



Neutral Citation Number: [2022] EWHC 1126 (Ch)

Case No: BL-2019-001328

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 May 2022

Before:

HIS HONOUR JUDGE KEYSER QC
sitting as a Judge of the High Court

Between:

(1) MR RIYADH NASSER ALOKAILI
(2) MR NASSIR ABDULLAH ALOKAILI

Claimants

- and -

(1) MR BALJINDER CHOCHAN
(a.k.a. Bally Chohan)
(2) MR BHUPINDER CHOCHAN
(3) SLOANE INTERNATIONAL
DEVELOPMENTS 1 LIMITED
(a company registered in the
British Virgin Islands)
(4) HILL & STANDARD DEVELOPMENTS
(a company registered in the
British Virgin Islands)
(5) HS1 PROPERTIES LIMITED
(6) SLOAN 1 DEVELOPMENTS LIMITED

Defendants

Mark Simeon Jones (instructed by **Amanah Solicitors**) for the **Claimants**
Simon Hunter (instructed by **Devonshires**) for the **Second Defendant**

Hearing dates: 11 May 2022

Approved Judgment

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

.....

HIS HONOUR JUDGE KEYSER QC

This judgment was handed down by email to the parties' representatives, the National Archive and the Judicial Office. The date and time of hand-down are 16 May 2022 at 10.30 a.m.

JUDGE KEYSER QC:

Introduction

1. This judgment contains the full reasons for a committal order that I made on 11 May 2022. Summary reasons were stated at the end of the hearing on that date.
2. The order was made on the claimants' application, by notice filed on 24 February 2022 pursuant to CPR r. 81.3(1), for committal of the second defendant, Mr Bhupinder Chohan ("Mr Chohan"), for breach of his disclosure obligations under orders made in these proceedings on 22 September 2021, 9 November 2021 and 7 February 2022. Those orders, each of which dispensed with the requirement of personal service, were all duly served in accordance with their terms.
3. The application was supported by an affirmation made on behalf of the claimants on 23 February 2022 by their solicitor, Mr Wakil Ahmed, of Amanah Solicitors.
4. The application notice and the supporting evidence were served on Mr Chohan on 25 February 2022. The hearing notice for the hearing of the application was served on Mr Chohan on 21 March 2022.
5. At shortly after 4.30 p.m. on 10 May 2022, the day before the hearing, Mr Chohan served a witness statement of that date, which admitted the breaches of the orders, expressed apologies for those breaches, and exhibited documents in purported—though admittedly partial—compliance with his obligations under the orders. Mr Chohan attended at the hearing and gave evidence on oath.
6. I am grateful to Mr Jones and Mr Hunter, counsel respectively for the claimants and for Mr Chohan, for their assistance during the hearing.

Background

7. I take the background mainly from the affirmation of Mr Ahmed and the documents exhibited to it. It is relevant because it provides context for the breaches of court orders complained of in the application.
8. These proceedings were commenced by the issue of a claim form on 18 July 2019. The first and second claimants, who are nationals of Saudi Arabia, resident in Riyadh, and are respectively son and father, claimed to recover moneys that they had advanced for the purchase of "off-plan" properties in England from the third and fourth defendants, which are companies registered in the British Virgin Islands. The moneys, totalling something over £500,000 from each claimant, had been paid into bank accounts held by the fifth and sixth defendants, which are companies registered in England and Wales. The claim form averred that it had transpired that the third and fourth defendants did not have title to the properties and that they had neither conveyed the properties nor returned the moneys. The second defendant, Mr Chohan, is the sole director and shareholder of the fifth and sixth defendants. He and his brother, the first defendant, were sued "as the directing mind and will exercising management and control" of the third, fourth, fifth and sixth defendants and as having procured breaches of contract and trust by those companies and conspired with the third and fourth defendants to effect

those breaches. In short, the claimants alleged that they had been a victim of a scam perpetrated by the first and second defendants through the various companies.

9. In October 2019 the claimants made an application for default judgment. That application was originally listed to be heard on 2 December 2019. On 4 November 2019 Deputy Master Nurse made an order (“the Preservation Order”) against Gordons Solicitors Limited (“Gordons”) and Mr Mark Gilbert, a director of that company and consultant with its practice, who had acted for the defendants in respect of other conveyancing transactions, requiring that until determination of the application for default judgment, Gordons and Mr Gilbert (referred to as “the Respondents”) should preserve

“(a) any transfer deeds, leases and exchanged sale and purchase contracts relating to any transactions completed between 1 January 2013 and 4 November 2019, involving funds received from the Fifth and Sixth Defendants (“the Transactions”);

(b) any written communications between the Respondents on the one hand and any of the Defendants and/or the Defendants’ agents, officers, servants, authorised signatories and/or employees on the other, relating to the Transactions; and

(c) any attendance notes relating to the Transactions.”

10. The application for default judgment was eventually heard on 6 February 2020 by Deputy Master Arkush, who gave a number of judgments for the respective claimants against the various defendants. The total sum of the judgments entered against Mr Chohan personally was £1,645,707.33, excluding accrued interest. The total sums of the judgments entered against the fifth and sixth defendants were respectively £721,801.23 and £923,906.10, excluding accrued interest. The judgments were not formally entered by consent, but the defendants’ solicitors had signified by email their agreement to the entry of the judgments.

11. On 30 March 2020 the first claimant and the second claimant as judgment creditors issued a total of four applications on form N316A for the fifth and sixth defendants to attend court by their officer, Mr Chohan, to provide information about their means. Each of the applications annexed as an “Annexure”, in identical terms, a list of the documents of which production was sought. Paragraph 3 of the Annexure read:

“For the purpose of enforcement of this judgment, the court is invited to order the judgment debtor to produce:

a) complete copies of transfer deeds, leases and exchanged sale and purchase contracts relating to any transactions completed between 1 January 2013 and 4 November 2019, involving funds received from the judgment creditor (‘the Transactions’)

- b) complete copies of solicitors [sic] client ledger account(s) involving funds received from the judgment creditor, which the judgment debtor remitted to Gordons between 1 January 2013 and 4 November 2019; and
 - c) if the said funds were not applied to the Transactions, the judgment debtor is to confirm:
 - i the purpose for which such funds were remitted to Gordons and/or to whom such funds were subsequently transferred by Gordons; and
 - ii how the aforesaid funds were used and/or the assets/property the said funds were applied to, and if applicable, to identify the relevant assets/property acquired with such funds.”
12. On 6 May 2020 the claimants as judgment creditors issued a fifth application, this time on form N316, for Mr Chohan as judgment debtor to attend court to provide information about his means.
13. I shall refer to the five applications as “the Debtor Questioning Applications”.
14. Five orders of Deputy Master Arkush, one on each application, were sealed on 13 May 2020, requiring Mr Chohan to attend before the Master on 22 July 2020 to provide information about the means of the judgment debtors to whom the respective applications applied. Each order contained a penal notice addressed to Mr Chohan. Each order specified classes of documents that Mr Chohan was required to produce. In the orders relating to the four corporate judgment debtors these included “those documents itemised in ... the ‘Annexure’ to the application (N316A)”. In all five orders the documents that were required to be produced included “those documents itemised in ‘Documents in your control’ in the notes attached hereto”. The relevant notes required the judgment debtor to produce documents confirming the necessary financial information, such as bank statements, pay slips and the like. They continued:

“If you have a business or you are a partner in a business, or the Judgment Debtor is a company or corporation, then include the above documents so far as they relate to the business and

 - Bills or invoices owed to the Judgment Debtor
 - two years’ balance sheets and profit and loss accounts
 - current management accounts”.
15. However, before the time came for Mr Chohan to attend before the Master and produce the documents, the parties reached terms for the payment of the judgment debts by instalments. Those terms were contained in a Settlement Agreement that was annexed as a Schedule to the consent order made by Deputy Master Nurse on 6 July 2020. Paragraphs 3 and 4 of that order provided:

- “3. The Debtor Questioning Applications are hereby stayed, the Claimants having permission on not less than fourteen days’ prior written notice to apply to lift the stay and restore the Debtor Questioning Applications for further hearing(s) without the need to issue any fresh applications, such stay to be lifted only if the Defendants breach the payment terms in the Settlement Agreement.
4. The Defendants, as relevant, shall instruct Gordons Solicitors Limited ... to retain and preserve for any future inspections and/or disclosure of all the files, documents, information and records as per the court order dated 4th November 2019, and as further identified on the Debtor Questioning Applications, until the judgment debts are paid fully or until any further order of the court.”
16. The claimants’ solicitors sent a copy of the order of 6 July 2020 to Gordons under cover of a letter dated 5 August 2020. The letter said: “We draw your attention to para 4 of the order, which relates to your firm. ... The documents and information in your control are of paramount importance. We therefore request that the same are preserved until further notice.”
17. The defendants did not comply with the Settlement Agreement. On 5 May 2021 the claimants’ solicitors wrote to the defendants’ solicitors, Devonshires, giving notice that the claimants intended to apply to lift the stay and restore the Debtor Questioning Applications. On the same day they sent a copy of that letter to Gordons, with the request: “Please ensure that you continue to preserve the documents mentioned in the previous court order, which the Claimants intend to call upon in due course.”
18. On 17 September 2021 the claimants applied to remove the stay and reinstate the Debtor Questioning Applications.

Events Concerning the Relevant Orders

19. On 22 September 2021 Master Clark made five orders, one in respect of each Debtor Questioning Application. Each order was indorsed with a penal notice addressed to Mr Chohan. Paragraph 1 of each order removed the stay imposed by the order of 6 July 2020. Paragraphs 2 and 3 of each of the orders relating to the corporate judgment debtors ordered that:

 - “2. The Officer, Mr Bhupinder Chohan, attend Court at 10:30 a.m. on 9 November 2021 before the Master in the Rolls Building ... to provide information about the Judgment Debtor’s means and any other information needed to enforce the Judgment including those documents itemised in ‘Documents in your control’ in the Notes below and in the ‘Annexure’ to the Application notice.
 3. The Officer shall at that time and place produce all documents in the Judgment Debtor’s control which relate to the Judgment Debtor’s means of paying the amount due

under the Judgment and which relate to the matters mentioned in paragraph 1 of this order. The documents produced must include all documents mentioned in paragraph 1.”

Paragraphs 2 and 3 of the order relating to Mr Chohan as judgment debtor were in identical terms to these, except that the concluding words “and in the ‘Annexure’ to the Application notice” did not appear. The reference in paragraph 2 to the Notes on “Documents in your control” was to the text set out above. The reference in paragraph 3 to “paragraph 1” was a plain and obvious mistake: it ought to have read “paragraph 2”; the error presumably crept in because the text of the earlier orders was followed but a new paragraph 1 had been introduced to lift the stay. Nobody could have been misled by the error.

20. On 9 November 2021 Mr Chohan attended before Master Clark but produced only some of the required documents, with the result that the hearing was adjourned. The order made by the Master on that occasion was indorsed with a penal notice addressed to Mr Chohan and contained the following relevant provisions:

“AND UPON the Judgment Debtor [defined as the second defendant] attending Court at 10.30 a.m. on 9 November 2021 and producing certain documents, but not producing all of the documents and information listed in the ‘Annexure’ to each of the Applications concerning the Corporate Judgment Debtors [defined as the fifth and sixth defendants]

...

IT IS ORDERED THAT:

1. The hearing is adjourned, to be re-listed for hearing on the first available date after 17 January 2022 with a time estimate of one day (‘the Adjourned Hearing’).
2. The Judgment Debtor and Corporate Judgment Debtors shall by not later than 4 p.m. on 7 January 2022
 - (1) provide to the Claimants’ solicitors copies of the documents listed in the ‘Annexure’ to each of the Applications concerning the Corporate Judgment Debtors, including:
 - (i) complete copies of transfer deeds, leases and exchanged sale and purchase contracts relating to any transactions completed between 1 January 2013 and 4 November 2019, involving funds received from the Judgment Creditors (‘the Transactions’);
 - (ii) complete copies of solicitors’ client ledger accounts involving funds received from the

Judgment Creditors ('the Funds'), which the Corporate Judgment Debtors remitted to Gordons Solicitors between 1 January 2013 and 4 November 2019; and

(2) provide to the Claimants' solicitors in the form of a witness statement the information listed in the 'Annexure' to each of the Applications concerning the Corporate Judgment Debtors, including stating:

(i) whether the Funds were applied to the Transactions;

and, if they were not so applied,

(ii) the purpose for which the Funds were remitted to Gordons and/or to whom the Funds were subsequently transferred by Gordons; and

(iii) how the Funds were used and/or the assets/property the Funds were applied to, and if applicable to identify the relevant assets/property acquired with Funds.

3. The Judgment Debtor in his personal capacity and as an officer of the Corporate Judgment Debtors shall attend Court at 10.30 a.m. on the date of the re-listed hearing as provided by the Court, before the Master in the Rolls Building ... to provide information about the Judgment Debtor's and the Corporate Judgment Debtors' means and any other information needed to enforce the Judgment."

21. By a hearing notice dated 19 November 2021 the court gave notice that the adjourned hearing would be before Master Clark at 10.30 a.m. on 16 March 2022.

22. On 3 December 2021, by a letter sent by email, Gordons asked the claimants' solicitors for "a further update with regard to the recovery of the sums payable pursuant to the Settlement Agreement." The claimants' solicitors replied by email that afternoon, attaching a copy of the order dated 9 November 2021.

23. On Wednesday 5 January 2022 Devonshires wrote to Mr Ahmed by email:

"We are currently experiences [sic] issues obtaining documentation from Gordons, as I understand it, both the fee earner and his secretary are off with COVID or have been off with COVID. As it stands we are not going to be able to provide the disclosure by 7 January 2022. I will update you further overnight once I have more information, and we can discuss a date that works for all to ensure the hearing on 16 March 2022 is effective, assuming your clients are agreeable to such an extension."

24. Mr Chohan failed to produce the required documents by 7 January 2022 in accordance with paragraph 2 of the order of 9 November 2021.

25. On 10 January 2022 Mr Ahmed sent an email to Devonshires, in which he wrote:

“As you are aware, your client (D2) has failed to make the disclosure required under the previous court order. This is extremely serious. Please urgently confirm when we can expect the disclosure.

My clients will not hesitate to make an application to the court if your client continues to drag this out even further.”

Devonshires replied by email that morning. They said that the defendants were dependent on the receipt of information from Gordons but that the information had not been provided, “and for very good reason it would seem.” They said that he had tried that morning to contact Mr Gilbert but without success: “I suspect that is because he is suffering the effects of COVID.” The email continued: “Gordons are a small firm and from my discussions I do not believe that anyone else in the firm will be able to put this information together without his direction. Even when he is in a position to provide the information it will take a number of weeks to do so.” The email also raised the possibility that Gordons would require payment to release the documents they were holding. It ended with a request for an extension of time until 4 February 2022 for the provision of the documents.

26. On 12 January 2022 the defendants made an application for a retrospective extension of time for compliance with paragraph 2 of the order of 9 November 2021. The claimants did not oppose the application. By order dated 13 January 2022 Deputy Master Arkush extended the time for compliance until 4 p.m. on 4 February 2022.

27. On 2 February 2022 Devonshires sought a further extension of time until 1 March 2022, for reasons they explained as follows:

“Since then [presumably, since the order of 14 January 2022, though this is unclear] we have been able to speak with Mark Gilbert of Gordons in an attempt to procure the required documentation as soon as possible. Mr Gilbert has confirmed the following today:

‘Unfortunately, payments from 2013 and 2014 are on a previous database, which is no longer electronically retained by Gordons. Thus, my cashier will need to revert to paper statements to identify those payments and thereafter to see to which file those payments were allocated.’

Unfortunately, even if Gordons can produce the required documentation by close of business tomorrow (Thursday 3 February), it is clear that Devonshires will not be afforded the time to analyse the same and produce a witness statement by Bhupinder Chohan, on behalf of Second, Fifth and Sixth Defendants prior to the deadline. There are clearly a number of

factors, such as the limitations of a small practice and the age of the transactions that are also delaying the production of the documentation.

However, we hope that this email provides you with sufficient comfort that progress is being made and that the documentation will be available to you very shortly. As such, we therefore write for your consent to further extend the requirement to provide the documentation. ...”

28. On 3 February 2022 Mr Ahmed replied to Devonshires, saying that the claimants would agree to an extension of time until 18 February 2022 but no later.
29. On 7 February 2022 Master Clark made a consent order extending the time for the second, fifth and sixth defendants to comply with paragraph 2 of the order of 9 November 2021 until 4 p.m. on 18 February 2022.
30. On 18 February 2022, at 12.08 p.m., a paralegal at Devonshires sent an email to Mr Ahmed, which said in part:

“Unfortunately, we have experienced further unexpected delays this week, Mark Gilbert of Gordons was in hospital this week we understand for an operation. He is now out of hospital but our client is simply not in a position to meet today’s deadline.

We understand that this deadline has already been extending [sic] and we appreciate your understanding in doing so. Please agree to one further short extension to 4 p.m. Friday, 25 February 2022.”

31. Mr Ahmed replied immediately, asking Devonshires to “urgently provide appropriate evidence to demonstrate the veracity of your client’s claim.” Devonshires replied:

“See attached confirmation, we agree to waive privilege on, my client is not hiding from the fact that he is impecunious and having difficulties funding the costs of this. Couple with Mark’s health issues has meant that this has taken longer than expected.”

The “attached confirmation” was an email dated 14 February 2022 from Mr Gilbert to Mr Chohan and Mr David Pack of Devonshires:

“Bup

My email of 2 February made my fee quote (inclusive of VAT) quite clear. David is not aware of the level of my fee.

One more day has passed. Tomorrow I am undertaking an operation in hospital with an estimated stay of 2 days if all goes well. Thereafter, my movements depend entirely upon the speed of recovery but with a strong warning of 7 days complete rest.”

32. The claimants declined to consent to any further extension of time.
33. The claimants' application to commit the second defendant was filed on 24 February 2022 and, together with the supporting evidence, was served on Devonshires on 25 February 2022.
34. On 7 March 2022 the claimants' solicitors wrote to apprise the court of the position regarding non-compliance with the orders on the Debtor Questioning Applications. In the light of that position, on 10 March 2022 Master Clark made an order vacating the hearing in the Debtor Questioning Applications from the list for 16 March 2022, directing that it be re-listed on the first available date four weeks after the determination of the committal application, and ordering that the second, fifth and sixth defendants pay the costs of and caused by the order.
35. On 21 March 2022 the claimants' solicitors served the notice of hearing of the committal application on Devonshires.
36. Thereafter Mr Chohan did not serve any evidence in response to the committal application and did not produce any documents or witness statement until, as I have mentioned, he served a witness statement with documents exhibited on the late afternoon of 10 May 2022.

Mr Chohan's Evidence

37. In his witness statement, Mr Chohan accepted that he was in breach of the court's orders and was therefore in contempt of court; he accepted that he had had "plenty of time" to produce the materials required by the order of 9 November 2021 and had failed to do so; he "apologise[d] profusely" and said that he was "extremely apologetic".
38. Mr Chohan proceeded to account for his failure to comply with the court orders; he said that the explanations were not excuses. The principal explanation was said to be Mr Chohan's "impecuniosity", which meant that he had not been able to put Gordons in funds to do the work necessary for compliance with the orders. He referred to a freezing injunction that was made against him and the third, fourth, fifth and sixth defendants in 2017 in different proceedings brought by other clients of Mr Ahmed. (I was told that the claim in those proceedings was similar to the claims in these proceedings, that judgment had been obtained but not satisfied, and that the freezing injunction remained in force.) He said that the freezing injunction prevented him from using moneys in his bank accounts to pay Gordons for the work required of them to achieve compliance with the orders of 22 September 2021 and 9 November 2021. He also said that, although employed as a site manager for student accommodation in Yorkshire at a salary of £1,000 per month, he had not drawn any salary "over the Covid-19 period" because the site had not been generating any income. He said he had had to borrow the moneys to pay Gordons "from friends, family and other third parties"; even so, the moneys he had been able to borrow had been insufficient to pay his legal fees "in a timely manner or in full." Mr Chohan also said that he had suffered from "clinical depression and high levels of stress", apparently caused by the collapse of his financial position and by a number of recent deaths of friends and family members.
39. Mr Chohan also mentioned difficulties that Gordons had experienced. Mr Gilbert alone was capable of producing the documentation required by the Annexure in a usable

manner, but a combination of Covid and Mr Gilbert's operation had made it impossible to meet the extended deadline for compliance with the order of 9 November 2021.

40. When Mr Chohan was cross-examined on his evidence, the things he said included the following (I shall mention some more later). Over the years he had been a director of perhaps as many as 30 companies registered in the British Virgin Islands or the Seychelles. He remained a director of between 10 and 15 companies, of which perhaps three were registered in the British Virgin Islands. (The records at Companies House show that he is a director of 11 English companies.) One of the English companies of which he remained a director (in fact, he is the sole director and the person with significant control) was Bentley & Maine Properties Limited, which on 27 February 2022 filed unaudited abridged accounts to June 2020 that showed shareholders' funds of £809,482. The company that employs him as a site manager is B & M Properties 1 Limited, of which he is the sole director and shareholder. (Documents filed at Companies House suggest that the company is heavily insolvent.) The site is owned by Hill & Standard Developments Limited, an English company, now in administration, of which Mr Chohan was formerly a director.
41. Exhibited to Mr Chohan's witness statement were five "ledgers", each of which comprised a short schedule purporting to show how payments received from the claimants had been applied and documents relating to the identified transactions. Mr Chohan explained that he had prepared the schedules; they did not comprise or contain Gordons' own ledgers, which have never been produced. He did not produce any documents to show the basis on which it was said that the payments received from the claimants, which had gone into the general bank accounts of the fifth and sixth defendants, had been applied specifically to these or indeed to any transactions. In cross-examination he said that a document showing the basis of the allocation might exist, but he would have to look for it. A feature of the transactions to which he said the claimants' payments had been applied is that they were all abortive transactions: there is nothing to show for the money. Although Mr Chohan said that there had been successful transactions, he said that the claimants' money had not been applied towards any of them. These matters go rather to disclosure than to contempt. But I shall say now both that Mr Chohan's answers appeared to me to be valueless and that the entire exercise of attempting to identify how the claimants' money was applied seems to me to be unlikely to be fruitful. The claimants did not pay money in order that it be applied to miscellaneous investments: they paid money as a price for specific properties. The moneys went into general bank accounts where they were mixed with other moneys. The corporate defendants then used those moneys for their own purposes. I can see no reason why the corporate defendants should have decided that a payment of such-and-such from their bank account would be attributed to a receipt of moneys from so-and-so for a wholly different purpose. That makes no sense that I can see. Mr Chohan says that this is what the corporate defendants did. But it appeared to me that he was simply making up allocations of money to specific projects with a view to establishing that there was nothing to show for the payments made by the claimants. I note, also, that the claimants have obtained simple money judgments. The relevant exercise so far as concerns enforcing those judgments is simply to identify any assets against which they can be enforced.

Discussion

Proof of the contempt

42. In *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch), Proudman J said at [20]:

“A person is guilty of contempt by breach of an order only if all the following factors are proved to the relevant standard: (a) having received notice of the order the contemnor did an act prohibited by the order or failed to do an act required by the order within the time set by the order; (b) he intended to do the act or failed to do the act as the case may be; (c) he had knowledge of all the facts which would make the carrying out of the prohibited act or the omission to do the required act a breach of the order. The act constituting the breach must be deliberate rather than merely inadvertent, but an intention to commit a breach is not necessary, although intention or lack of intention to flout the court's order is relevant to penalty.”

That summary was approved by the Court of Appeal in *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9, [2020] 4 WLR 29, at [25]. The “relevant standard” of proof referred to by Proudman J is the criminal standard: proof beyond reasonable doubt.

43. It is not in issue, and I am satisfied on the evidence, that Mr Chohan not only had notice of the orders of 22 September 2021, 9 November 2021 and 7 February 2022 but had actual knowledge of them.
44. As the foregoing recital of facts also makes clear, and as he himself admits, Mr Chohan was in breach of paragraph 3 of the four orders of 22 September 2021 regarding the corporate judgment debtors and was—and remains, at least partially—in breach of paragraph 2 of the order dated 9 November 2021, as varied. The breaches consist in his failure to produce the documents mentioned in paragraph 2 of the four orders of 22 September 2021 regarding the corporate judgment debtors and his failure to produce the documents (the same documents: those identified in the “Annexure”) and the witness statement required by paragraph 2 of the order of 9 November 2021.
45. For present purposes, I need only consider the breaches of the order of 9 November 2021. The scope of Mr Chohan’s obligations under the order of 22 September 2021 mirrored that in the orders made on 13 May 2020 and extended not only to the Annexure but to the “Documents in your control”. It is clear enough that Mr Chohan did not comply with his obligations in respect of the latter category of documents. However, the order of 9 November 2021 referred only to the Annexure. The breach of the earlier order is relevant as providing context for the later breaches but I have not treated it as a separate contempt.
46. The breaches of the order of 9 November 2021 will amount to a contempt of court only if the failure of which they consist was deliberate, in the sense already explained, and it was within Mr Chohan’s power to comply with the order. Mr Hunter rightly accepted that both requirements were satisfied. As for the breaches being deliberate, it suffices that Mr Chohan knew what was required of him and knew that he was not complying with it. As for it being in his power to comply, I have referred to Mr Chohan’s evidence. I am entirely satisfied that Mr Chohan had it in his power to comply with the order of 9 November 2021 and deliberately chose not to do so. I make the following specific observations.

- 1) In his witness statement, Mr Chohan says (para 23): “I am not particularly bright”. He is bright enough to run numerous high-value projects through a large number of companies, both within this jurisdiction and elsewhere, and to receive and dispose of large amounts of money. (I was told, without demur, that sums in excess of £10m had been identified as passing through the corporate defendants’ hands during the 7-year period mentioned in the Annexure.)
- 2) Mr Chohan’s disclosure obligations had been identified as long ago as 13 May 2020. Those obligations were suspended when the Settlement Agreement was made, but that was nearly two months later. There was then a failure to abide by the terms of the Settlement Agreement.
- 3) Mr Chohan failed to provide compliant disclosure in the six weeks between the orders of 22 September 2021 and the hearing on 9 November 2021. Compliance with those orders required Mr Chohan to obtain documents from Gordons. In his witness statement Mr Chohan said that he instructed his solicitors to contact Mr Gilbert and they did so on 5 January 2022, which is some eight weeks after the hearing on 9 November 2021. It means, of course, that he had not taken any steps at all to obtain documents from Gordons in the six weeks after 22 September 2021.
- 4) In his oral evidence, in answer to questions by me, Mr Chohan said that he had contacted Mr Gilbert by telephone a week or two after the hearing on 9 November 2021. I do not accept that evidence, for several reasons. (i) No such approach is mentioned in the witness statement. (ii) That such an approach was made is rendered implausible by the fact that in the first week of December 2021 Gordons enquired concerning the state of payments under the Settlement Agreement—clearly because they were interested in the question whether they remained obliged to retain documents. (iii) In his witness statement, Mr Chohan says that he had to appeal to family and friends for financial assistance “over the Christmas break and in the beginning of January 2022”, which (if true) does not suggest that he had learned of the need for funds to meet a deadline of 7 January 2022 more than a month previously. (iv) No documents have been disclosed to support the evidence; nor have any supporting statements from Mr Gilbert. However, even if the evidence were correct, it would mean that Mr Chohan, who could only comply with the order of 22 September 2021 if he had documents from Gordons, did not seek those documents for about 2 months.
- 5) As for the question of impecuniosity, Mr Chohan has referred to the freezing injunction obtained against him in 2017 by other clients of Mr Ahmed. However, he confirmed to me that he never asked for relaxation of the terms of the freezing injunction. He says that he is not earning money. But his disclosure of his own means has been lamentable; and, while breach of the order of 22 September 2021 is not in issue on contempt, it means that I view with scepticism his claims to impecuniosity. Again, he says that he borrowed money to put Gordons in funds, but he gives only the vaguest and undocumented evidence of this. Again, he produces no documents from Gordons to show the amount or basis of their charges. The documents in question have been preserved for more than two years. Their production ought to involve minimal charges. The orders do not require Gordons to perform any analytical work. What appears to be said is that, in order to identify the documents that relate to transactions involving

funds received from the claimants, Mr Gilbert personally needs to go through the ledgers and tie up funds with transactions. There are several problems with that. (i) The attribution of particular transactions to particular funds seems to me to be almost certainly a bogus exercise, for reasons I have already indicated. (ii) However, if it is not a bogus exercise it cannot seriously be supposed that it turns on Mr Gilbert's powers of recollection as to what was intended. It can only depend on some documentation. Therefore it is for Mr Chohan to produce the documents (concerning which he was extremely vague when he gave oral evidence), or possibly it is for Mr Gilbert to extract them from the papers he has been preserving. I simply do not accept that this involves a major expenditure of time or effort. (iii) Mr Gilbert's remarks on 2 February 2022, quoted above, do not say that he was going to do the necessary work personally: he refers to the work being done by the cashier.

- 6) Mr Chohan, who has at all material times been represented in these proceedings by a respected firm of solicitors, and who was represented on 9 November 2021 as today by Mr Hunter, never made an application for relief from his obligations under the orders of 22 September 2021 or 9 November 2021 on the grounds that his personal circumstances made it impossible for him to comply.
- 7) The first attempt at (partial) compliance with the order of 9 November 2021 came on 10 May 2022, more than two months after the extended date for compliance and the application for committal.

47. In short, I find and am satisfied that Mr Chohan deliberately did not comply with his disclosure obligations. Further, I find that in doing so he was deliberately attempting to prevent the claimants from obtaining the information they sought with a view to enforcing their judgments.

Sentence

48. The principal penalties for contempt of court are a fine or committal to prison. Section 14 of the Contempt of Court Act 1981 provides, so far as material:

“(1) In any cases where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

(2) In any case where an inferior court has power to fine a person for contempt of court and (apart from this provision) no limit applies to the amount of the fine, the fine shall not on any occasion exceed £2,500.”

49. The principles of sentencing for contempt of court were considered the Court of Appeal in *Liverpool Insurance Company Ltd v Zafar* [2019] EWCA Civ 392, [2019] 1 WLR 3833. That case concerned a false statement made by an expert witness and was therefore different from the present case; nevertheless, the guidance is relevant. Having

remarked on the importance of assessing the contemnor's culpability, the Court continued:

“65. In determining what is the least period of committal which properly reflects the seriousness of a contempt of court, the court must of course give due weight to matters of mitigation. An early admission of the conduct constituting the contempt of court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made. So too will cooperation with any investigation into contempt of court committed by others involved in the same proceedings or in other fraudulent claims. Where the court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account. Previous positive good character, an unblemished professional record and the fact that an expert witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor's favour. ...

66. The court must also give due weight to the impact of committal on persons other than the contemnor. In particular, where the contemnor is the sole or principal carer of children or vulnerable adults, the court must ensure it is fully informed as to the consequences for those persons of the imprisonment of their carer. In a borderline case, such considerations may enable the court to avoid making an order for committal which would otherwise be made. In a case in which nothing less than an order for committal can be justified, the impact on others may provide a compelling reason to suspend its operation.

67. ...

68. Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt. In this regard, the timing of the admission is important: the earlier an admission is made in the proceedings, the greater the reduction which will be appropriate. Consistently with the approach taken in criminal cases pursuant to the Sentencing Council's definitive guideline, we think that a maximum reduction of one-third (from the term reached after consideration of all relevant aggravating and mitigating features, including any admissions made before the commencement of proceedings) will only be appropriate where conduct constituting the contempt of court has been admitted as soon as proceedings are commenced. Thereafter, any reduction should be on a sliding scale down to about 10% where an admission is made at trial.

69. The court must, finally, consider whether the term of committal can properly be suspended. ... We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as *Bashir* shows, an immediate term – greatly shortened to reflect the personal mitigation – may well be necessary.”

50. I also derive assistance from the remarks of Popplewell J in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Ltd and others* [2015] EWHC (Comm) 3748, at [7], in the context of a contempt by failure to comply with disclosure provisions in a freezing order:

“I was referred to a number of relevant authorities, including *Crystal Mews Limited v Metterick & Others* [2006] EWHC 3087 (Ch) at paras 8 and 13, *Trafigura Pte Ltd v Emirates General Petroleum Corporation* [2010] EWHC 3007 (Comm), *JSC BTA Bank v Solodchenko* [2011] EWHC 2908 (Ch), *JSC BTA Bank v Solodchenko (No 2)* [2012] 1 WLR 350 at paras 52 to 57 and 66 to 67, *Templeton Insurance Limited v Thomas & Panesar* [2013] EWCA (Civ) 35 at para 42, *JSC VTB Bank v Skurikhin* [2014] EWHC 4613 (Comm) and *ADM Rice Inc v Corporacion Comercializadora de Granos Basicos SA* [2015] EWHC 2448 (QB). From those authorities I derive the following principles which are applicable to the present case:

(1) In contempt cases the object of the penalty is to punish conduct in defiance of the court’s order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to achieve.

(2) In all cases it is necessary to consider (a) whether committal to prison is necessary; (b) what is the shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.

(3) A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an

immediate sentence of imprisonment of a not insubstantial amount.

(4) Where there is a continuing breach the court should consider imposing a long sentence, possibly even a maximum of two years, in order to encourage future cooperation by the contemnors.

(5) In the case of a continuing breach, the court may see fit to indicate (a) what portion of the sentence should be served in any event as punishment for past breaches; and (b) what portion of a sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future court. If it does so, the court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing breach. The punitive element of the sentence both punishes the contemnors and deters others from disregarding court orders.

(6) The factors which may make the contempt more or less serious include those identified by Lawrence Collins J as he then was, at para 13 of the *Crystal Mews* case, namely:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

to which I would add:

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward.”

51. Turning to the present case, I regard Mr Chohan’s as a serious breach. It was not a single oversight but formed part of a pattern of deliberate and calculated behaviour that has been designed to prevent enforcement of the judgment. It has caused prejudice to the claimants. Perhaps, as Mr Hunter submitted, that can yet be remedied; though justice delayed is justice denied, and a delay in ability to enforce a judgment is liable to reduce the prospects of any successful enforcement. No reasonable mitigating explanations have been put forward. Reliance on Mr Chohan’s health can carry no weight; he produces no supporting medical evidence. In his witness statement and through counsel, Mr Chohan expresses apologies for his conduct. I am unmoved: expressions of apology are cheap; the court looks for genuine evidence of remorse, not of dismay at being in a tight spot, and I find none. I bear in mind that there has been some partial compliance by means of the witness statement of 10 May 2022 and the documents exhibited to it. However, it is so partial and so belated that I can attach little weight to it as mitigation, though I take it into account.
52. The other relevant matter is the admission in the witness statement of the contempt. There is no absolute rule that credit must always and in all circumstances be given for an admission; the question is fact-specific: see *Su v Lakatamia Shipping Co Ltd* [2021] EWCA Civ 1355. In the present case, the admission was made after 4.30 p.m. on the day before the committal hearing—so, effectively, at court. Further, as Mr Chohan had done absolutely nothing at all to comply with the terms of the orders, the breach was totally undeniable. Even so, I shall give some, very slight credit for it.
53. When deciding on the appropriate sentence, I have in mind two considerations that are in some tension with each other. First, and most importantly, the deliberate breach of court orders ought not to be tolerated. Compliance with the order of 9 November 2021 was mandatory, not optional. Mr Chohan was not entitled to choose not to comply with the order if he thought that it did not suit his own interests to do so. The wilful disregard of disclosure orders made as an aid to enforcement is an attack on the administration of justice and must be treated as such. Second, the purpose of the order and the interests of the claimants stand to be furthered by what is sometimes referred to as a coercive element in the sentence, designed to achieve future compliance. This second consideration is important but does not override the first consideration.
54. In my judgment, Mr Chohan’s failure to comply with the order of 9 November 2021 requires the imposition of a custodial sentence. The term I have imposed is 32 weeks. If it had not been for the belated admission, coupled with the rather desultory nod at compliance, I would have imposed a term of 8 months, which is very slightly longer.
55. I have not found any sufficient reason to suspend the sentence.
56. However, as I indicated at the hearing when pronouncing the sentence, I direct that the term of custody shall commence on 11 July 2022. This is because I have made a further order for focused and specific disclosure, with which Mr Chohan is to comply by 10 June 2022. Compliance will be more likely if Mr Chohan is not in prison in the interim. I have directed that Mr Chohan attend at court to surrender to custody at 10.30 a.m. on 11 July 2022, when there will be a further mention in this matter. The court can then

consider whether Mr Chohan's compliance with the further disclosure order I have made ought properly to be treated as sufficient to purge his contempt and, if so, to what degree. Any decision on that occasion will be entirely a matter for the judge who hears the mention. It might, however, be helpful if I indicate, as I did when pronouncing sentence, that, although the sentence I have passed is single and undivided, I had in mind periods of 20 weeks for the punitive element and 12 weeks for the coercive element.