

Bitcoin's Dr Wright to face the courts' new zero tolerance policy towards embargo breaches

Dr Craig Wright, the self-proclaimed creator of Bitcoin, has been referred for contempt of court proceedings, after he posted messages on a Slack channel which appeared to reference the outcome of his libel battle with Mr Peter McCormack, before the judgment was published. This decision is a further example of the courts' new zero-tolerance policy towards embargo breaches and shows they are proactively making use of their powers under paragraph 2.8 of Civil Procedure Rules Practice Direction 40E.

Background

Dr Wright brought libel proceedings against Mr McCormack, a blogger in the cryptocurrency community, over a series of Tweets and a recorded discussion in 2019, in which Mr McCormack said that Dr Wright's claims to be Satoshi Nakamoto (the pseudonym used by the creator of Bitcoin) were fraudulent. The case attracted considerable publicity among those with an interest in cryptocurrency.

At trial, Dr Wright established that some of Mr McCormack's publications were defamatory and caused serious harm to his reputation at the time they were made (although Dr Wright did not establish in the proceedings that he is Satoshi Nakamoto). The judgment was a pyrrhic victory for Dr Wright as Chamberlain J concluded that Dr Wright had advanced a "*deliberately false case*"¹ and should be awarded only £1 in damages (he was also ordered to pay Mr McCormack's costs on the indemnity basis).

The draft judgment was circulated to the parties in July 2022, in advance of being handed down publicly. This is in line with the usual practice in England and Wales, where providing a draft judgment under confidential terms, also known as receiving the judgment "under embargo" (the terms of which are set out in paragraph 2.4 of CPR PD 40E) enables mistakes and inaccuracies to be corrected before the judgment is published. Pursuant to paragraph 2.8 of CPR PD 40E, breaches of an embargo may be treated as contempt of court. However, until recently, such breaches were rarely sanctioned.

Days after the judgment was published on 1 August 2022, Dr Wright's solicitors notified Chamberlain J of their client's potential violations of the embargo. As well as Slack messages, Dr Wright also forwarded email correspondence with his solicitors, which contained their summary of the draft judgment in the first email in the chain, to five people who did not have permission to view the embargoed judgment. Dr Wright's explanation was that the purpose of the Slack posts was "*not to give any indication as to the outcome set out in the Draft Judgment*", but merely to "*encourage debate*" and to give an indication of his "*dogged approach to his opponents in the digital assets sphere generally*".

Decision

In an ancillary judgment delivered on 21st December 2022, Chamberlain J did not accept Dr Wright's explanation and concluded there was evidence showing that he may have acted in deliberate breach of the embargo. Chamberlain J held that contempt proceedings should be commenced on the Court's own initiative against Dr Wright and a listing before another judge would deal with directions and the hearing. Chamberlain J's judgment referred to the Court of Appeal's 'clear message' in *R (Counsel General for Wales) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWCA Civ 181, in which Sir Geoffrey Vos MR said that embargo breaches were becoming more regular and that

¹ Dr Wright has been involved in a number of high-profile cryptocurrency cases across the globe, with Chamberlain J noting it was not the first occasion on which Dr Wright's evidence has been found to be unreliable.

in future, embargo breakers could expect to be the subject of contempt proceedings. In light of this message, Chamberlain J ruled that it would not be appropriate to take no further action in this case.

In reaching his conclusion, Chamberlain J appears to have been influenced and motivated by Dr Wright's dishonesty and conduct in the underlying libel proceedings. The trial judgment had referenced a number of other decisions which assessed Dr Wright's credibility in a similar way. In this judgment, Chamberlain J also referenced the decision of Butcher J in *Ramona Ang v Reliantco Investments Limited* [2020] EWHC 3242 (Comm) at [49], which found that Dr Wright had been an unsatisfactory witness in many respects. This firm acted for Reliantco Investments in those proceedings, which were brought by Dr Wright's wife.

Practical implications

This judgment further illustrates that the courts are now keen to make an example of those who contravene the strict confidentiality obligations of draft judgments, in order to warn against and discourage future breaches.

The key practical points arising from the judgment are that:

- no action, other than 'internal action', can be taken on the back of an embargoed judgment (as set out in paragraph 2.4(b) CPR PD 40E);
- those involved in litigation should abstain from making any public communications (however vague) which may be seen as relating to a draft judgment;
- a draft judgment should be provided only to those who need to see it for a proper purpose, that is to inform appropriate members of the client/the client of the outcome and to suggest corrections, prepare submissions, or agree orders on consequential matters; and
- those who are provided with the draft judgment or are made aware of its contents should be explicitly informed of the confidentiality restrictions and the potential consequences of non-compliance until it is published.

The Judgment is available [here](#).