



DLA Piper UK LLP
160 Aldersgate Street
London
EC1A 4HT
United Kingdom
T: +44 (0) 20 7349 0296
F: +44 (0) 20 7796 6666
dlapiper.com

[REDACTED]

Your reference

Our reference

By email only: [REDACTED]@niallhorn.co.uk

7 November 2025

Dear Mr Horn

Claim No: KB-2025-003720
Niall Geoge Horn -v- Apple (UK) Limited ("Apple")

I write further to your application for permission to commit Apple (**Apple**) for Contempt of Court dated 01/10/25 ("**your/the application**").

Apple has served its Defence to your application and has also applied to strike your application out on a variety of grounds. The filed versions of these documents have been served upon you separately by email. A sealed copy will be served upon you following our receipt from the Court.

1. The Purpose of this Letter

I am conscious that you act in this matter as a litigant in person ("**LIP**"). I am also conscious that you are a disabled person and are disabled in a variety of manners as detailed in your application to the Employment Tribunal. Having read the affirmation which you have filed in support of your application it is however clear that you have undertaken some research into the law of contempt and the procedure for making such an application.

I write this letter on Apple's instructions in an effort to detail the significant challenges which your application faces and the additional adverse consequences which you might face if the application to strike out your application were to succeed. I wish to make clear that the purpose of this letter is not, in any way, to seek to intimidate you. Nor is the letter motivated by your Employment Tribunal claim in any manner. I finally write on Apple's instructions to offer you a route to avoid the consequences which I have highlighted in this letter.

I also wish to emphasise that **this letter is written on an open basis** and there is no impediment to either you or Apple referring to its contents. Apple will refer to this correspondence in its defence of your application and in pursuit of its own application for strike out coupled with an

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UK switchboard
+44 (0) 20 7349 0296

order that you pay Apple's costs of defending your application on an indemnity basis. This means that, should Apple succeed with its costs application, Apple would be able to recover all costs that are reasonably incurred, as opposed to standard costs which include an element of proportionality.

2. Analysis of the Difficulties Facing Your Application

I emphasise that the purpose of this letter is not to seek to commence a debate between us as to the merits of your application. It is instead to detail to you the challenges Apple considers your application faces and the basis of its strike out application in order that you may consider the same and then determine whether this is indeed an application which you wish to maintain.

I also write this letter in the full awareness of your status as an LIP and in compliance with my professional obligation to draw to your attention (and that of the Court) legal points which are adverse to Apple's case.

The insuperable difficulties which Apple considers your application to face are as follows:

- 2.1 As detailed in its Defence Apple considers that the application is insufficiently particularised in accordance with CPR Part 81.2. A number of mandatory elements of that provision are not addressed within the application. It is open to you to apply to the Court to waive that procedural failing but plainly such an application may not succeed. A lack of clarity is a reason to dismiss the application, see *Navigator Equities Ltd-v-Deripaska* [2022] 2 All ER 995 at [79] (see below)
- 2.2 In Apple's analysis each of the four alleged contempts set out in your application are said to be perpetrated by myself as the legal representative of Apple. I note that I am not named as a party to the application.
- 2.3 Further in writing the documents/letters which I did I was following the instructions of Apple. At no point in your application do you address the state of mind of the unnamed persons within Apple who provided instructions to me and why (you contend) they knew that those instructions were false. Apple (as a corporate entity) is only liable for the deliberate acts of its servants or agents. Please see *Director General of Fair Trading-v-Pioneer Concrete* [1995] 1 AC 456 and *Navigator* at [82(vii)].
- 2.4 When addressing the question of the state of mind of an alleged contemnor mere negligence is insufficient to found liability. There must be a conscious engagement such as to amount to recklessness. See Whipple J at [7-12] in *Newson-Smith-v-Al Zawawi* [2017] EWHC 1876 (QB).
- 2.5 On a related point when addressing an application for contempt the High Court shall apply the criminal standard of proof. See for example *Navigator* at [79]. Therefore it is only if you are able to prove beyond reasonable doubt that Apple deliberately made false statements which I repeated in my various documents that the application can possibly succeed. Apple is entitled to the benefit of the criminal presumption of innocence.
- 2.6 The application is considered by Apple to be an abuse of process as it seeks to subvert the Employment Tribunal's role in those proceedings. You have made various applications to the Employment Tribunal as regards the alleged failings in Apple's disclosure and seeking a strike out of its response. The Employment Tribunal is plainly the appropriate forum to determine the correctness or otherwise of your contentions in this regard. I note that a preliminary hearing is now listed on 19/03/26 to address those

applications. The Employment Tribunal also wrote to the parties on 28 October 2025 seeking views as to the determination of the outstanding applications for specific disclosure.

- 2.7 The truthfulness (or otherwise) of Apple's statement that no offer was made to you (and that consequently no offer documents exist) is a central issue in the Employment Tribunal proceedings. You assert this very point at paragraphs 33-4 of your affirmation in support of the application. The Employment Tribunal shall hear evidence on that point at the hearing and you shall be at liberty to cross-examine Apple's witnesses on the basis that their evidence is false. There is no warrant for engaging in satellite litigation in the separate forum of the High Court on that key issue. In that regard please see the comments of Moore Bick LJ in *KJM Superbikes Ltd-v-Hinton* [2009] 1 WLR 2406 at [18-19].
- 2.8 The application is considered by Apple to be plainly disproportionate per *PJSC Vseukrainskyi Aktsionernyi Bank-v-Maksimov* [2014] EWHC 4370 (Comm) at [21-2] and *Navigator* at [82(ii)]. In that regard see *KJM* at [16-17] (emphasis added):

“16. *Whenever the court is asked by a private litigant for permission to bring proceedings for contempt based on false statements allegedly made in a witness statement it should remind itself that the proceedings are public in nature and that ultimately the only question is whether it is in the public interest for such proceedings to be brought. However, when answering that question there are many factors that the court will need to consider. Among the foremost are the strength of the evidence tending to show not only that the statement in question was false but that it was known at the time to be false, the circumstances in which it was made, its significance having regard to the nature of the proceedings in which it was made, such evidence as there may be of the maker's state of mind, including his understanding of the likely effect of the statement and the use to which it was actually put in the proceedings. Factors such as these are likely to indicate whether the alleged contempt, if proved, is of sufficient gravity for there to be a public interest in taking proceedings in relation to it. In addition, the court will also wish to have regard to whether the proceedings would be likely to justify the resources that would have to be devoted to them.*

17. *In my view the wider public interest would not be served if courts were to exercise the discretion too freely in favour of allowing proceedings of this kind to be pursued by private persons. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not, and although the rules do not prescribe the class of persons who may bring proceedings of this kind, the court will normally wish to be satisfied that the applicant was liable to be directly affected by the making of the statement in question before granting permission to bring proceedings in respect of it. Usually the applicant will be a party to the proceedings in which the statement was made, but I would not exclude the possibility that permission might be granted to someone other than a party if he was, or was liable to be, directly affected by it. In my view there is also a danger of reducing the usefulness of proceedings for contempt if they are pursued where the case is weak or the contempt, if proved, trivial. I would therefore echo the observation of Pumfrey J. in paragraph 16 of his judgment in *Sony v Ball* that the court should exercise great caution before giving permission to bring proceedings. In my view it should not do so unless there is a strong case*

both that the statement in question was untrue and that the maker knew that it was untrue at the time he made it. All other relevant factors, including those to which I have referred, will then have to be taken into account in making the final decision.”

- 2.9 On the issue of proportionality it is considered that it is unclear what you consider shall be the outcome of the committal proceedings were they to succeed. They are advanced against Apple alone and clearly it cannot be committed to prison. Apple could be fined but the Employment Tribunal proceedings would continue to subsist and still require determination at the full hearing listed in April 2026.
- 2.10 Apple also considers that the application is made for an improper purpose as it does not seek to secure compliance with the disclosure orders of the Employment Tribunal, does not seek to further the Employment Tribunal proceedings and seems calculated to seek to browbeat Apple. In that regard see the comments of Briggs J in *Sectorguard plc-v-Dienne plc [2009] EWHC 2693 (Ch)* at [47].
- 2.11 Finally (and critically) the statements which you detail in the affirmation in support of your application simply do not display the clear case of contempt which you seek to contend. In this regard Apple would respectfully refer you to paragraphs 20-31 of its Defence. It is Apple’s analysis (which it considers to be unanswerable) that those paragraphs display that there was an expectation that you would be successful in your final interview and that this would lead to the provision of an offer to you. None of the same display that an offer had been made, that a draft offer existed, that Apple's statement is incorrect that offers within it are an iterative process or that the later statements of myself, which you criticise, are in any way false.

For all of the above reasons Apple considers that its application to strike out your application shall succeed. In the alternative it is considered that they display why the High Court shall refuse permission for you to advance your application.

3. Your Potential Liability for Costs

The Employment Tribunal is (generally) a non-cost bearing jurisdiction. However in deciding to issue proceedings in the High Court you have entered a jurisdiction where costs normally follow the event. Committal proceedings do not represent a special case in this regard per *Symes-v-Phillips & Ors [2006] 4 Costs L.R. 553 [6-7]*. The additional points made by the Court of Appeal at [7] do not apply here:

“7. I respectfully agree with Sachs LJ that, while there is no difference in principle, factors may be present in contempt proceedings which are not normally present in civil proceedings. Amongst them, in a case such as the present, is the fact that the contemnor, by his admitted contempts of court, has brought the entire proceedings upon himself and is in a weaker position to claim costs as between the parties than most litigants. Another is the need not to deter claimants, who may, as in this case, be in the best position to assist the appellate court as to what happened at the trial, from doing so.”

Further per *Loveridge-v-Loveridge [2021] Costs LR 1429* it is generally the case that if a party withdraws a committal application they are liable for the costs incurred up until that point see [159 & 166]. Further Apple relies on [163] (emphasis added):

“163. It does not follow from this that the merits may never be taken into account in determining the costs of a withdrawn committal application. Under CPR 44.2 the court

*is required to have regard to all the circumstances, which in an appropriate case will include the **merits**. For example, it may well be appropriate to take account of the fact that a respondent to a contempt application has admitted contemptuous breaches of it. **There may also be cases where a respondent has not engaged to admit or deny the allegations, but where it is clear that there is no real scope for argument that contemptuous breaches have occurred.** But where (as in this case) the question of breach has not been established, proper regard must be had to the presumption of innocence. Although the judge referred to that presumption, it is not apparent that sufficient regard was paid to it.”*

Clearly those points were made in the context of a withdrawn committal application. Apple considers that they apply with even greater force in the case of an application which is struck out or where permission is not granted for it to proceed.

Finally indemnity costs may be justified on the basis of absence of merit in an application, in response to offers made and if the application is seen as a tactical device per *Loveridge* [170-4].

More generally on the question of the award of indemnity costs the Court of Appeal has stated in *Excelsior Commercial-v-Salisbury Hammer Aspden & Johnson* [2002] CP Rep 67 that specific guidance is inappropriate but there must be something which takes matters out of the norm [32 and 39] in order to justify such an award. Waller LJ then added this (Defendant's emphasis):

“40. *In this case, if the judge had awarded indemnity costs simply on the basis that a Part 36 offer had been made and bettered, I would be inclined to have interfered with that decision. But there are clear indications that what happened here was that the judge took **the view that this was a speculative claim by the claimant which Defendant's had made various attempts to resolve outside the court** and in relation to which the Part 36 offer was the final straw. The key factor which demonstrates to my satisfaction that this was the judge's approach is the fact that the cut-off date he chose from which costs would be on an indemnity basis, was the date of the payment in, not the date up to which the claimant would have had the opportunity to take the money or to accept the Part 36 offer. The judge fully appreciated the 21 days which the claimant had because he was told of that immediately prior to commencing his judgment. But he still chose the date of the payment in. In my view he must have said to himself: "This is a case which is close to being out of the norm in any event", and once the claimant was (and I use the words that the judge himself used when explaining the matter to Mr Davidson) "aware of the payment in", it was a case that the claimant should only be entitled to pursue on the basis that they paid indemnity costs if they lost.”*

For all of the reasons detailed above Apple considers that your committal application is flawed, speculative, an abuse of process and enjoys no reasonable prospects of success. Indeed Apple considers that is based on an unsustainable construction of the words used by Apple's servants or agents in their internal communications.

For that reason, if your application were to be maintained, Apple considers that there is a strong argument that you be ordered to pay costs on an indemnity basis from the point of issue. We consider that argument is made all the stronger if the application were pursued post the date of the offer detailed immediately below.

In terms of the costs which Apple would seek (at any assessment on the strike out of your application) they are as follows:

- The costs which Apple has incurred to date in response to your application (involving drafting the Defence, preparing the application to strike out, drafting this letter and conducting a conference with leading counsel) stand at £14,350.
- If the matter proceeds to a contested strike out hearing Apple estimates that its further costs shall amount to £28,000.

4. Apple's Offer

Apple considers that you may not (to date) have appreciated the weakness of your case and equally you may not have appreciated the substantial costs liability which you shall face if Apple's application to strike out were to succeed. It is hoped that Apple has addressed both such issues clearly above.

On that basis Apple hereby offers that if you write to the High Court seeking its agreement to the withdrawal of your application for permission to commit Apple for contempt by **4pm on 14 November 2025** then Apple shall agree to the dismissal of the application and shall not seek any order for its costs incurred in response to the same.

Apple considers (in the light of the points made above) that this is an extremely generous offer and it trusts that you shall recognise it as such.

However should you not accept Apple's offer by the above-stated deadline then Apple may refer to the same in support of its applications for (i) costs generally (ii) indemnity costs from the commencement of the committal proceedings and (iii) indemnity costs from the date of this offer.

5. Independent Legal Advice

Bearing in mind the issues raised in this letter, and the potentially serious consequences for you in the event that your application were to be struck out, we would respectfully suggest that this is an issue on which you should seek independent legal advice.

6. Conclusion

We await to hear from you at your earliest convenience and certainly by 4pm on 14 November 2025.

Yours faithfully

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