to the trial judge. The Kennedy Judgment is admissible. However, nothing in this ruling should be taken as expressing any view as to the weight which may properly be attached to any particular finding or observation contained within it. Those are matters for the trial judge.

63. For those reasons, the Defendant's application to exclude the Kennedy Judgment is dismissed.

END