



Neutral Citation Number: [2023] EWCA Civ 1201

Case No: CA-2023-000765

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
Mr Justice Richard Smith
[2023] EWHC 1224 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 October 2023

Before :

LORD JUSTICE NUGEE
and
LORD JUSTICE SNOWDEN

Between :

MOHAMED SALEEM KHAWAJA

**Petitioner/
Respondent to
Appeal**

- and -

(1) STELA STEFANOVA

**Respondent to
Petition/
Appellant**

(2) BIOTECHNOLOGIESUK LTD
(3) DERMAMED SOLUTIONS LTD

**Respondents to
Petition**

Robin Howard (instructed by **Stokoe Partnership Solicitors**) for the **Appellant**
Gideon Roseman (instructed by **Mills Chody LLP**) for the **Respondent**

Hearing date: 5 September 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 19 October 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Nugee:

Introduction

1. This is an appeal against a committal order imposed on the Appellant, Ms Stefanova, for contempt of court. On 29 March 2023 Richard Smith J found Ms Stefanova to have committed 30 contempts, each consisting of failure to provide information or documents that she had been ordered to provide. He ordered that she be committed for a total of 8 months (consisting of 4 months for a first group of contempts and 4 months for a second group, to run consecutively), suspended for a period of 18 months. Ms Stefanova does not appeal the findings of contempt but appeals the sentence.

Facts

2. The underlying dispute between the parties (that is, Ms Stefanova and the Respondent, Mr Mohamed Khawaja) arises out of an arrangement that they would go into business together. It was common ground that at a dinner in April 2018 they reached an oral agreement for a joint venture consisting of the import and distribution of a range of aesthetic beauty filler products produced by an Israeli company called Luminera Derm Ltd (“**Luminera**”), but the agreement was not recorded in writing and there was a dispute as to what its terms were.
3. In August 2020 Mr Khawaja issued proceedings in the County Court at Central London against Ms Stefanova and a company called Dermamed Solutions Ltd (“**Dermamed**”) which she had incorporated in February 2018 in anticipation of starting the business. His case was that what had been agreed was that they would go into the business of distributing and supplying Luminera’s products, sharing expenses and profits equally, and that Ms Stefanova would make him an equal shareholder and a director of Dermamed. He claimed specific performance of that agreement, together with various other relief including damages for breach of contract (in lieu of or in addition to specific performance) and an account of what was due to him. Ms Stefanova’s pleaded case was that all that had been agreed was that they should place an initial trial order, after which matters would be re-assessed, and that nothing was agreed about Mr Khawaja becoming a shareholder or director of Dermamed.
4. On 29 March 2021 HHJ Gerald gave directions in the case, including a direction that there be a trial before him of certain preliminary issues, the first of which was what the terms of the agreement between the parties were. That trial took place in October 2021 and HHJ Gerald gave judgment on 6 October 2021. He preferred the account given by Mr Khawaja and found that there was a binding contract to the effect that Ms Stefanova would procure the appointment of Mr Khawaja as director of Dermamed, and the issuance or transfer to him of 50% of its share capital.
5. He also held that Mr Khawaja was “in principle, entitled” to specific performance of that agreement, but he declined to order it there and then, for reasons expressed by him as follows:

“However, at this point in time, I am not prepared to make an order for specific performance because there is insufficient material before me upon which I could make such a decision. The reason I say that is that it appears possible that the second defendant no longer contracts with

Luminera. It is possible, but it is not presently known, that it may have a completely different business from the cosmetic filler business. It might, of course, be possible that there is a midway point which is that the second defendant still supplies and distributes cosmetic fillers, not from Luminera but from another supplier. None of that is presently known. If, for example, it turns out that the second defendant now runs a completely different business from fillers, it may well follow that it would be quite wrong for an order for specific performance to be granted and that, instead, there should be an enquiry as to damages.”

6. By his Order dated 6 October 2021 he therefore made a declaration as to the contract he found to have been made and adjourned the issue of whether there be specific performance or damages in lieu. He also gave directions requiring (i) Ms Stefanova by 27 October 2021 to file and serve a witness statement giving details of what had become of the Luminera contract and whether Dermamed had entered into any contract for the supply of similar products, and of Dermamed’s business activities and (ii) the Defendants to provide financial statements and accounting information for Dermamed and bank statements for any bank account of which Ms Stefanova had been a signatory, in each case for the period from 1 April 2018 to the date of the order. Time for compliance with the order was later extended to 26 November 2021.
7. Ms Stefanova made a witness statement dated 26 November 2021, exhibiting various documents, in compliance (or purported compliance) with the order.
8. Mr Khawaja’s advisers considered that this left a number of matters unclear and on 4 April 2022 served a lengthy request for further information of various things said by Ms Stefanova in her witness statement, and of the documentation she had provided. There were 41 requests in total. A response was served on behalf of Ms Stefanova on 28 April 2022 objecting to all except a handful of the requests on the basis that they were not reasonably necessary, the cost of compliance would be very large and out of all proportion to the possible quantum, and that they were oppressive.
9. That led to Mr Khawaja applying to the Court, and on 13 May 2022 HHJ Gerald duly made an order requiring Ms Stefanova to serve by 24 June 2022 (i) a response to 17 questions set out in schedule 1 to the order and (ii) copies of documentation listed in schedule 2 to the order under 17 heads.
10. Ms Stefanova did not comply with that order. Instead on 20 June 2022 her then solicitors sent an open offer to Mr Khawaja’s solicitors to compromise the litigation on the basis that he would be allotted one ordinary share (50% of the issued share capital) in, and appointed a director of, Dermamed, followed by confirmation that Mr Khawaja had been made an equal shareholder. But the offer was not accepted by Mr Khawaja, and by Order dated 8 July 2022 HHJ Gerald extended the time for Ms Stefanova to comply with his Order of 13 May 2022 to 2 September 2022.
11. Ms Stefanova again did not comply and Mr Khawaja applied to the Court for an order debarring her from defending. HHJ Parfitt was not prepared to make a debarring order but he did make an unless order (on 16 September 2022) providing that if Ms Stefanova did not provide the information and documents scheduled to the order by 4 November 2022, her defence be struck out. The information and documents in the schedules were the same as HHJ Gerald had previously ordered her to give. This order was endorsed

with a penal notice. The evidence is that it was HHJ Parfitt's own suggestion that a penal notice be added, and that he took the trouble to explain to Ms Stefanova (who was by this stage acting in person) the terms of the order and the consequences of her failing to comply with it.

12. On 4 November 2022 Ms Stefanova sent a number of letters to the Court, copied to Mr Khawaja's solicitors, with some answers to the questions she had been ordered to answer and some copy documentation. Mr Khawaja's solicitors took the view that these were not sufficient to comply with the order, and applied again to the Court. On 7 December 2022 HHJ Gerald made a further order requiring Ms Stefanova to provide certain bank statements within 28 days.
13. Then on 12 December 2022 Mr Khawaja started new proceedings in the High Court. This took the form of an unfair prejudice petition in relation to Dermamed, based on the allegations that Ms Stefanova, in breach of her duties owed to Dermamed as its sole director, had been treating Dermamed's money as if it was her own, and diverting Dermamed's business to another company, Biotechnologiesuk Ltd, which she had incorporated in October 2020. At the same time Mr Khawaja applied to the Court for a freezing injunction against Ms Stefanova. The evidence in support of the application explained that bank statements (some provided by her and some obtained by way of third party disclosure orders against her bankers) appeared to show her using Dermamed's bank account for her own personal purposes including transferring over £164,000 to her personal bank account and payments for her personal legal fees (over £116,000), a Mercedes car bought for some £67,000, payments towards her pension totalling £60,000, a personal tax liability, and an expensive handbag. In total it was suggested that over £450,000 of Dermamed's money had been spent in this way, and that once an allowance had been made for a salary for Ms Stefanova of £2,000 per month, Mr Khawaja was entitled to at least some £168,000.
14. On 13 December 2022 Zacaroli J granted a freezing injunction (endorsed with a penal notice) against Ms Stefanova. It was made without notice in the usual way and provided for a return day on 20 December 2022. The order required her to provide information as to her assets exceeding £1,000 in value, and to swear an affidavit by 19 December 2022 setting out such information and also a list of all bank accounts to which she had been a signatory during the period 1 April 2018 to the date of the order, and also a list of all bank accounts used by Biotechnologiesuk Ltd.
15. On 20 December 2022 Meade J continued the freezing injunction (again endorsed with a penal notice) and ordered her by 23 December 2022 to provide the affidavit and bank statements ordered by Zacaroli J; he also ordered the Respondents to provide copy bank statements for all accounts to which they were signatories on a fortnightly basis up to 3 February 2023 and thereafter on a weekly basis.
16. On 1 February 2023 Mr Khawaja applied to the County Court to commit Ms Stefanova for contempt of court in failing to comply with HHJ Parfitt's Order of 16 September 2022. Ms Stefanova was said to have failed to provide the information required by 15 specific requests listed in schedule 1 to his order, and to have failed to provide the documents required by 10 specific paragraphs of schedule 2 to his order. On the same day Mr Khawaja applied to the High Court to commit Ms Stefanova for contempt of court in failing to comply with the Orders of Zacaroli J and Meade J respectively. She was said to have failed to provide an affidavit of her assets, bank statements for various

specified accounts, and ongoing bank statements on a fortnightly basis.

17. On 7 February 2023 Dame Sarah Worthington ordered the County Court contempt application to be transferred to the High Court and heard together with the High Court contempt application. The applications were heard by Richard Smith J on 28 and 29 March 2023, and he gave judgment on 29 March 2023 at [2023] EWHC 1224 (Ch).

The Judgment

18. Having set out the history, Richard Smith J recorded that Ms Stefanova's evidence for the contempt applications contained a number of admissions which narrowed the issues. Ms Stefanova had admitted breaches of the Orders of Zacaroli J and Meade J in failing to provide disclosure of assets and bank statements. So far as the Order of HHJ Parfitt was concerned, she had admitted a total of 14 breaches; 3 were not pursued; and that left 7 in issue.
19. He then resolved these 7, finding one of them not established but concluding that he was sure that she had committed breaches of the other 6.
20. Richard Smith J later considered the appropriate sanction or sentence. Having referred to the well-established principle that imprisonment is only appropriate where there is serious or contumelious flouting of orders, the key questions being culpability and harm (at [29]), he concluded that he was sure that Ms Stefanova's conduct represented serious and contumelious flouting of the County Court orders, with the repeated need to seek the intervention of the Court to secure compliance (at [31]); and that so far as the High Court was concerned he was sure that the breaches were "deliberate breaches of the orders to avoid the disclosure of information which might otherwise have given grounds for more serious and earlier intervention by the Court" (at [33]). He accepted that the litigation had been a significant burden for Ms Stefanova, and that she might have encountered some logistical issues, and might not have understood or have been mistaken as to the information sought; but he nevertheless found a number of excuses put forward for non-compliance to be lacking in credibility (at [34]). So far as harm was concerned, the risk created by non-disclosure was that by delaying the provision of information, Ms Stefanova had prevented Mr Khawaja from taking steps earlier to secure his position within Dermamed (at [36]).
21. In those circumstances Richard Smith J was satisfied that the breaches of all three orders were serious, not least her breach of the disclosure orders connected to the freezing injunctions, which was such as to require consideration of at least a long custodial sentence (at [38]).
22. He then turned to personal mitigation, giving Ms Stefanova credit for her admissions of most of the breaches; her apologies to the Court (although in light of what he had said about her motivation about the case and "the somewhat thin excuses for non-compliance" he was unable to say she was remorseful); her mental health and anxiety; the fact that she had caring responsibilities for a young child; and the fact that she had provided further information in her affidavit (although recognising that some information remained outstanding) (at [39]-[44]).
23. He then concluded that a custodial sentence was unavoidable, and imposed a sentence of 8 months' custody, being 4 months for breaches of the High Court Orders, and 4

months for breaches of the County Court Order to be served consecutively, that being “the shortest sentence I can impose commensurate with the seriousness of the breaches I have found” (at [45]). Finally he decided to suspend the sentence (“with not inconsiderable hesitation”), the decisive matter being her caring responsibilities for her daughter, and therefore suspended it for a period of 18 months. That was on condition that Ms Stefanova fully complied with the High Court Orders, including completion of any outstanding requirements under them within 28 days (at [46]).

24. He also ordered her to pay the costs of the contempt applications on an indemnity basis, summarily assessed in a total sum of £57,000.

Grounds of appeal

25. Three grounds of appeal were argued:

- (1) (Ground 1) The overall sentence of 8 months was excessive.
- (2) (Ground 2) The judge erred in taking account wider allegations of misconduct and not confining himself to the specific allegations of contempt.
- (3) (Ground 4) The passing of consecutive sentences was wrong in principle.

(There had originally been a Ground 3 but it was withdrawn and not pursued).

26. Mr Robin Howard however, who appeared for Ms Stefanova, concentrated his oral submissions on Ground 1. I agree that he was wise to do so. I do not think there is anything in the other grounds. So far as Ground 2 is concerned, this is based on something said by Richard Smith J at [37] as follows:

“For all these reasons, I consider that the narrower approach of focusing solely on the allegations on this contempt application is not the correct one. Yes, the respondent, of course, has to be sentenced for those allegations found to have been proved but other facts and context inform the relevant considerations which feed into that sentencing exercise.”

27. But this, as the context makes clear, has to be read with the immediately preceding paragraphs. These do refer to some of the wider context, but they do so (i) for the purpose of assessing the seriousness of the breaches and (ii) for the purpose of assessing the degree of harm. Thus in [34] Richard Smith J refers to the fact that Barclays Bank statements could have been provided in compliance with court orders if Ms Stefanova had gone about matters the right way rather than concentrating so intensely on the issue of her living expenses; in [35] he refers to her misguided focus in the litigation, namely in concentrating on a hostile focus on Mr Khawaja and his legal team rather than engaging in the court process; and at [36] he refers to the risk created by the non-disclosure of assets, which was amply shown by the asset freezing relief which Mr Khawaja was able to persuade the Court to grant on the basis of a real risk of dissipation of Dermamed’s assets, but only once equipped with the Barclays Bank statements and information from Ms Stefanova.

28. Read in this context, I do not think that the suggestion that Richard Smith J sentenced Ms Stefanova for matters other than those alleged in the contempt application is made out. Rather what he was saying was that one cannot assess the true seriousness and risk

of harm involved in the contempts that had been established (being either admitted or found by him) without placing them in the wider context of the conduct of the litigation as a whole. That seems to me entirely appropriate and not to involve any error of principle at all.

29. So far as Ground 4 is concerned, the real question to my mind is whether 8 months was excessive as a total sentence. Richard Smith J expressly directed himself that he should have regard to the totality principle, “standing back to ensure that the sentence I impose is proportionate to her conduct overall”. The division of the contempts into two groups, one consisting of the breaches of the County Court Order made by HHJ Parfitt, and one consisting of the breaches of the two High Court Orders made by Zacaroli J and Meade J, seems to me a perfectly sensible way of treating the very many contempts with which he was concerned which recognised that in a real sense there were two separate sets of failures by Ms Stefanova to do what she had been ordered to do. Having done so, I see no particular objection to sentencing for each group separately, and making the sentences consecutive, so long as the overall sentence of 8 months was not excessive. That is the subject of Ground 1.

Legal principles

30. There was no dispute as to the legal principles on an appeal against an order for committal for contempt of court. They were summarised by this Court in *Financial Conduct Authority v McKendrick* [2019] EWCA Civ 524, [2019] 4 WLR 65 at [37] per Hamblen and Holroyde LJJ as follows:

“In deciding what sentence to impose for a contempt of court, the judge has to weigh and assess a number of factors. This court is reluctant to interfere with decisions of that nature, and will generally only do so if the judge: (i) made an error of principle; (ii) took into account immaterial factors or failed to take into account material factors; or (iii) reached a decision which was plainly wrong in that it was outside the range of decisions reasonably open to the judge...”

31. Mr Howard, after some hesitation, submitted that this was a case where an error of principle had been made, as this was not really a case that required a custodial sentence at all. He sought to characterise the case as one where very burdensome disclosure obligations had been placed on Ms Stefanova, which she had made an effort to comply with (at considerable expense when she was represented), and where it was difficult to identify either contumely or real harm to Mr Khawaja. Some of the complaints were purely technical: for example it was said that she had failed to disclose as part of her assets her shareholdings in Dermamed and Biotechnologiesuk Ltd where Mr Khawaja not only knew of those assets but had based his petition on them. He said that the litigation had been characterised by a series of satellite applications, with more and more detailed requests.
32. I have some sympathy with the submission that what should have been a relatively straightforward case to try has become bedevilled by numerous ancillary applications that have no doubt proved horrendously expensive for both parties. I suspect that both parties share some responsibility for this, Mr Khawaja and his advisers being ready to ascribe Ms Stefanova’s failures to the most nefarious of motives, and Ms Stefanova not assisting matters by not providing information that she could have done without too

much difficulty.

33. But it is not our task to review the whole of the litigation, nor was it that of Richard Smith J. There was no doubt that Ms Stefanova had failed in numerous respects to comply with the Orders of both the County Court and of the High Court. The essential question for Richard Smith J was how serious these breaches were. That depended on two things (i) whether they were pardonable lapses that could be excused, Ms Stefanova having done her level best to comply, or whether information was being deliberately held back; and (ii) what the prejudice to Mr Khawaja was. He duly addressed both these issues, concluding that the breaches were deliberate, the excuses put forward being thin and lacking in credibility; and that by its very nature the delay in providing information was apt to create a risk of prejudice in preventing Mr Khawaja from taking steps to preserve his position.
34. Despite Mr Howard's measured submissions, I have not been persuaded that Richard Smith J reached conclusions that were not open to him, or fell into error in these respects. So far as deliberateness is concerned, it is a noticeable feature of the case that repeated applications had to be made to require her to answer questions which should have been not too difficult to answer, and which the Court was obviously persuaded were necessary to enable the litigation to move forward. As Mr Gideon Roseman, who appeared for Mr Khawaja, pointed out, his client had been successful on the key issue at trial as long ago as October 2021 but had been unable to recover anything, or even to identify the details of his claim, until Ms Stefanova had given detailed financial information about what she and her companies had done. HHJ Parfitt had thought it appropriate to underline the importance of her doing this by taking the unusual step of attaching a penal notice to his Order and explaining the consequences to Ms Stefanova. Her failure nevertheless to engage fully with what was required was something that Richard Smith J was undoubtedly entitled to rely on.
35. So far as harm or prejudice is concerned, failure to comply with the Orders of the Court to provide information is almost always likely to be prejudicial. Mr Howard said that where information had now been disclosed it could be seen that in many cases it was not of great importance after all. But that does not seem to me an answer. Some of the information not disclosed was of some potential significance; but quite apart from this, the prejudice comes in the very fact of not providing disclosure. That is likely, in a case such as the present, to prevent the litigation from proceeding smoothly; it is also almost bound to exacerbate the other party's suspicions and make the litigation both more difficult and more expensive to resolve. Moreover Richard Smith J found that the effect in the present case was to prevent Mr Khawaja from taking steps to preserve his position, and that too seems to me to have been a justifiable conclusion.
36. I therefore do not accept the submission that these breaches of the Court's orders were ones that were characterised by an absence of either contumely or harm. In those circumstances I do not think it can be said that Richard Smith J erred in principle in concluding that this was a case for a custodial sentence, albeit suspended on the terms that he did.
37. The remaining question is whether the overall period of 8 months was too long. That requires showing that the decision of the judge below was outside the range of decisions reasonably open to him. It has been said that this is "essentially the same" as the "manifestly excessive" test applied by the Court of Appeal (Criminal Division) to

criminal sentences: see *Business Mortgage Finance 4 plc v Hussain* [2022] EWCA Civ 1264, [2023] 1 WLR 396 at [126] per Arnold LJ and the cases there cited.

38. Mr Howard sought to contrast the present case with other cases of failure to provide information such as *JSC BTA Bank v Solodchenko (No 2)* [2011] EWCA Civ 1241, [2012] 1 WLR 350 (where the contemnor had aggravated his contempt by misleading the sentencing judge into believing that he had purged it) and *Otkritie International Investment Management Ltd v Gersamia* [2015] EWHC 821 (Comm) (where the contemnor had failed to disclose what had happened to the proceeds of fraud). I fully accept that the facts of those cases concerned worse behaviour than that of Ms Stefanova. But comparisons of this type are seldom a useful exercise: see the comments of Lloyd LJ in *Thursfield v Thursfield* [2013] EWCA Civ 840 at [33]. The task of the judge imposing a sanction for contempt of court is not to review other cases with a view to identifying those with similar features, but to assess the seriousness of the conduct in the context of the instant case. Any deliberate disobedience to a court order is likely to attract a significant penalty because the efficient and effective conduct of litigation depends on court orders being complied with. As has frequently been said, the power to enforce orders by way of contempt proceedings is an essential part of the machinery of the administration of justice.
39. I do not think it can be said that Richard Smith J's decision to impose two consecutive periods of 4 months for these groups of breaches was outside the range of decisions reasonably open to him. It is no doubt the case that some of the breaches taken in isolation were not very significant, but overall there were multiple failures against a background of repeated non-compliance, and the practical effect was to make the County Court proceedings more difficult to progress and the High Court freezing injunctions more difficult to police.
40. I would therefore dismiss Ground 1 of the appeal as well, and dismiss the appeal.

Lord Justice Snowden:

41. I agree with the judgment of Lord Justice Nugee. I would, however, wish to add a few words of my own on the Judge's approach to the "totality" principle in sentencing. In my view, this lay at the heart of Ms Stefanova's appeal under Grounds 1 and 4. As Nugee LJ has explained, ground 4 raised the question of whether the Judge was wrong to pass consecutive sentences for the two groups of contempts, namely those involving breaches of the County Court Orders and those involving breaches of the High Court Orders; and ground 1 raised the question of whether the overall sentence of 8 months imprisonment was excessive.
42. At the start of his remarks on sentencing, the Judge referred to the "totality" principle which is applied in the criminal courts to sentencing for multiple offences. He summarised his understanding of the principle, namely that it meant, "ensuring that the sentence I impose reflects the respondent's breaches of the numerous orders, albeit also standing back to ensure that the sentence that I impose is proportionate to her conduct overall".
43. Although the Judge did not expressly refer to it, The Sentencing Council published a Guideline on Offences Taken into Consideration and Totality in criminal cases in 2012 (the "2012 Guideline"). That was the guideline in force when Ms Stefanova was

sentenced. The 2012 Guideline was replaced by a revised Guideline on Totality in relation to criminal cases with effect from 1 July 2023. Although the 2023 revision adopts a different format, and some new features, for purposes relevant to this case it is not materially different to the 2012 Guideline.

44. The 2012 Guideline made the point that when sentencing for more than a single offence, a court should pass a total sentence which reflects *all* the offending behaviour and is just and proportionate. I consider that the Judge's summary set out in paragraph 42 above was a fair precis of that overriding principle.
45. However, the 2012 Guideline also contains helpful guidance as to how a sentencing judge should approach their decision-making when dealing with multiple offences. So, for example, whilst making the point that there is no inflexible rule as to whether sentences for multiple offending ought to be concurrent or consecutive, the 2012 Guideline states that if it is appropriate to impose consecutive sentences, it is usually impossible to arrive at a just and proportionate overall sentence simply by adding together the notional single sentences; ordinarily some downwards adjustment will be required. The 2012 Guideline also makes the point that concurrent sentences will ordinarily be longer than a single sentence for a single offence.
46. The 2012 Guideline also suggests that, in general, a sentencing court in a criminal case should adopt a structured approach to sentencing for multiple offences, namely,
 - i) Consider the appropriate sentence for each offence.
 - ii) Determine whether the case calls for concurrent or consecutive sentences.
 - iii) Test the overall sentence against the requirement that it be just and proportionate.
 - iv) Consider and explain how the sentence is structured in a way that will be best understood by all concerned.
47. In his sentencing remarks, the Judge started correctly by considering the essential elements of the contempts that had been admitted and proven, together with their aggravating and mitigating factors, and the mitigation arising from Ms Stefanova's personal circumstances. He then concluded, again in my view rightly, for the reasons given by Nugee LJ in paragraphs 34-35 above, that Ms Stefanova's multiple breaches of the two sets of court orders was deliberate and serious, was not accompanied by any real remorse, and caused (or risked causing) real prejudice to Mr Khawaja. In my view the Judge was entirely justified in a conclusion that each group of breaches could not be appropriately sanctioned other than by a custodial sentence.
48. However, in determining the length of sentence, the Judge did not follow the approach set out in the 2012 Guideline, but simply dealt with the question in paragraph [45] as follows,

“... I impose a sentence of 8 months' custody. That is 4 months for the breaches of the High Court Orders, which I treat together for sentencing purposes, and a further 4 months to be served consecutively for the breaches of the County Court order, giving

a total period of imprisonment of 8 months. That is the shortest sentence I can impose commensurate with the seriousness of the breaches that I have found.”

49. In my view, it would have been preferable if the Judge’s attention had been drawn to the 2012 Guideline and if he had followed the structured approach which it advocates. In that way, the Judge would have been encouraged to explain his sentence on each of the two groups of contempts, to explain why he thought it appropriate to impose consecutive rather than concurrent sentences for those two groups, and to go on to explain why he considered that the total sentence which he imposed upon Ms Stefanova was just and proportionate to her overall misconduct.
50. Taking those points in order, in my view the Judge’s approach of taking the breaches of the County Court Orders together, and taking the breaches of the High Court Orders together was correct. Each of those groups were breaches of orders of the same court, and represented a continuing course of non-compliance with such orders. In effect imposing concurrent sentences for the various breaches within those two groups was unobjectionable and justified a longer sentence than might otherwise have been the case for a single breach of each of the orders.
51. I also agree that the numerous and repeated breaches of the County Court orders – especially after being expressly told by HHJ Parfitt of the importance of compliance – clearly justified a 4 month custodial sentence. For my part, and reflecting the Judge’s own comment at [38], I consider that the various breaches of the High Court Orders made in connection with the grant of a freezing injunction were more culpable and would normally have justified a longer sentence of up to 6 months imprisonment.
52. I also consider that the Judge was entitled to take the view that the two sets of breaches warranted consecutive sentences. Although both sets of contempts involved a failure to provide information and documents, and were committed in proceedings involving the same opponent, they took place on separate occasions in relation to distinct orders made by different courts, where the purposes of the proceedings and the relevant orders were different. The purpose of the County Court Orders was to enable Mr Khawaja to identify and claim the appropriate remedy for the breaches of contract that he had already established in the County Court proceedings. The purpose of the relevant provisions in the High Court Orders was to enable Mr Khawaja to police compliance with the interim injunctions that he had obtained to protect his interests as a shareholder of Dermamed, in circumstances in which there was evidence that Ms Stefanova had been misapplying the company’s assets for her own benefit and was continuing to divert its business opportunities to her newly formed company, Biotechnologiesuk Limited.
53. As I have indicated, the Judge did not explain why he had not thought it appropriate to reduce the two sentences of 4 months that he had decided to impose consecutively to take account of the totality principle. However, as I have indicated, the Judge clearly did have the overall purpose of the totality principle well in mind, and I think that he could perfectly well have started from a higher total amount of 10 months (6+4) and reduced that to arrive at 8 months as a just and proportionate sentence overall.
54. Accordingly, although I consider that it would have been desirable for the Judge to approach this issue in the structured way suggested by the Sentencing Council, and to explain more clearly what he was doing, the resultant 8 months sentence at which he

arrived was not excessive but was within the range of sentences that could reasonably be regarded as just and proportionate for all of the contempts that had been admitted and proven.

55. I would therefore dismiss the appeal.