Neutral Citation Number: [2016] EWHC 258 (Ch)

Case No: HC-2014-000262

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/02/2016

Before:

MRS JUSTICE ROSE

- -

Between:

(1) JSC MEZHDUNARODNIY PROMYSHLENNIY BANK

(2) STATE CORPORATION "DEPOSIT INSURANCE AGENCY" **Applicants**

- and –

SERGEI PUGACHEV **Respondent**

Stephen Smith QC, Ben Griffiths, Anna Scharnetzky (instructed by Hogan Lovells International LLP) for the Applicants

The Respondent appeared in person by video link assisted by Mr Michael McNutt

Hearing dates: 11 and 12 February 2016

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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.

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MRS JUSTICE ROSE

MRS JUSTICE ROSE:

1. This judgment sets out the sentence to be imposed on Mr Pugachev for contempt of court. In the judgment handed down on 8 February 2016 I set out my findings in respect of the Applicants' application to commit Mr Pugachev to prison for contempt of court: [2016] EWHC 192 (Ch) ('the Liability Judgment'). 17 allegations of contempt were considered at the six day hearing in December 2015. I use the same abbreviations in this judgment as I used in the Liability Judgment. In the Liability Judgment I found that Mr Pugachev had committed 12 of the 17 breaches alleged against him. Those were set out at paragraph 246 of the Liability Judgment.

2. At the hearing of the committal application last December Mr Pugachev was represented by leading and junior counsel all of whom are barristers in the London office of the law firm King & Spalding. King & Spalding were the solicitors on the record for Mr Pugachev for some time prior to the committal hearing and during the hearing itself. On 27 January 2016 Master Price made an order, on the application of King & Spalding that they have ceased to act as solicitors for Mr Pugachev and for Luxury Consulting.

3. Since then Mr Pugachev has acted as a litigant in person and has remained in France. He has been strongly encouraged by me to seek legal representation and been informed that he may be eligible for legal aid for this. Arrangements were made for him to appear by video link in court. Mr Pugachev sent me a three page letter dated 10 February 2016 from his address in Nice. I will refer to the points made by Mr Pugachev in his letter below. At the hearing on 11 February Mr Pugachev was assisted by Mr McNutt who is an adviser to Mr Pugachev on international litigation and his claims against the Russian state. Mr McNutt and Mr Pugachev could apparently see and hear what was happening in court from the room they were in and we were able to hear them though not see them.

4. The maximum sentence that the Court can impose for contempt of court on a single occasion is two years: see section 14(1) of the Contempt of Court Act 1981. The reference in that section to 'one occasion' has been interpreted to mean the hearing at which sentence is imposed: see *Arlidge, Eady & Smith on Contempt* (4th edn 2011) and *Villiers v Villiers* [1994] 1 WLR 493 (CA). This means that the maximum sentence I can impose for these 12 breaches is 24 months. A person committed to prison for contempt of court is entitled to unconditional release after serving half the sentence: Criminal Justice Act 2003 section 258.

5. In *Crystalmews Limited v Metterick* [2006] EWHC 3087 (Ch), Mr Justice Lawrence Collins gave valuable guidance on the principles to be applied in sentencing for contempt consisting of a breach of a freezing order. He said:

> "In contempt cases the object of the penalty is both 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 do."

6. He listed the matters which he took into account as being first, whether the applicant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy; second, the extent to which the contemnor has acted under pressure; third,

whether the breach of the order was deliberate or unintentional; fourth, the degree of culpability; fifth, whether the contemnor has been placed in breach of the order by reason of the conduct of others; sixth, whether the contemnor appreciates the seriousness of the deliberate breach and seventh, whether the contemnor has cooperated.

7. Those factors were applied by Lewison J (as he then was) in *Aspect Capital v Christensen* [2010] EWHC 744 (Ch). In that case Mr Christensen admitted breaches of an order that he deliver up computers and provide information about the whereabouts of confidential documents that he had unlawfully uploaded from the applicant's system. In addition Lewison J added further relevant factors namely whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; whether the contemnor has made a sincere apology for his contempt; whether the contemnor has been frank with the court in admitting his contempt; and finally the defendant's character and relevant antecedents.

8. There are a number of authorities which make clear that where assets are dissipated in breach of a freezing injunction, an immediate prison sentence is necessary both to protect the applicant and to punish the defendant: see for example *Pospischal v Phillips* The Times 20 January 1988; *Hudson v Hudson* [1996] 1 FCR 19.

9. There are, unfortunately, plenty of recent cases in which the court has had to pass sentence for breaches of freezing orders and disclosure orders. I have considered the cases referred to by Briggs J in *JSC BTA Bank v Solodchenko and others* [2011] EWHC 2908 (Ch). He referred to the judgment of Lord Donaldson of Lymington MR in *Lightfoot v Lightfoot* (1989) 1 FLR 414 where Lord Donaldson stated that it would be consistent with the practice of the courts at a time when it was possible to impose an indefinite sentence for contempt, for the courts to consider imposing the full two year maximum when the contemnor was in continuing and wilful breach of court orders. In *Solodchenko* Briggs J imposed a sentence of 18 months imprisonment for breaches of the provisions requiring Mr Syrym Shalabayev to provide information about his assets and a concurrent sentence of six months for failing to provide an affidavit setting out that information. He explained that he had decided not to impose the maximum sentence because he compared the case before him with the case of *JSC BTA Bank v Stepanov* [2010] EWHC 794 (Ch). In *Stepanov* Roth J had imposed the maximum sentence but there the Bank had already obtained a judgment against the contemnor so that the contemnor's refusal to comply with his disclosure obligations had become an impediment in executing the judgment. In *Solodchenko* the proceedings were still at an interlocutory stage.

10. There were contempt proceedings brought against Mr Kythreotis, the second defendant in the *Solodchenko* proceedings, also for failure to comply with disclosure obligations. The Court of Appeal ([2011] EWCA Civ 1241) imposed a sentence of 21 months' imprisonment having regard to the need properly to punish the contemnor for his aggravated contempt and to deter others from disobeying court orders. In that case the Court of Appeal stated that in the case of continuing breach, out of fairness to the contemnor, 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 the sentence the court might consider remitting in the event of prompt and full compliance thereafter. Jackson LJ, with whom Carnwath LJ and Lord Neuberger MR agreed, indicated that the punitive portion of Mr Kythreotis' sentence was nine months: if Mr Kythreotis

complied fully with the disclosure order subsequently it would be open to him to apply to the court to vary the sentence of 21 months imprisonment but not to less than nine months. He stated that the indication was not binding on any future court but may be of assistance.

11. Finally as a preliminary observation I have borne in mind that imprisonment is always a punishment of last resort and I have considered in each case whether a sentence other than one of imprisonment might be sufficient and have also been careful to impose the minimum term for each allegation commensurate with the seriousness of the contempt.

Failure to deliver up travel documents and leaving the jurisdiction

12. **Allegation A1: failure to deliver up French passport: paragraphs 50 to 73 of the Liability Judgment.** Mr Pugachev's failure to deliver up his French passport was a deliberate breach of the order which was only put right after it had become apparent to everyone that he must have had another travel document which enabled him to move between France and England. He deserves little credit for eventually complying with the Return Date Passport Order by the extended deadline set by Arnold J since he denied that he had this passport when asked about it during the execution of the Ex Parte Passport Order and failed to disclose it in response to Hogan Lovells' letter of 5 March 2015. Mr Pugachev did not admit the breach and claimed, falsely, that he believed that the French passport was not covered by the Ex Parte Passport Order. However, I accept that this breach was a temporary one and that it did not cause significant prejudice to the Applicants.

13. Mr Smith QC on behalf of the Bank also accepted that this was a less serious breach though much more than a technical or trivial breach since it was deliberate. He referred me to the decision of Eder J in a judgment delivered on 28 October 2013 against Mr Tyschenko in the *Ablyazov* litigation. Mr Tyschenko was not a defendant to the proceedings but had had disclosure orders made against him and in support of those orders he was required to hand over his passports and not to leave the jurisdiction. The order was served personally on Mr Tyschenko when he was at Heathrow but he refused to hand over his passport. After a bench warrant had been issued for his arrest, Mr Tyschenko did then hand over one passport and a short time later handed over his second passport. There were unusual circumstances in that case which do not apply here – in that Mr Tyschenko was not a party to the proceedings and that Eder J accepted that the order he had made was too wide ranging and oppressive and ought not to have been made. He sentenced Mr Tyschenko to 14 days imprisonment which he suspended. The reasons for the suspension do not apply here.

14. **Allegation A3: failure to deliver up other travel document: paragraphs 94 to 96 of the Liability Judgment.** The more serious breach is Mr Pugachev's failure to identify and deliver up whatever travel document he used to leave the jurisdiction on 23 June 2015 and go to France. That was a deliberate flouting of the Ex Parte and Return Date Passport Orders; he can have been in no doubt of the ambit of the orders following the hearing before Peter Smith J on 6 March 2015. He did not admit this contempt but gave evidence on oath before me that he had left the country without being asked to show any identity documents; evidence that I had no hesitation in rejecting as wholly implausible. We do not know whether Mr Pugachev had whatever passport he used on 23 June in his possession at the date of the hearings before Peter Smith J either he did have it then, or if not then shortly after those hearings he put in train whatever

arrangements needed to be made for him to acquire a replacement passport. In either case, his failure to deliver up his passport shows a complete disregard for the orders of the court.

15. **Allegation A2: leaving the jurisdiction: paragraphs 74 to 93 of the Liability Judgment.** Mr Pugachev's failure to deliver up his other travel document and his decision to leave the jurisdiction on 23 June 2015 have caused the Applicants prejudice in that he is now beyond the jurisdiction of this court, making it more difficult to enforce orders against him. I consider Mr Pugachev is entirely unrepentant about his decision to leave, seeking to cast the blame on the Applicants. Although I reiterate my finding that he has fears for his safety, I have found that these do not provide any excuse for his departure: see paragraphs 75 onwards of the Liability Judgment.

16. Mr Smith on behalf of the Bank urged me to treat this as being in the category of most serious breaches and to impose the maximum term or something close to the maximum term. He argued that the result of Mr Pugachev's departure is that the Bank is deprived of the principal means by which judicially imposed coercion can be brought to bear on him. He also points out that Mr Pugachev left shortly after he had been admonished by Hildyard J and the Court of Appeal as to the importance of him remaining here to give further disclosure following the completion of his cross-examination.

17. I have considered the following cases as providing guidance on the appropriate length of sentence for these three breaches. In *BTA Bank v Zharimbetov* [2014] EWHC 116 (Comm) Andrew Smith J sentenced the contemnor to 15 months for failing to deliver up passports, leaving the jurisdiction and failing to return to the jurisdiction. He held that the nature of the breaches in that case were closely comparable and arose from one event. He therefore held it was appropriate to impose concurrent sentences of similar length making it clear that the matter should be regarded as a single incident. He also dealt with Mr Zharimbetov on the basis that he was in continuing breach of the orders but he did not indicate what portion of the sentence was punitive and what portion coercive. I note that Andrew Smith J passed that sentence even though he held that he was not able to determine whether Mr Zharimbetov's fear, which he claimed led him to leave the jurisdiction, was genuine or well-founded. The judge appears to have sentenced Mr Zharimbetov on the basis that those fears provided no excuse for his breaches, leaving it to the contemnor to persuade the court of this in an application to purge his contempt.

18. I was also referred by Mr Smith to the decision of Eder J in the *Ablyazov* litigation in respect of the committal of Salim Shalabayev: [2013] EWHC 3243 (Comm) a judgment of 18 October 2013. Mr Shalabayev was a third party who had been ordered to make disclosure of certain information and had been ordered not to leave the jurisdiction until he had answered the questions. He was required to surrender his passport and stay in the jurisdiction. Eder J was dealing with allegations that Mr Shalabayev had failed to comply – he had not given proper disclosure and he had left the jurisdiction and had not delivered up all his passports. Eder J found those contempts proven and sentenced Mr Shalabayev to 22 months immediate imprisonment.

19. I do not accept the Bank's characterisation of this as being as serious a breach as occurred in the *Zharimbetov* and *Shalabayev* cases. Andrew Smith J in *Zharimbetov* considered Mr Zharimbetov's breach particularly prejudicial to the claimants because it meant that he would have to be cross-examined in any enforcement proceedings over

video link rather than in person. By contrast, I take into account here that Mr Pugachev did stay in the jurisdiction for the completion of his cross-examination when he was subject to restraint orders preceding the Hildyard Order and he has continued to participate in the proceedings since he left for France. In his letter to me Mr Pugachev stresses that he has consistently participated in the English proceedings for over 18 months. He has spent, he tells me, many millions of dollars on legal fees and for other advisers so that they could continue to represent him in this court after he left the jurisdiction. Those advisers also enabled him to provide more information about his assets in his 11th and 12th affidavits in response to the Rose Order after he moved to France. He also reminds me that even though he was between lawyers at the time he was cross-examined before Hildyard J, the judge considered that he had sufficiently completed his cross examination except for a few matters. I accept that that these are good points in mitigation. Mr Pugachev is not in the same position as some contemnors who wholly fail to respond to the orders of the court and refuse to participate in the court's proceedings at all. Mr Pugachev's cooperation even after his departure from the jurisdiction – deficient though the Applicants may think that is – must be reflected in a significant reduction in the sentence for this breach.

20. In his letter of 10 February Mr Pugachev describes himself as a French citizen who had been forced against his will into the jurisdiction of the court by simple virtue of tending to his partner and three small children who reside in London. He says that he has no relevant business interests here. I do not accept that characterisation of his links with this country or that his decision to leave the jurisdiction is somehow mitigated by the supposedly tenuous nature of his links with England. In Schedule C to the Return Date Freezing Order Mr Pugachev disclosed that he owns indirectly or through the New Zealand trusts three properties here, two in central London and one in Avebury. He also disclosed that he held a number of bank accounts in this jurisdiction. He does have business interests in this country – his own evidence is that he has in the past used Luxury Consulting which is based in London for various projects that he was involved in.

21. In *BTA Bank v Zharimbetov* Andrew Smith J imposed three concurrent sentences of 15 months imprisonment. He referred to the decision of Eder J imposing a sentence of 22 months on Mr Shalabayev in the *Ablyazov* proceedings for similar breaches which Andrew Smith J regarded as more serious because Mr Shalabayev had instructed counsel to give a false account of his movements to the Court of Appeal.

22. In the present case I will treat Allegations A2 and A3 as the same incident and impose concurrent sentences of 8 months imprisonment for each. I impose a sentence of 21 days imprisonment for Allegation A1. That is a separate incident and that sentence should therefore run consecutively.

Disposal of assets in breach of the freezing orders

23. There were four serious and deliberate breaches by Mr Pugachev of his obligations not to dispose of his assets frozen by the Return Date Freezing Order; Allegations B1, B3, B4 and B5. In *Lightfoot v Lightfoot* [1989] 1 FLR 414 the Court of Appeal upheld a sentence of 18 months imprisonment for a husband who had disobeyed a court order requiring him to pay his redundancy compensation into a joint account of his and his wife's solicitors. Instead, the husband never paid any of the money into the joint account, he withdrew most of the money. He told the court he had gambled the money

away although the court rejected that explanation and concluded that he had hidden it. In its judgment the Court of Appeal stated that courts should consider imposing a two year sentence when the contemnor was in continuing and wilful breach of court orders:

> "Whilst there may be cases in which such a sentence would be disproportionately severe, any wilful defiance of the court and its orders is necessarily a very serious offence and if the contemnor is aggrieved, he has a remedy in his own hands – he can seek his immediate release by ceasing his defiance, complying with the order and thereby purging his contempt."

24. In his letter to me Mr Pugachev refers to the fact that he has used the monies from these assets to support his family paying for school and food and to pay legal fees to enable him to continue to provide answers to the questions that the court was putting to him. I do not accept that as significant mitigation in respect of these four allegations for two reasons. First, there is no real evidence from him about what has happened to the monies that were realised in breach of the court orders. There is no satisfactory evidence about what has happened for example to the proceeds of sale of the two motor cars or what really happened in relation to the shares in Petrovka-Rent. Mr Pugachev has not been frank in his evidence on these matters but rather has sought to deny any involvement in the dissipation of the assets and to put the blame on other people. Now he says that all the money was spent on lawyers and family expenses. I am not at all convinced that that is the case. Secondly, a very generous regime had been set up for Mr Pugachev's benefit allowing him to spend £50,000 per week on living expenses subject to an obligation to report this to Hogan Lovells in accordance with the Living Expenses Order. He concealed what had happened with these monies from the monthly statements he purported to make in compliance with the Living Expenses Order.

25. **Allegation B1: shares in Petrovka-Rent: paragraphs 97 to 113 of the Liability Judgment.** As regards the shares in Petrovka-Rent I regard Mr Pugachev as entirely and solely culpable for this deliberate breach. He has continued to deny any involvement in the sale of these assets and he has procured Mr Moukhordykh to produce a false letter to the court in order to back up his denials. The only mitigating factor is that it is not entirely clear what value there was left in the company at the time of the transfer. Mr Pugachev says that it was only worth $1 though given that he denied any involvement in the sale, he was not able to produce evidence to show what consideration was paid. It is not possible therefore to assess what prejudice has been suffered by the Applicants. I consider a sentence of 12 months imprisonment as appropriate for this breach.

26. **Allegation B3: dealing with proceeds of sale of Hediard business: paragraphs 124 to 141 of the Liability Judgment.** Mr Pugachev had dealt with these assets in breach of court orders first by permitting or procuring the transfer of the sums of €3,750,000 and £994,416.33 from the proceeds of sale into the bank accounts of Luxury Consulting and then by giving instructions or at the least permitting or procuring that those sums were spent. This was a deliberate breach of the order involving sums that are substantial amounts in their own right but also represent a substantial proportion of the total monies that the Applicants have been able to find. The Applicants have been seriously prejudiced by Mr Pugachev's breaches. The assets that they have managed to identify since these proceedings began are only a very small proportion of the total assets they believe Mr Pugachev still retains and the frozen assets have been considerably depleted

by this breach. He continued to deny this breach throughout the proceedings or sought to downplay it as trivial or technical.

27. I consider that the maximum sentence of 24 months imprisonment is the only appropriate sentence for this breach. I recognise that this is two months longer than the sentence that was imposed by Teare J in the *Ablyazov* case though it is not clear from his judgment why he imposed a sentence of 22 months rather than 24 months. I also recognise that that 22 month period was used as a benchmark for other sentencing decisions in the other decisions against other contemnors in that complex litigation. But I do not regard it as setting in some way a new maximum for breaches which comprise dealing with frozen assets and there is no reason to treat it as such in sentencing outside the *Ablyazov* proceedings. I do not regard it as overriding the guidance of the Court of Appeal in *Lightfoot v Lightfoot* I referred to earlier about the appropriateness of imposing the maximum sentence for serious and wilful breaches.

28. If Mr Pugachev were prepared to replace the money that has been dissipated by paying it into court or into an account over which Hogan Lovells have control, he would then be in a position to apply to the court to purge his contempt and reduce this sentence.

29. **Allegation B4: sale of the two motor cars: paragraphs 142 to 153 of the Liability Judgment**. I found that Mr Pugachev had obtained duplicate copies of the registration documents of these cars held in safekeeping by King & Spalding, sold the cars without informing HR Owen of the existence of the Return Date Freezing Order and moved the money to France. It is true that these are relatively small the amounts of money compared to the amounts at stake in this claim and relative to the amounts that are in issue in the cases I have seen on dissipation of assets. But they are still substantial sums and this was a cynical and deliberate breach of the court's orders for which Mr Pugachev continued to deny responsibility and for which he has expressed no regret. The Applicants have been prejudiced by this breach by the dissipation of assets that they thought were protected and would be available for the enforcement of any judgment against Mr Pugachev. Again, his attempts to blame his solicitors for entering into correspondence with Hogan Lovells which he knew was a charade show his continued disregard for court orders. I can think of no mitigating factor in respect of this breach. I consider that a sentence of 24 months imprisonment is appropriate for this breach. If Mr Pugachev were to bring a sum equivalent to the proceeds of the sale of the two cars (£87,000 and £115,000) into court or into Hogan Lovells' control, he would be able to seek a reduction of this sentence.

30. **Allegation B5: disposal of the BIT claim: paragraphs 154 to 167 of the Liability Judgment** I found that Mr Pugachev had been involved in the replacement of the trustees of the WRT in July 2015 by Maru Ltd and shortly afterward with the conclusion of the funding agreement whereby he disposed of a proportion of his future BIT claim proceeds in return for an immediate payment of $800,000 and a promise of future funding. Mr Pugachev did not accept at the hearing that this funding agreement was a breach of the Return Date Freezing Order. Certainly he has not expressed any regret or acknowledged that there has been any wrong-doing on his part. In his letter to me Mr Pugachev says that he entered into the funding agreement in desperation and to keep King & Spalding as his lawyers so that they could continue to help him respond to the court's orders. Again I consider that this would have had more force as a point in mitigation if Mr Pugachev had responded to questions about the funding agreement in a straight forward and honest manner.

31. Mr Smith told me that although the Bank had initially regarded this as a very serious infringement, in fact King & Spalding have repaid the $800,000 they received into a bank account held by the relevant New Zealand trust where it is frozen by an order of the court. He also fairly makes the point that it appears that legal advisers were involved in the drawing up of the funding agreement and Mr Pugachev may have been relying on them to alert him to whether the agreement was permissible or not. It also appears that the money was all intended to be used to pay legitimate legal expenses in pursuing Mr Pugachev's BIT claim.

32. This breach is therefore less serious than the other disposal breaches – although to some extent that is fortuitous rather than something for which Mr Pugachev can take credit. I consider a sentence of 3 months' imprisonment is appropriate.

33. These four disposal breaches are unconnected with each other and the sentences should be regarded as running consecutively although of course they will ultimately be subject to the two year overall maximum. Mr Smith pointed out that in some contempt cases all breaches of a freezing order have been sentenced with concurrent sentences even though they occurred at different times and related to different assets. Mr Smith referred me to the passage in Archbold (2016 edition) which states in paragraph 5-588 that consecutive terms should not be imposed for offences which arise out of the same transaction or incident whether or not they arise out of precisely the same facts. I do not consider that these incidents are sufficiently closely linked to mean that the sentences should be concurrent. Each of them relates to different assets and each of them must have involved Mr Pugachev in making separate arrangements with different groups of people to get the duplicate car registration certificates; to transfer the money owed to Luxury Investments to Luxury Consulting and then spend it, to sell the shares in Petrovka-Rent and to replace the trustees of the New Zealand trust and draw up the funding agreement. In my judgment in a case where a freezing order is in force for a substantial period of time and covers a range of different assets, it is important that the defendant realises that he will face punishment for each occasion on which he decides to breach the order and not that he should believe that once he has dissipated some assets there is nothing to be lost by dissipating more later because he will only face concurrent sentences in respect of breaches of the same order.

Failure to comply with the search and seizure orders

34. There were two breaches in this category, Mr Pugachev's failure to deliver up his iPad and mobile phone and his delay in delivering up the passwords to his email accounts. I regard these as akin to breaches of disclosure orders since the provisions in the relevant orders were intended to support his obligation to disclose what has happened to the Pugachev Assets.

35. **Allegation C1: failure to deliver up iPad and mobile phone: paragraphs 168 to 179 of the Liability Judgment.** Mr Pugachev did not admit these breaches or express any regret. Rather in his evidence before me he made up a version of events that was inconsistent with what he had said earlier about these items. These were deliberate breaches of the order for which only Mr Pugachev is to blame. Mr Smith put this contempt in the category of the most serious breaches and urged me to impose the maximum or close to the maximum sentence. He referred me to the case of *Alfa Laval Tumba AB and others v Separator Spares* [2009] EWHC 1387 (Ch) as the closest case he could find but the facts there were really very different from these in many respects.

Mr Smith submitted that this was a very serious breach because the Bank suspects that there had been material on these devices which Mr Pugachev wished to keep from the Bank and that the Applicants' search for Mr Pugachev's hidden wealth has in that respect been thwarted.

36. I do not accept that it would be right to approach this breach on the assumption that there was material lost because of the failure to deliver up these devices. No such allegation was made and what has emerged from the evidence in these proceedings is that Mr Pugachev has a large number of advisers working for him on all his projects and businesses. That may make it unlikely that there were documents on those devices that were not duplicated anywhere else. In my judgment the correct approach is to assume in Mr Pugachev's favour as a mitigating factor that there were no documents on either device that would have added materially to the information. I am prepared also to assume that the devices no longer exist or are no longer in his possession so that the sentence for this breach is purely a punitive one rather than a coercive one.

37. However I do accept Mr Smith's submission that the seriousness of the breach is aggravated by the untruthful evidence that Mr Pugachev gave on various occasions and his failure thereby to admit this breach.

38. A sentence of 4 months imprisonment is appropriate.

39. **Allegation C2: delay in handing over the passwords: paragraphs 180 to 185 of the Liability Judgment.** I regard Mr Pugachev's attempt to blame his lawyers for not explaining the order to him or failing to hand over the passwords without recourse to him as aggravating his refusal to accept that he has done anything wrong in this regard. However, the passwords were handed over after a short delay and I accept for the purposes of sentencing that there was no interference with the content of the password protected accounts in the interim. I consider a sentence of 3 weeks imprisonment is appropriate for this breach.

40. As these two breaches were committed around the same time and were both part of Mr Pugachev's initial response to the search orders, I will direct that those two sentences run concurrently.

Failures in disclosure relating to the EPK/Basterre monies

41. **Allegation D3: failure to provide information about EPK/Basterre monies: paragraphs 207 to 215 of the Liability Judgment and Allegation E1, false evidence about the EPK/Basterre monies: paragraphs 216 to 232 of the Liability Judgment** I found in the Liability Judgment that Mr Pugachev had failed to set out to the best of his ability what happened to the $146.7 million that was transferred from Devecom Ltd to Basterre Ltd in his 11th and 12th affidavits. I also found that Mr Pugachev lied in his evidence on this subject when he was cross-examined about it before Hildyard J. I regard these as serious contempts because this is one of the few parcels of money that the Applicants have been able to identify as being paid to Mr Pugachev (or to someone on his behalf) since he left Russia and they are understandably anxious to pursue it. The Applicants are directly prejudiced by Mr Pugachev's refusal to disclose where the money is. I do not believe that his son Victor Pugachev has dissipated money that does not belong to him or that he would refuse to tell his father what had happened to the money if Mr Pugachev made it clear that he really wanted to know and not that he

preferred his son to refuse to tell him. Mr Pugachev has not admitted any wrongdoing and these are serious and deliberate breaches for which he is wholly responsible.

42. In his letter to me yesterday Mr Pugachev stressed the amount of information he has in fact given during his cross-examination before Hildyard J and in his written evidence and the money and time that he has spent on advisers to help him do this. I have fully recognised that factor in my decisions in relation the allegations that I found were not proven in relation to the Safelight and Creative monies. The submissions are no answer to the much more limited finding of breach that I made in relation to the EPK/Basterre monies.

43. These are breaches which Mr Pugachev could, even now, remedy by finally providing details of where the money is. I will impose a prison sentence of 20 months imprisonment in respect of each of these two breaches, to run concurrently.

False evidence as to lack of funds

44. **Allegation E4: false evidence about lack of funds: paragraphs 241 to 245 of the Liability Judgment.** Mr Pugachev gave false evidence before Hildyard J when applying for the return of his passport on 2 April 2015. He knew by that date that the substantial euro and sterling sums from the Hediard proceeds had been paid into Luxury Consulting's bank accounts and that he was going to use those monies, not the money in the French bank account, to pay his ongoing expenses. It was not true that he risked losing legal representation because he had no means to pay his legal fees and it was not true that he was reliant on his wife's money to support the family.

45. Mr Smith drew my attention to the decision of the Court of Appeal in *R v Jeffrey Archer* [2002] EWCA Crim 1996 where the Court dismissed an appeal against a sentence of 4 years' imprisonment for a serious case of perverting the course of justice. The Court stated

> "63. In our judgment, there are many factors to be considered when determining the appropriate level of sentence for perjury and related offences. We have already indicated that there is not, in our judgment, any distinction as to the level of sentence to be drawn according to whether the proceedings contaminated were of a civil or criminal nature. Perjury may be comparatively trivial in relation to criminal proceedings or very serious in relation to civil proceedings. No doubt whether the proceedings were civil or criminal is one of the factors proper to be considered. There are many others. We do not purport to give an exhaustive list. They include the number of offences committed; the timescale over which they are committed; whether they are planned or spontaneous; whether they are persisted in; whether the lies which are told or the fabrications which are embarked upon have any actual impact on the proceedings in question; whether the activities of the defendant draw in others; what the relationship is between others who are drawn in and the defendant. …"

46. In this case I take into account the fact that the conduct relied on in support of this allegation was evidence given on a single occasion rather than a prolonged course of

conduct as in the *Archer* case. But there is no doubt that it was a deliberate and cynical attempt to obtain the indulgence of the court for the return of his passport. The fact that Hildyard J was not persuaded by Mr Pugachev's false portrayal of himself as desperately short of cash meant that the lies did not, in the event, affect the course of proceedings. Mr Pugachev did not attempt to involve anyone else in his deception. I consider a sentence of 10 months imprisonment to be the appropriate sentence for this offence.

Conclusion

47. I have set out the sentences that I would impose for the different breaches as if each incident were being considered separately. I have also indicated where the sentences for some breaches should run concurrently. I have considered how I would apply the totality principle to ensure that the total sentence for all 12 findings of contempt would reflect all the offending behaviour in a way which is just and proportionate. The totality principle was described by Mustill LJ in *S & A Conversions Ltd & Others* (1988) 4 BCC 384, 387 in the following terms:

> "This label denotes a rule of common sense, that sentencing is not an exercise to be performed mechanically. True it is that the sentencer who is called on to deal with a series of offences should first seek to hit upon the appropriate sentence for each offence, and should then ask himself whether in principle the individual sentences should be so expressed as to involve in each instance a real addition to the time spent in custody, rather than being compressed into a set of concurrent sentences, with only the longest having any practical effect on the outcome for the offender. But this is not the end of the exercise. There then comes the time when the sentencer must stand back from the proceedings, and put them in perspective, in order to see whether logic should yield to a broader concept of proportionality between the time which the offender has to spend in prison and the wrongfulness of his conduct. In many cases, of course, the sentencer will rightly conclude that the sentences should indeed be made to operate consecutively. But in others it may be seen that to multiply an appropriate single sentence by the number of offences yields a total time to be served which is simply too long, having regard to the true wickedness of what the offender has done. In such an event, the sentencer must do his best to arrive at a suitable global figure, and then arrive at it either by reducing the individual sentences whilst keeping them consecutive, or making some or all of them take effect concurrently."

48. In my judgment, applying the totality principle to Mr Pugachev's conduct would not lead to a reduction of the sentence to one below the statutory maximum of two years. The sentence imposed by the court on Mr Pugachev for the 12 findings of contempt is therefore two years imprisonment.

49. I have considered also whether there is anything further I should say about how much of that sentence should be regarded as punitive and how much as coercive, beyond the few comments I have made above. I do not think there is. In his letter of 10 February,

Mr Pugachev states forcefully that he is not a criminal in any way and that there must be some form of punishment other than imprisonment that would be more correct and would allow him to defend his rights. "A sentence of prison time for things that cannot be fixed now is simply a sanction to warn others, but that cannot undo what is done". He says that he has not stolen any money and has not disrespected the court by trying not to participate like some others have done.

50. His submissions that what is done cannot be undone does not, of course, mean that punishment is not appropriate. If a court is considering in future an application by Mr Pugachev to purge one or more of the contempts I have found by, for example, returning to the jurisdiction, making good the assets he has dissipated, or disclosing further information about the EPK/Basterre money that would mean that the court is facing a very different situation from the one facing me. It will be up to that court to decide, having regard to Mr Pugachev's overall behaviour at that stage, whether any reduction in the overall sentence is warranted.

51. I summarise my conclusions as follows:

Allegation A1: he failed to deliver up his French passport in breach of paragraph 1(2) of the Ex Parte Passport Order **Sentence of 21 days imprisonment**

Allegation A2: he left the jurisdiction in breach of the court-imposed travel restriction in breach of paragraph 4(a) of the Hildyard Order **Sentence of 8 months imprisonment to run concurrently with Allegation A3**

Allegation A3: he failed to identify and deliver up further travel documents in breach of paragraph 1(2) of the Ex Parte Passport Order, paragraph 1(2) of the Return Date Passport Order and paragraph 3(d) of the Rose Order **Sentence of 8 months imprisonment to run concurrently with Allegation A2**

Allegation B1: he procured and/or permitted the transfer of shares in LLC Petrovka-Rent held by Limebury Investments Ltd to another company in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order **Sentence of 12 months imprisonment**

Allegation B3: he dealt with the proceeds of sale of Financiere Hediard in breach of paragraphs 2(1), 2(2), 2(3) and/or 2(4) of the Return Date Freezing Order **Sentence of 24 months imprisonment**

Allegation B4: he sold two motor cars in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order **Sentence of 24 months imprisonment**

Allegation B5: he disposed of part of the proceeds of any recoveries from his Bilateral Investment Treaty arbitration claim in breach of paragraphs 2(1), 2(2) and/or 2(3) of the Return Date Freezing Order **Sentence of 3 months imprisonment**

Allegation C1: he failed to deliver up mobile devices, namely an iPad and a mobile phone in breach of paragraph 19 of the Ex Parte Search Order and/or paragraph 4 of the Search Protocol Order **Sentence of 4 months imprisonment to run concurrently with Allegation C2**

Allegation C2: he failed to provide passwords to email accounts in breach of paragraph 20(1) of the Ex Parte Search Order and/or paragraph 1 of the Return Date Search Order. **Sentence of 3 weeks imprisonment to run concurrently with Allegation C1**

Allegation D3: he failed to set out to the best of his ability and having made all reasonable enquiries what happened to $146.7 million transferred from Devecom Ltd to Basterre Business Corporation in breach of paragraph 1(d) of the Rose Order **Sentence of 20 months imprisonment to run concurrently with Allegation E1**

Allegation E1: he gave false evidence in respect of EPK and Basterre having no honest belief that it was true. **Sentence of 20 months imprisonment to run concurrently with Allegation D3**

Allegation E4: he gave false evidence in respect of his impecuniosity during his submissions to Hildyard J during his cross-examination and as confirmed in his fifth affidavit when he had no honest belief that it was true. **Sentence of 10 months imprisonment**

COSTS

52. I also heard submissions on the question of costs. Three issues arise.

53. The first is whether I should order Mr Pugachev to pay the whole of the Applicants' costs for the contempt proceedings or whether I should make a reduction to reflect the fact that the Applicants were unsuccessful in respect of 5 of the 17 allegations they made. Mr Smith submitted that the Bank was clearly the successful party and that there was no justification for depriving them of their costs for the whole proceedings. He referred me to the notes in the White Book and the propositions set out at pages 1429 – 1430 of the 2015 edition. He stressed particularly that there was nothing unreasonable in the Bank's decision to include the allegations which they did not manage to prove to the necessary standard.

54. Having taken into account the factors listed in the White Book I do consider that it is appropriate to make a reduction to reflect the fact that some of the allegations were not proved. I am not saying that it was unreasonable of the Bank to include the allegations, given the importance that the case law places on making sure that all allegations of contempt are brought before the court on a single occasion. That practice is generally to the benefit of the contemnor given how the maximum sentence applies. But this case was undoubtedly complicated by the multiplicity of allegations that had to be examined and there is no doubt that time and effort was spent by both sides in pursuing the allegations that I held were not made out.

55. I consider that Mr Pugachev should pay the Bank 75 per cent of their costs of the application.

56. The second issue is whether those costs should be assessed on the standard or indemnity basis. Having been referred to the well-known authorities I am satisfied that this is an appropriate case for the award of costs on the indemnity basis. That is the order usually imposed by the court in contempt cases and as I have described in the Liability Judgment and in this judgment, Mr Pugachev has not acted in a way which justifies any

departure from that salutary practice. I will therefore order that costs be assessed on the indemnity basis.

57. Finally Mr Smith asks for the payment of an interim amount. He has provided me with a schedule of costs which gives a total for all fees for the applications of just under £660,000. He asks for an interim payment of £500,000. Given that I have reduced the amount of costs they are entitled to by 25 per cent I will order an interim payment of £375,000.

58. In his submissions Mr McNutt said that Mr Pugachev has every intention of paying these costs and of paying the other outstanding costs orders. He says that one of Mr Pugachev's UK properties which is subject to the freezing order is in the course of being sold. There is a prior charge for legal fees on that property but there is plenty of equity in it to cover that charge, outstanding costs orders and any payment of costs arising from these applications. I understood him to be submitting that any order for interim payment should provide that it should be paid from the proceeds of sale directly to Hogan Lovells because Mr Pugachev does not have the cash to meet any such order without liquidating some of his assets.

59. Mr Smith and those instructing him were not aware of the proposed sale of the house in question. In these circumstances the fairest course is for me to make the order that payment should be made by a certain date but to give Mr Pugachev liberty to apply to the court to vary the order if the sale of the house goes ahead. Mr Pugachev can then present the court with proper evidence as to the sale and with an appropriate plan to safeguard the proceeds of sale so that the court can be confident before postponing the due date for payment that the proceeds of sale will be used for the purpose Mr Pugachev proposes.