

Neutral Citation Number: [2024] EWHC 2261 (Comm)

Case No: CC-2022-CDF-000010

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS IN WALES**  
**CIRCUIT COMMERCIAL COURT (KBD)**

Cardiff Civil Justice Centre  
2 Park Street  
Cardiff, CF10 1ET

24 July 2024

**Before:**

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

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**Between:**

**ZI WANG**

Claimant

**- and -**

**GRAHAM DARBY**

Defendant

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**Mr Daniel Scott** (instructed by **Curzon Green Solicitors**) for the **Claimant**  
The Defendant, **Mr Graham Darby**, in person

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**JUDGMENT**  
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## **JUDGE KEYSER KC:**

1. This is my judgment after a sentencing hearing in a committal application brought by the claimant against the defendant.
2. The dispute originally arose out of contracts between the claimant and the defendant to swap different kinds of cryptocurrency for a period of time. The claimant alleged that the defendant was in breach of the agreements and did not return his, the claimant's, cryptocurrency at the end of the period. In due course, at the end of the substantive proceedings, I gave judgment in the claimant's favour for a substantial sum, which remains outstanding.
3. When the proceedings were commenced in London, HHJ Pelling QC, sitting as a judge of the High Court, made a freezing injunction on 2 August 2021 endorsed with a penal notice. The freezing injunction contained relevant paragraphs as follows:

"13(1) Unless paragraph (2) applies [which it did not], the Respondent must within 5 working days of service of this order and to the best of his ability inform the Applicant's solicitors of all his assets worldwide exceeding £5,000 in value whether his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. Such information shall include but is not limited to, a complete inventory of all cryptocurrency holdings and precisely where they are located."

"14. Within 7 working days after being served with this order, the Respondent must serve on the Applicant's solicitors a witness statement supported by a statement of truth (the wording of which is set out in Schedule C at the end of this Order) setting out the information required to be disclosed pursuant to paragraph 13(1) above."

4. After the substantive proceedings in this case were concluded, the claimant applied for the committal of the defendant, Mr Darby, to prison for contempt of court on three grounds. Two of the grounds alleged disobedience to Judge Pelling QC's order; the third ground alleged that a witness statement made pursuant to the order contained false statements.
5. Mr Darby did not participate in the contempt proceedings, whether by filing evidence (which he was not obliged to do) or by attending at hearings.
6. I heard the committal application on 4 June 2024, having on that occasion decided that it was appropriate to proceed in Mr Darby's absence. I handed down a reserved judgment on 10 June 2024. In short summary, I found the three allegations of contempt proved as follows:

(1) In breach of paragraph 13 (1) of the order dated 2 August 2021, the defendant by his disclosure letter dated 11 August 2021 failed to mention the existence or location of approximately 100 Bitcoin owned by him, which in early August 2021 had an approximate value of US \$4 million.

(2) In breach of paragraph 14 of the order, the defendant provided a witness statement dated 13 August 2021 in purported compliance but which did not provide the information required to be disclosed pursuant to paragraph 13(1) of the order in that it failed to disclose the existence or location of the 100 Bitcoin.

(3) In his witness statement dated 13 August 2021 verified by a statement of truth, the defendant knowingly made a false statement, namely that the contents of the disclosure letter dated 11 August 2021 were true and accurate to the best of his knowledge and belief. That statement was false, and the defendant knew that it was false because:

(a) the defendant thereby failed to disclose the existence or location of the 100 Bitcoin, which he knew existed;

(b) the defendant thereby falsely affirmed that he was unable to access his cryptocurrency holdings because he had forgotten the password on his hard drive.

7. The reasons for these findings were set out in my reserved judgment of 10 June 2024.
8. At the end of the judgment I said that I would hold a short hearing by Cloud Video Platform on 12 June 2024 to give directions for sentence. I sought to impress upon Mr Darby the seriousness of the position and encouraged him to seek legal representation.
9. Mr Darby did not attend the hearing on 12 June 2024. I gave directions for this sentencing hearing. I gave an opportunity for Mr Darby to produce evidence on which he intended to rely and recorded that he was not obliged to produce any evidence directly bearing on sentence, but was entitled to do so if he wished. Mr Darby did not produce any evidence or information bearing on sentence. He has very recently—this Monday, 22 July—produced a defence statement, but it seeks only to deny the allegations of contempt, on which I have already given my judgment.
10. Mr Darby appeared today, representing himself. I am grateful for the courteous way in which he did so. He told me that he had contacted a number of solicitors but they declined to act, apparently because of the technical nature of the proceedings or the underlying issues. Rather surprisingly, he told me that he had not read my judgment. He said that he has some eye problems, though it is entirely unclear to me why a thing of that nature has prevented him acquainting himself with the terms of the judgment,

especially as Mr Darby has subsequently written to the court and communicated with solicitors. He has never previously informed the court of any difficulty with reading documents.

11. The principles and powers of the court relating to sentence can be addressed relatively shortly. The powers of the court to sentence for contempt are contained in section 14 of the Contempt of Court Act 1981 and referred to in rule 81.9 of the Civil Procedure Rules 1998. These include imprisonment for a term not exceeding 2 years on any one occasion.
12. The policy rationale for punishment in civil contempt was stated as follows by Jackson LJ in *JSC BTA Bank v Solodchenko (No.2)* [2012] 1 WLR 350:

"The sentence for such contempt performs a number of functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly, in some instances, it provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question."

13. The principles to be applied by the court in sentencing for contempt were helpfully surveyed recently by Bacon J in *Lim v Ong* [2024] EWHC 373 (Ch), at [15ff]. I shall not read those paragraphs out, as I went through them in the course of the hearing. I note in particular the summary that Bacon J took from the lead judgment in *Attorney General v Crosland* [2021] 4 WLR 103, at [44]. I note the emphasis on the need for sentences to be fact-specific and the desirability of keeping offenders (and in particular first-time offenders) out of prison, especially when any custodial term would necessarily be short. I note the statement that imprisonment is only appropriate where there is a serious contumacious flouting of the orders of the court; that the key questions are the extent of the defendant's culpability and the harm caused by the contempt; and the importance of considering in each case whether any sentence of imprisonment can be suspended. I note the guidance summarised in Bacon J's judgment at [20] relating to sentencing for multiple offences.
14. The present case involves, as I have said, sentencing for two kinds of contempt. The first is breaches of freezing orders. In *Solodchenko (No.2)* Jackson LJ said at [55]:

"(i) Freezing orders are made for good reason and in order to prevent the dissipation or spiriting away of assets. Any substantial breach of such an order is a serious matter, which merits condign punishment.

(ii) Condign punishment for such contempt normally means a prison sentence. However, there may be circumstances

in which a substantial fine is sufficient: for example, if the contempt has been purged and the relevant assets recovered.

(iii) Where there is a continuing failure to disclose relevant information, the court should consider imposing a long sentence, possibly even the maximum of two years, in order to encourage future co-operation by the contemnor."

15. The second kind of contempt in this case, which arises in the third ground of contempt, is the making of false statements in a witness statement. In this regard I note the comments in *Business Mortgage Finance 4 plc v Hussain* [2022] EWCA Civ 1254, [2023] 1 WLR 396. That was actually concerned with expert reports; nevertheless, it seems to me that I ought properly to have regard to it when considering sentencing for false statements in a witness statement.
16. I turn to the circumstances of this particular case. I have already mentioned the findings of contempt made in my previous reserved judgment. Mr Darby politely protests his innocence and challenges the conclusions that I reached. But they are my conclusions, and it is upon them that I proceed to sentence.
17. The passages in the judgment dealing with the three alleged grounds, all of which I found to be established, run from [46] onwards. At [48] I inferred that the reason why Mr Darby had not produced expert evidence in response to Mr Sanders' evidence for the claimant was that he knows he could not do so. At [49] I find, for reasons there set out, that Mr Darby knew the facts that made his conduct a breach of the disclosure letter. I said it stretched credulity to suppose that he had forgotten he owned a number of Bitcoin, particularly when it is known that he had carried out certain transactions only about three-and-a-half months before his asset disclosure under the freezing injunction. I described his evidence concerning memory loss as "feeble" and coming nowhere near demonstrating a level of cognitive impairment that could possibly explain the level of forgetfulness alleged. I said that his narrative within the substantive proceedings was inconsistent and incredible, and that the evidence showed his account to be false. In respect of allegation two, I found beyond reasonable doubt that Mr Darby knew he had the holding of Bitcoin and knew he was failing to mention it. I found that he had deliberately withheld the information about the holding. In the context of the third allegation of breach, I said at [58]:

"The disclosure of assets is a critical element in ensuring the efficacy of a freezing order as a means of enforcing an actual or potential judgment (cf. the observations of Flaux J in *Navig8 Chemical Pools Inc v Nu Tek (HK) Pvt Ltd* [2016] EWHC 1790 (Comm), at [34]). Similarly, a false statement that the defendant is unable to access cryptocurrency holdings represents an attempt to put those assets beyond the reach of an actual or potential judgment-creditor."

And at [59] I said:

"I am satisfied beyond reasonable doubt that Mr Darby did not believe in the truth of the Verification Statement and that he knew that it was likely to interfere with the course of justice—indeed, that he intended that it would do so."

18. The effect of such conduct is indeed to contribute to the placing of assets beyond the reach of a judgment creditor, which is the very mischief that freezing injunctions and the provisions regarding their policing are designed to avoid.
19. The breaches of the orders and the false statement are, in my judgment, in the present case serious matters requiring condign punishment.
20. Mr Darby has addressed me in mitigation. He tells me that he is a man of good character, in the sense not only of having no criminal convictions, but also of being a generally community-minded and honest person. There is nothing before me to indicate the contrary, and I accept what he says.
21. Mr Darby refers to his mental health difficulties. However, I have seen no proper evidence that mental health issues, including memory loss, have anything to do either with the substantive issues in the underlying proceedings or with Mr Darby's failure to participate in the contempt proceedings. He describes himself as "stubborn", which I can accept. He says that he is probably autistic. With respect, I think that that is probably right and I accept it for the purpose of this judgment. Mr Darby tells me that he has become mentally unwell on account of the financial pressures exerted by the litigation and charges placed by the solicitors upon his and his mother's properties. I have no evidence that mental health issues have played any part in this case, though I am prepared to accept that a failure or refusal to participate may in part have been due to Mr Darby burying his head in the sand (so to speak).
22. Mr Darby tells me that his mother, daughter and partner are all unwell and this I accept. But there is no evidence that his incarceration would cause significant hardship, though it might cause distress and inconvenience, to any of them. In particular there is no evidence that he is in an irreplaceable caring role in relation to them. He tells me that he has not worked for the last five years, that he is not on benefits, that he currently does volunteering work. I accept these matters and I take them into account.
23. What are signally lacking in the present case—Mr Darby would say necessarily so, because he disputes his guilt—is any acceptance, at any stage, of culpability, and any steps to remedy the contempts. I regard that as an aggravating factor.
24. I have regard to the current pressures on the prison population. However, in the circumstances of this case, I do not regard that as a prevailing factor.
25. I shall impose immediate custodial sentences on each of the contempts. The sentence for ground one is 18 months and the sentence for ground two is 18 months concurrent. The sentence for ground three is six months concurrent. That means a total of 18 months.

26. I have considered whether the sentence ought properly to be suspended but I have found no grounds that would justify me suspending it.
27. The total sentence is 18 months. By statute the defendant is entitled to unconditional release after serving half of that period, namely 9 months.
28. Strictly speaking, each of the contempts is complete rather than ongoing. However, in the case of the contempts in grounds one and two, the breaches of the order, the contempts are to this extent capable of a measure of remedy: that, if full and frank information making the policing and enforcement of the freezing order capable and thereby facilitating the satisfaction of the judgment were now to be performed, there would in substance, albeit not technically, be some belated remedy of the breaches. On a purely indicative basis, I indicate that on contempts one and two, the 18 months might be taken to involve 6 months for a purely penal element and 12 months which, though penal, is intended to encourage compliance. In the event that there were to be something akin to belated compliance, it would be open to Mr Darby to apply for the discharge of all or part of the remaining sentence and the judge considering any such application, whether it be I or some other judge, might wish to take into account the remarks that I have made, although he would not be bound by them.

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