Neutral Citation Number : [2015] EWHC 2931 (Ch)

IN THE HIGH COURT OF JUSTICE **Case No. 8091 of 2015**

CHANCERY DIVISION

BIRMINGHAM DISTRICT REGISTRY

The Priory Courts
33 Bull Street
Birmingham
B4 6DS

Friday, 16 October 2015

Before:
HIS HONOUR JUDGE SIMON BAKER QC (sitting as a Judge of the High Court)

BETWEEN
(1) DERMOT POWER
(2) PATRICK ALEXANDER LANNAGAN
(3) CHRISTOPHER KIM RAYMENT
(in their capacity as Joint Liquidators of Nixon & Hope Limited)

Applicants

-and-

(1) RICHARD JOSEPH HODGES
(2) ROBERT ADRIAN HODGES
(3) PARJINDER SINGH SANGHA
(4) DAVID JOHN VIZOR
(5) BENCHER LIMITED (formerly Floors 2 Go Limited)
(6) F2G RETAIL SALES LIMITED
(7) N & H IP LIMITED
(8) CLEAT AMALGAMATED HOLDINGS LIMITED (formerly Floors 2 Go Amalgamated Holdings Limited)

Respondents

Representation :
Mr James Morgan instructed by Gateley LLP appeared for the Applicants
Mr Andrew Maguire instructed by direct access appeared for the First Respondent
Mr Robert Hodges appeared in person
Mr Parjinder Sangha appeared in person
Mr David Vizor appeared in person

Hearing Dates : 30 July 2015 and 22 – 23 September 2015

JUDGMENT

ON COMMITTAL APPLICATION AGAINST
(1) RICHARD JOSEPH HODGES (2) ROBERT ADRIAN HODGES
(3) PARJINDER SINGH SANGHA (4) DAVID JOHN VIZOR

I direct that pursuant to CPR APD.6 paragraph 6.1 no tape recording shall be made of this judgment and that copies of this version shall stand as authentic and be treated as the official transcript

HIS HONOUR JUDGE SIMON BARKER QC:

Introduction

1 The Applicants on this committal application and in these proceedings are the liquidators of Nixon & Hope Limited ('N&H').

2 The Respondents are Mr Richard Joseph Hodges of Hay Wood Grange, Birmingham Road, Wroxall, Warwick, CV35 7ND ('RJH'), Mr Robert Adrian Hodges of Willow House, Chessetts Wood Road, Lapworth, Solihull, West Midlands, B94 6ES ('RAH'), Mr Parjinder Singh Sangha of 414 Warwick Road, Solihull, West Midlands, B91 1AJ ('PSS'), and Mr David John Vizor of 15 Brook Holloway, Wollescote, Stourbridge, West Midlands DY9 8XJ ('DV'). RJH, RAH, PSS and DV were at all material times, directors of N&H (they are referred to collectively as 'the Directors').

3 The Applicants allege that, amongst other things, the Directors, acting in breach of their fiduciary duties and/or misfeasantly, transferred or disposed of N&H's business and assets, tangible and intangible, to the Fifth to Eighth Respondents to these proceedings (referred to respectively as 'Bencher', 'F2GRS', 'NHIP' and 'Amalgamated', and collectively as 'the Corporate Respondents') when N&H was insolvent and for no, or no more than illusory, consideration or at an undervalue.

4 In order to progress the liquidation of N&H, and pursuant to the provisions of ss.234 – 237 Insolvency Act 1986 ('IA 1986'), the Applicants issued an application for the delivery up of N&H's books, records and documents. The Applicants were aware that the Directors had conducted aspects of N&H's business via their mobile telephones and using personal e-mail accounts and other remote storage media. By applications made without notice on 19.3.15, the Applicants sought, and were granted, freezing orders against the Directors, an order for delivery up by the Directors of N&H's books, records and documents, and orders against the Directors for disclosure of their respective user names and passwords for their e-mail and other remote storage media containing electronic documents, including e-mail communications and text messages, concerning N&H and its business. A return date was set for 1.4.15. The Directors refused to comply with the electronic disclosure order affecting their personal accounts on the ground that the disclosure order breached their human

rights because it targeted personal electronic accounts on which were stored numerous personal communications.

5 At the hearing on the return date, RJH and RAH were each represented by counsel and PSS and DV appeared as litigants in person. DV is a former solicitor but his professional background is not in litigation.

6 It was not necessary to consider the human rights point raised by the Directors because they proposed a procedure to achieve disclosure of the relevant documents utilising the services of an independent expert specialising in electronic disclosure to access and create a data bank of the relevant documents which were to be identified by reference to agreed search terms. RJH and RAH were to fund this exercise for all the Directors and an agreed form of order was put before the court.

7 The relevant terms of the order ('the Disclosure Order') are as follows :

1.5 (a) By 4pm on 15 May 2015, they[1] must provide the Applicants with a copy (both in electronic and hard copy form) of all emails, documents or any other information concerning the business, dealings, affairs or property of the Company[2] located following a reasonable search in respect of the period commencing 1 July 2011 (which is to be verified by affidavit and to be conducted by an independent agent specialising in electronic disclosure (to be nominated by the those Respondents and to be agreed by the Applicants) at those Respondents own cost) of any email accounts and/or cloud (or other) remote storage facilities which those Respondents used to conduct the business dealings and/or affairs of the Company including but not limited to:

Name	**Email Address(s)**
David Vizor	david.vizor@live.co.uk dvizor@hotmail.com
Robert Hodges	genesis25@mail.com robhodges@mac.com
Richard Hodges	richhodges@mac.com richhodges@Floors2Go.co.uk
Parjinder Singh Sangha	pssangha@yahoo.com

such search to be limited to all documents located or other information located by reference to the search terms set out in Schedule 3[3];

(b) The instructions to the nominated agent[4] (which are to be agreed with the Applicants) are to be sent to the nominated agent by 4pm on 22 April 2015.

[1] Each of the Directors
[2] Ie N&H
[3] The agreed search terms are immaterial to the committal application
[4] The independent expert

8 On 1.4.15 the parties were allowed time to negotiate a solution to the disclosure issue and the procedure which became the Disclosure Order was proposed by the Directors. They were parties to the finalisation of the language of the Disclosure Order, which was conducted by e-mail over the following week. By arrangement with the parties, the sealed order was served by the court by e-mail to all parties at about 6.30pm on 9.4.15. At all material times, the Directors were aware that the Disclosure Order was to be endorsed with a penal notice and the sealed order was so endorsed, as had been the case with the 19.3.15 order. Further, on 1.4.15, I explained the significance of a penal notice to each of the Directors, albeit that the explanation was by reference to the penal notice in the same terms on the freezing order of the same date.

9 As from 19.3.15 the Directors have been jointly and severally subject to a maximum sum (£4.58million) freezing injunction in conventional terms limiting their personal expenditure and permitting reasonable expenditure on legal advice and representation and other expenditure agreed in writing. The freezing order was continued without opposition on 1.4.15. It was implicit in the orders made on 1.4.15 that the cost of compliance with the Disclosure Order, that is the cost of the independent expert (including the cost of preparing and agreeing instructions) to be borne by the Directors, would be permitted expenditure under the freezing order if borne from their personal resources, albeit that the Applicants might reasonably require to know the source of the funds if not from the monthly allowances under the freezing injunction.

Non-compliance with the Disclosure Order

10 For the purposes of this committal application, I keep in mind that at court on 1.4.15 RJH and RAH agreed with the Applicants that the funding of compliance with the Disclosure Order by all the Directors was to be borne by RJH and RAH; and, further, that when the terms of the Disclosure Order were discussed and agreed by the Applicants with PSS and DV, which occurred after agreement had been reached with RJH and RAH, it was on the basis that RJH and RAH had proposed the terms and had agreed to fund the entire disclosure process.

11 Again, for the purposes of this committal application, I keep in mind that on 11.5.15, that is still within the ultimate deadline for disclosure, DV sent an e-mail to RAH's then solicitors, Rollingsons, which firm had taken the lead for the Directors in dealing with the Applicants' solicitors, Gateley PLC, asking whether the Applicants had agreed the terms of instructions and expressing his concern about the impending deadline under the Disclosure Order; and, on 18.6.15, that is after the expiry of the deadline under the Disclosure Order, and in response to the Applicants' complaints of non-compliance, DV offered to send every relevant e-mail from his e-mail addresses to the Applicants and to swear an affidavit confirming his compliance with the Disclosure Order. The Applicants' solicitors rejected that offer as impractical for reasons they explained in writing to DV.

12 In the event no instructions to an independent expert were agreed, no independent expert was instructed, and no disclosure was forthcoming from the Directors.

13 The correspondence between Gately and Rollingsons includes complaint by Rollingsons that the Applicants had caused some of the delay in agreement of instructions and had contributed to delay on the Directors' part by their "unhelpful attitude". On the material before me there is nothing in either of these criticisms. The reality is, as Rollingsons themselves stated in a letter dated 3.6.15, they were even then still :

"in the process of liaisng with all [Directors] regarding their ability to fund the e-disclosure agent. We are hopeful that this matter will be resolved swiftly and that the Instruction Letter can be sent to [the independent expert] by the end of the week. If not, we will contact you to seek to agree an alternative approach, and in the absence of agreement, the [Directors] will have to make an application to court".

Rollingsons alternative proposal was that the Applicants should fund compliance with the Disclosure Order. At that time, the proposed independent expert was Epiq Systems ('Epiq').

The committal application

14 On 13.7.15 the Applicants issued this committal application on the basis that the Directors had failed to comply with their respective obligations under the Disclosure Order and, in particular, (a) each of the Directors

had failed to provide the Applicants with the e-mails, documents and other information the subject of the Disclosure Order, or any such material, by 15.5.15 or at all, and (b) instructions for the independent expert had not been agreed by 22.4.15 and were never sent to Epiq. The Applicants contend that the Directors' failure to comply with the Disclosure Order was deliberate or wilful and that there is a high degree of culpability on their part.

The Directors' subsequent conduct and evidence

15 DV and PSS responded by way of witness statements dated 21-22.7.15 in substantially similar terms. They both asserted that the solicitors acting for RJH and RAH had made strenuous efforts to comply with the Disclosure Order, including agreement of instructions to the independent expert, and asserted that their compliance was out of their hands because their disclosure was to be funded by RJH and RAH. They referred to the selection of an appropriate expert taking some time and exhibited a letter from RAH's solicitor dated 15.5.15 identifying Epiq as the selected expert. On the evidence before me, there is no justifiable basis for a contention that the Applicants caused or contributed to the Directors' failure to meet the deadlines set by the Disclosure Order.

16 PSS and DV said in their evidence that at various times they received assurances from RJH and RAH that they would arrange for the necessary funds to be provided for disclosure and they acknowledge that the funds did not materialise. On that basis PSS stated that he did not breach the Disclosure Order. DV took the same position in his witness statement and also relied on his conduct chasing RAH's solicitor in May 2015 and subsequently offering to provide disclosure directly. I also keep in mind that PSS and DV were and are litigants in person; however, this is to be tempered by the fact that they are both articulate and intelligent men, PSS fulfilling the role of finance director and having an Association of Accounting Technicians qualification and DV being a former solicitor.

17 RJH responded to the committal application by an affidavit sworn on 28.7.15. First, it is to his credit that he acknowledged that he had not complied with the Disclosure Order and that he remained in breach of its terms. He tendered his unreserved apology for his breach and asked the

court to accept that the interference with the course of justice caused by his non-compliance was unintentional. The difficulty with this is that his promise to contribute to the funding of the Directors' disclosure was predicated on an event which he must have known could not be achieved within the agreed timescale. RJH's evidence was that he intended to use his 50% share of the net proceeds of sale of Wood Corner Farm, Wroxhall, Warwickshire ('Wood Corner') to fund his contribution. At 1.4.15, Wood Corner was on the market and there is said to have been an interested buyer. However, it was also let on an AST. The tenants were given notice to quit effective on 16.6.15. There was no prospect of a sale completing in time to fund compliance with the Disclosure Order. That is the correct context in which to view RJH's evidence that he did not deliberately ignore the terms of the Disclosure Order.

18 That was the state of the evidence when the committal application came before the court for hearing on 30.7.15. It will be apparent that there was no evidence at that time from RAH. RJH was represented by Mr Maguire on direct public access instruction. RAH was represented by Mr Francis intstructed by McVeighty & Co, then very recently retained by RAH. PSS and DV appeared as litigants in person. Both Mr Maguire and Mr Francis, on instructions, urged on the court that the Directors' failure to comply with the Disclosure Order had been caused by their inability to get access to funds and that as at 30.7.15 this difficulty had been overcome.

19 In addition, the Applicants had issued a summary judgment application returnable on 30.7.15 and the Directors had indicated that they wished to amend their respective Points of Defence which would result in a challenge to the proposition that N&H was insolvent at the relevant times.

20 It was common ground that a further order for disclosure ('the Further Disclosure Order') revising the timetable would not affect the issue of whether the Directors were in breach of the Disclosure Order (which RJH alone had admitted). It was also common ground that the disclosure sought should be given. The parties were allowed time to discuss the Further Disclosure Order. The upshot was that a revised timetable and procedure were agreed and specific detail as to funding was provided by RJH and RAH to the Applicants. Compliance with this arrangement would

constitute effective purging of any contempt and would be a material mitigating factor. Accordingly, the committal application was adjourned to 22.9.15 on the basis that by then (in fact by 21.8.15) the Directors would have complied with the Further Disclosure Order which was made in agreed terms on 30.7.15.

21 It is not necessary to recite the Further Disclosure Order in detail for the purposes of this committal application. There are four points to note : (1) disclosure was to involve (a) identification of relevant material by a different, cheaper, independent expert and (b) exclusion of privileged material by an independent solicitor; (2) each had provided a quote based on the Directors' estimate of work involved, the aggregate total was £48,000 to which a £6,000 contingency was to be added; (3) RJH stated that contracts were imminently to be exchanged for the sale Wood Corner with simultaneous completion from which he would provide £30,000 and RAH said that his solicitors held the proceeds of sale of a car (£14,000) and that his wife had agreed to lend him £10,000; and, (4) a timetable was agreed for the necessary steps leading to a deadline for disclosure of 21.8.15 and a fallback procedure was agreed for the Applicants to apply for a variation of the Further Disclosure Order in the event that the independent solicitor could not undertake the required review of privileged material within the price quoted. The short point is that, after consulting the independent professionals to be engaged and reviewing their respective financial positions, RJH and RAH again agreed to fund disclosure and the Directors agreed a new timetable.

22 On 28.8.15, seven days after the deadline under the Further Disclosure Order, RAH swore an affidavit in answer to the committal application. Referring to the 19.3.15 orders, RAH stated that as soon as they came to his attention (a telephone call from RJH) he made arrangements with the process server to arrange for service. As his assets were frozen, RAH also borrowed £20,000 from a friend to enable him to instruct Rollingsons and counsel for the hearing on 1.4.15. RAH said that at that time he assumed that much of that money would be available to fund disclosure and that a further £20,000 would become available imminently from the sale of Cheswood Grange; in the event, the sale completed on 8.5.15 and some £24,500 was remitted to Rollingsons. RAH accepted that there was

a delay in instructing an independent expert. He also accepted that by early May 2015 it was apparent that there were insufficient funds to pay the fees of the then selected independent expert, Epiq. RAH evidently approached his wife for a loan from her share of the proceeds of Cheswood Grange, said to be some £200,000, but she refused RAH's request. RAH's conclusion was that non-compliance "all comes down to funding, which was beyond my ability and control". RAH said that he was not advised at any time to make an application to the court to vary the Disclosure Order. He also said that after the 30.7.15 hearing he arranged for collection of all relevant devices and their delivery to the new independent expert ('IT Group') and that IT Group completed their work within the timetable set by the Further Disclosure Order.

23 Focussing on the possible consequences of a finding of contempt RAH said that although he is impecunious, he "could and would pay a substantial fine … by borrowing money" from his wife, his father, and his uncle. His wife is now supportive of RAH and has substantial funds from Cheswood Grange, his father is said to be a wealthy, semi-retired businessman living in Spain, and his uncle is said to be a successful businessman in Australia. After making enquiries during the course of the committal proceedings, Mr Maguire said that the same arrangements were available to RJH. Not unreasonably, Mr Morgan, who appears for the Applicants, made the point that a great deal of inconvenience and cost would have been saved and serious prejudice (to which I shall return) avoided if such funding had been offered before the breach if there had otherwise been a genuine commitment to complying with the Disclosure Order.

24 PSS and DV made further witness statements on 28.8.15. Their evidence drew attention to the breakdown in compliance with the Further Disclosure Order and referred to efforts being made to agree a basis for compliance with the disclosure requirement before the return date for the committal application, 22.9.15.

25 In the event disclosure was provided in the early evening on 15.9.15, but the period between 28.8.15 and 15.9.15 was not without further glitches.

The Applicants' submissions

26 Opening the committal application, Mr Morgan made nine submissions, all supported by references to evidence before the court.

27 In summary, Mr Morgan's submissions were :

(1) the Directors have a history of failing and refusing to provide information and documentation dating back at least to the administration of N&H. This is demonstrative of the Directors' mindset, namely intentional non-compliance with legal duties and orders;

(2) the timetable set on 1.4.15 by the Disclosure Order was not imposed on the Directors, it was based on their proposal for giving disclosure and was agreed on that basis. The underlying assumption was that they would not propose a funding arrangement without giving it careful thought. The outcome, based on the Directors' evidence, demonstrates that RJH and RAH were, at best, indifferent to (in the sense of recklessly careless about compliance with) the terms of the Disclosure Order when it was made. The Directors' continued failure to comply with the requirement to instruct an independent expert by 22.4.15 and failure to return to court reveals their attitude to be that of deliberate disregard;

(3) the final deadline expired on 15.5.15. By then no letter of instruction had been sent (no letter was ever sent to Epiq) and funding was not in place. This shows a high degree of culpability. The directors could and should have returned to court on their own application before 15.5.15;

(4) the relevant correspondence between the parties', effectively conducted between Rollingsons and Gateley, is consistent with and corroborates a lack of engagement on the part of the Directors and a conscious disregard of the timetable for, and of their obligations under, the Disclosure Order, even weeks after it had expired. Further, RAH's statement that he was never advised of the need to apply to the court is not to be taken as reliable given the express terms of Rollingsons 3.6.15 letter;

(5) the Directors' criticism of the Applicants as causing or contributing to delay and non-compliance with the Disclosure Order is unfounded;

(6) between 3.6.15 and service of the committal application in mid-July 2015 RJH, RAH and PSS consciously disregarded their obligations under and consciously ignored the Disclosure Order. The Applicants

concede that DV did contact them with a view to making alternative arrangements for his disclosure;

(7) the Further Disclosure Order set a new timetable again proposed by the Directors and again not followed. The result was that important documents were received four months after the deadline under the Disclosure Order causing serious prejudice (including by inhibiting the scope of the Applicants' summary judgment application which, for example, would otherwise have included a claim against F2GRS in relation to the transfer of N&H's stock at an undervalue) and significant and unnecessary additional costs, both incurred and to be incurred (e.g. by pleading amendments);

(8) inspection so far of the disclosure received on 15.9.15 has already disclosed material undermining RJH's and RAH's pleaded defences, e.g. as to their denial of any connection with F2GRS. That this would happen cannot but have been appreciated by RJH and RAH who applied to amend their Points of Defence to admit the connection but explain away its significance. The effect has been, at a minimum, to delay a summary judgment application against F2GRS. This goes to assessment of their attitude to compliance with orders including the Disclosure Order and is an aggravating factor;

(9) the provision of false information or non-disclosure, specifically the promulgation of incorrect and incomplete affidavits of assets pursuant to the freezing orders made against the Directors, caused further serious prejudice to the Applicants in the performance of their duties. The Applicants referred to the mis-spelling, and therefore incorrect identification of an offshore company, and the omission by RJH, RAH and PSS to identify companies owned by them. This also goes to assessment of their attitude to compliance with the Disclosure Order and is a further aggravating feature.

28 These submissions were amplified by express references to the evidence served in connection with the committal application. On behalf of the Applicants, Mr Morgan made clear from the outset that he wished to cross-examine each of the Directors on matters the subject of the committal application and their evidence.

The Directors' submissions

29 After hearing Mr Morgan's submissions, the Directors were offered and took an opportunity to consider their position. I explained that adverse inferences might be drawn, subject to my being satisfied to the requisite standard of proof, if they declined to be cross-examined. They did decline to submit to cross-examination. However, each of RAH, PSS and DV changed their position and admitted that they had each been in breach of the Disclosure Order and were in contempt of court. Accordingly, they sought to make submissions going to mitigation and, based on recent compliance with the disclosure obligation under the Further Disclosure Order, to purge their respective contempts of court.

RJH

30 Mr Maguire, counsel for RJH, made a number of submissions which the other Directors adopted as being equally applicable to their own positions.

31 These were that :

(1) the substantive proceedings, the freezing order and, to a lesser but not insignificant extent, the Disclosure Order have turned RJH's world upside down;

(2) the committal application is made against a person of good character with no prior experience of such proceedings;

(3) within the timetable of the Disclosure Order compliance was understood to be in hand, specifically by Rollingsons, RAH's solicitors;

(4) the breach cannot fairly be characterised as contumelious, wilful or deliberate disobedience of an order;

(5) in particular, there was no attempt to conceal assets or frustrate the Disclosure Order for some ulterior purpose, and certainly no intention to prejudice the Applicants in the exercise of their duties;

(6) rather, non-compliance with paragraph 1.5 of the Disclosure Order was the unfortunate result of a catalogue of errors or blunders;

(7) in particular, it had not been appreciated that RJH and RAH would have funding difficulties at the time when the timetable was agreed and ordered on 1.4.15;

(8) with the benefit of hindsight, it is very regrettable that the Directors did not return to court to seek a variation of the Disclosure Order extending time;

(9) in the event, the substantive requirements of the Disclosure Order have now (as of the evening of 15.9.15) been fulfilled and in that sense the contempt has been purged;

(10) turning to the purpose of committal, as the Disclosure Order has now been complied with, the coercive objective of penalising a contempt has fallen away;

(11) as to the punitive element of any sanction, the proceedings themselves (that is the committal proceedings in particular and also the freezing order and the scale of the Applicants' substantive proceedings) have been an abhorrent experience and have had and continue to have a salutary effect; and,

(12) as to the deterrent element, there are powerful mitigating circumstances in this case and there is no need to send a message to the wider business community.

32 As to RJH's individual circumstances, Mr Maguire submitted that his client is a 38 year old family man in a stable relationship with a wife and four children. He is the younger brother, by 8 years, of RAH and very much in his shadow. Unlike the others of the Directors, RJH acknowledged the breach of the Disclosure Order at the first opportunity. In so far as his failure to provide funding was causative of the contempt, he had expected that the sale of Wood Corner would proceed and had been ignorant of delays on the part of Rollingsons.

33 As to sentence, Mr Maguire submitted that RJH's mitigation is powerful and a custodial sentence would be excessive. A fine would be just and although RJH does not have funds personally to meet a significant fine, both his father and a wealthy uncle resident in Australia have provided assurances that they will fund both any fine imposed and any liability in costs. Moreover, RJH's wife, Rebecca Hodges, has also made clear that she would make available her funds from the sale of Wood Corner, when the sale completes, to assist RJH in meeting any such liabilities. Alternatively, if a custodial sanction is considered appropriate consideration should inevitably be given to suspending the sentence imposed (see the judgment of Hale LJ in Hale v Tanner [2000] 1 WLR 2377 which, although expressed to be confined to the context of family cases has been applied in commercial cases as, for example, in Prosser v

Prosser [2011] EWHC 2172 (Ch)). Even the prospect of imprisonment has already had a material effect on RJH in his home life.

34 In reply submissions, Mr Morgan acknowledged that RJH's acknowledgment of breach had been prompt, but submitted that the allegations of breach and contempt were unanswerable and, further, that over the 2 months from expiry of the deadline under the Disclosure Order to service of the committal application RJH had maintained "radio silence" and simply ignored his obligations. As to the proceedings, the freezing order and the Disclosure Order "turning his world upside down", non-disclosure of assets and belated acceptance that more than £60,000 was wrongfully taken from N&H amply justifies the measures taken. Mr Morgan submitted that the unintentional breach and powerful mitigation submissions are fatally flawed when it is borne in mind that RJH knew that Wood Corner was let on an AST and that vacant possession had to be obtained before a sale could proceed. Further, what all of this points to is a willingness to sign up to promises in the knowledge that they will not be honoured. As to the availability of funding now from RJH's father and uncle, Mr Morgan submitted that the funds could and should have been offered earlier to ensure compliance with the Disclosure Order and that that demonstrates that the order was not taken seriously.

RAH

35 RAH, who appeared as a litigant in person on 22-23.9.15, adopted Mr Maguire's eloquent and focussed submissions. He said that his personal position was identical to that of his brother, being a married family man of good character with 4 children. He drew attention to his early co-operation in arranging for service of the initial orders at the outset of the proceedings. Rollingsons had been his solicitors and he had assumed that they were actively complying with the Disclosure Order on behalf of all the Directors.

36 RAH submitted that any disobedience of the court's order had been unintentional. At all times material to the Disclosure Order RAH had relied on his solicitors, Rollingsons, to "take care of", i.e. to undertake, the disclosure exercise.

37 Although not formally in evidence, and notwithstanding that he had declined to give oral evidence, RAH sought to explain his non-compliance with the Disclosure Order between expiry of the deadline (15.5.15) and the first hearing of the committal application (30.7.15) as follows : he had taken the operational reins of the 'Floors 2 Go' business (ie the business and assets the subject of the Applicants' substantive application that had previously been carried on by N&H) and, because the operations manager had been on holiday throughout June, had been responsible for retail sales, stocks, refurbishment of stores, and 15 staff. He had driven many miles every day and worked very long hours. He had been absorbed in the business and had hardly noticed the time passing.

38 RAH said that he now knows that the instruction letter, due to be agreed and issued by 22.4.15, was not agreed until 24.6.15 (in fact the letter of instruction was agreed on 12.5.15), and that it was never sent to Epiq, the independent expert selected by the Directors at that time.

39 RAH also said that on 30.6.15 he met with the Directors and ESN solicitors, then RJH's solicitors, for the purpose of finalising the Points of Defence. DV had drafted his own pleading and, in order to achieve the deadline, RAH copied DV's Points of Defence making necessary changes, as did RJH and PSS. There had not been time to compare the Points of Defence to the Points of Claim. One unfortunate consequence had been the denial of involvement in the business of 'Floors 2 Go' and F2GRS. RAH described himself as "Mr Floors 2 Go", albeit, so he said, that that there had recently been a falling out with a business partner and that his position in the business was under challenge.

40 Overlaying all of this, these proceedings, including in particular the impact of the freezing order, had caused a temporary but total disruption of RAH's family life and a temporary estrangement from his wife.

41 RAH adopted Mr Maguire's submissions as to the appropriate approach to sanction for contempt in the circumstances of this case. As to financial penalty, his wife now fully supported him and was willing to make available her resources of up to £75,000 held in an account with Barclays

Bank; his father and uncle stood behind him as they did behind RJH both in respect of a financial penalty and costs.

42 RAH submitted that, following a discussion on the previous day with his brother, he now understood that he had been in breach of the Disclosure Order, and he submitted that he had done all that he could to assist in these proceedings and would continue so to do.

43 In reply, Mr Morgan submitted that much of his criticism of RJH in reply was equally applicable to RAH. RAH's non-disclosure of assets and belated acceptance that almost £70,000 was wrongfully taken from N&H amply justifies the measures taken against him. Mr Morgan challenged RAH's submission that he is a newcomer to significant litigation by reference to a US appellate court judgment on a $750,000 guarantee given by RAH and called upon after the insolvency in 2007 of RAH's and RJH's 62 store flooring business based in Florida; the appeal judgment records that a default judgment had been obtained after the court and RAH's own counsel had been unable to contact him. Mr Morgan drew attention to RAH's own explanation of his conduct over the course of June and July and submitted that his disregard of the order and decision to focus on the 'Floors 2 Go' business could not support unintentional breach or even indifference to the obligation to comply with court orders, but was tantamount to deliberate and flagrant breach. Mr Morgan submitted that RAH's reference to the circumstances in which he prepared and signed the statement of truth to his Points of Defence provides a further telling insight into his approach to this litigation and the rule of law, and that this point applied with equal force to RJH and PSS.

DV

44 PSS intended to adopt much of what DV wished to say and, by agreement between them, made his submissions after DV.

45 DV is a former solicitor, albeit that he had no background in litigation. He is now 60 years old and has three grown up children. He said that he was 56 when N&H was formed and he expected to work hard and contribute to the building of a substantial business in the last decade of his working life.

46 He had thought that because the process of compliance with the Disclosure Order was to be funded by RJH and RAH and orchestrated by RAH's solicitors, and was therefore completely out of his control, he was not in breach of the Disclosure Order. As the committal application had proceeded he had realised that that was not the case and he accepted that he was in breach.

47 In addition to adopting Mr Maguire's submissions, DV added the following as particular matters relevant to himself :

(1) on 1.4.15, when agreeing to the terms of the Disclosure Order, he had understood - because the Applicants' representatives had explained the proposal to him - that the Applicants were satisfied with the terms proposed by RJH and RAH and had no concerns about availability of funds or engagement of an independent expert. In short, he understood that his involvement was to be limited to providing access to his e-mail and any similar accounts;

(2) over the course of the period 1.4.15 to 15.5.15 he tried to keep abreast of developments and understood there to be an ongoing dialogue between the relevant solicitors;

(3) when the deadline loomed he did enquire about making an application to the court but he understood that an application would not be heard for some time and, more cogently, that there was a costs risk;

(4) far from having a propensity to disregard court orders, DV had complied with the delivery up and financial reporting aspects of the freezing order and had adhered to its terms;

(5) once breach was notified by Gateley, DV had sought to arrange for direct disclosure irrespective of the intrusion into his privacy or the risk of disclosure of privileged material; and,

(6) in relation to funding the disclosure exercise, subject to permission being granted, he had offered to sell his one asset, a Rolex watch.

48 DV expressed his apology to the court for breaching the Disclosure Order and "for the fact that we are here". He did not want to go to prison and if the court imposes a financial penalty he stressed that he is a man of modest means and asked for time to pay.

49 Finally, in relation to the discussion that arose during the hearing about a particular aspect of the Points of Defence (paragraph 50), which is in common form because the other Directors copied DV's draft, he wished to add that he now appreciates that the plea that the Directors are unconnected with F2GRS was "totally wrong".

50 Mr Morgan submitted that DV's belated efforts to comply with the Disclosure Order do not amount to significant mitigation or lessen his culpability because he knew that the proper course was to make an application to the court and, further, he did not make a reasonable alternative arrangement with the Applicants. Mr Morgan submitted that as a former solicitor, DV must have known that the denial at paragraph 50 of the Points of Defence which he drafted was misleading and that provides an insight into his attitude to the proceedings and to court orders.

PSS

51 PSS also adopted Mr Maguire's submissions and aligned himself with DV in that the Disclosure Order was presented to him by the Applicants' representatives as a proposal made by RJH and RAH which was acceptable to the Applicants and, he assumed, that meant that his involvement was limited to providing access to his e-mail and similar accounts.

52 PSS said that he is a member of the Association of Accounting Technicians. He is in his mid-50s, a family man who has worked hard and paid off his mortgage. He has been involved in the businesses run by RJH and RAH for 16 years working mainly on the financial side of the businesses.

53 PSS said that he has been in a state of shock since the initial freezing order of 19.3.15.

54 PSS acknowledged breaching the Disclosure Order and stressed that the breach was unintentional and out of his control. He also did not want to go to prison and if the court imposes a financial penalty he would ask for time to pay.

55 Mr Morgan submitted in reply that PSS had failed to provide any significant mitigation for his belatedly recognised contempt. For example, PSS could not pray in aid active engagement with the disclosure exercise comparable to that of DV, or indeed any active engagement at all.

Relevant principles

56 The sole purpose of the power to commit for contempt of court is to ensure that justice is done, in other words to uphold and to aid conformity with the rule of law.

57 Contempt proceedings following disobedience of or non-compliance with a court order may only be brought in furtherance of that sole purpose. They are a last resort, which does not mean that they are inappropriate as a first response to breach; where the court has seen fit to make an injunctive order, whether mandatory or prohibitory and whether interim or final, it is usual to emphasise the importance of compliance by the endorsement of a penal notice. That step gives fair warning that the consequences of breach may well be contempt proceedings. This is all the more so where the order is draconian in nature, such as a freezing order or a disclosure order made in that context.

58 Where a person knows of an order and knowingly does or fails to do an act which is prohibited or required by the order, he is in contempt. Whether or not the breach is intended or understood to be a breach does not prevent there being a contempt. It may, though, affect the consequences.

59 As foreshadowed by a penal notice, the consequences of contempt for an individual may be imprisonment or a fine or both. The maximum term of imprisonment is two years and, by reason of the provisions of s.258(2) of the Criminal Justice Act 2003, as soon as a person has served one-half of any prison term imposed for contempt, he must be released unconditionally. Thus, there is no concept of release on licence if an immediate custodial sentence is imposed. In High Court proceedings there is no limit to the level of fine that may be imposed.

60 The purposes of imposing sanctions for contempt are threefold : (1) punishment, (2) deterrence, and (3) coercion (JSC BTA Bank v Solodchenko (No. 2) [2012] 1 WLR 350 Jackson LJ [45]).

61 The punitive element addresses the nature and gravity of the breach itself. The court will have regard to all relevant aggravating and mitigating factors.

62 The deterrence element, in the context of breach of an order, reflects the public interest in ensuring that orders are complied with and, thereby, made effective. Where a draconian order has been made there is a strong public interest in its policing and enforcement; it is important that the court does, and is seen to be doing, all that it can to ensure the efficacy of the order (JSC BTA Bank v Ablayazov (No. 7) [2012] 1 WLR 1988, Gross LJ at [33] and [48] with whom Moses LJ and Sir Andrew Morritt C agreed).

63 The coercive purpose, to encourage compliance and, thereby, purging of the contempt, is central to the objective of upholding the rule of law. Since the coming into force of the Contempt of Court Act 1981 the prospect of a stubborn contemnor languishing (if that was ever possible) in prison for an indeterminate period of, potentially, many years has gone. Any sentence must be for a fixed term not exceeding two years. However, for many contemnors, the experience of prison is sufficient to bring about a desire to comply with the order and purge, or atone for, the breach. A contemnor has an unqualified and continuing right to apply to the court to purge the contempt and seek an order for immediate release.

64 In Solodchenko (No.2) Jackson LJ, with whose judgment Lord Neuberger MR and Carnwath LJ agreed, reviewed and summarised the authorities on contempt for breach of freezing and related disclosure orders. At [51] Jackson LJ summarised their import as follows :

> "What they all show collectively is that any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year".

65 Jackson LJ gave guidance (at [55] to [57]) on the approach to sentencing for civil contempt consisting of non-compliance with disclosure provisions of a freezing order. That Guidance was applied by the Court of Appeal in JSC BTA Bank v Ablayazov (No. 8) [2013] 1 WLR 1331 at [102] to [109]. Jackson LJ's guidance was in summary :

(1) a substantial breach of a freezing order merits condign punishment;

(2) condign punishment normally means imprisonment. However, there may be circumstances where a substantial fine is sufficient, for example if the contempt is purged and relevant assets recovered;

(3) continuing failure to disclose information engages consideration of a long sentence, possibly the maximum two years for the coercive purpose;

(4) where a breach is continuing, fairness may require the court to identify the portion of the sentence that is punishment and the portion that is coercive and might be remitted in the event of prompt and full compliance; and,

(5) when passing the sentence, the court does not have regard to the actual time likely to be spent in prison.

66 The substantive decision in Solodchenko (No.2) was to allow an appeal from a decision of Proudman J who had not imposed any sanction other than costs on the contemnor, a Mr Kythreotis, a Cyprus based British lawyer who provided corporate nominee services, for breach of a disclosure order because the hearing before her proceeded on the basis that at that point Mr Kythreotis had in fact provided disclosure and thereby purged his contempt. That turned out not to be the case, hence JSC BTA's appeal.

67 At first instance[5], Proudman J gave guidance by way of a checklist of factors a judge should take into account for sentencing purposes which include :

- whether another party to proceedings is prejudiced by virtue of the contempt and whether that prejudice is capable of remedy;
- the extent to which the contemnor has acted under pressure;

[5] [2010] EWHC 2843 (Ch)

- whether the breach of the order or the contempt in the face of the court was deliberate or unintentional;
- the degree of culpability;
- whether the contemnor was placed in breach by reason of the conduct of others;
- whether the contemnor appreciated the seriousness of the breach;
- whether the contemnor has cooperated, and if so, at what stage and to what extent;
- whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea, and if so what, if any, reduction should be applied to the appropriate sentence;
- whether the contemnor has made a sincere apology for his contempt;
- the contemnor's previous character and antecedents;
- any personal mitigation advanced on the contemnor's behalf.

68 It is relevant to note and bear in mind that, in the context of sentencing for crimes, reductions or discounts are available for acceptance of guilt at the earliest opportunity of up to 33% (or 20% where the case is overwhelming), and that, depending upon the circumstances, acknowledgment of guilt, even after a trial has begun, may attract a 10% discount on sentence, see Rv Carew [2015] EWCA Crim 437.

69 If the appropriate sanction for a proven or admitted contempt is a custodial sentence, the court should first decide upon the appropriate term. Having decided upon sentence, and as noted above as part of Mr Maguire's submissions, the court should then consider whether the sentence should be suspended. A feature of suspending a sentence is that either or both of the coercive and deterrent purposes may be emphasised, at least over the period of suspension. Suspension may be for up to two years, but is not usually more than 18 months where the prison sentence is 12 months or less. If a custodial sentence is suspended it is also essential to specify the terms of the suspension.

70 As the alleged contempts are now admitted by all the Directors, it is necessary only to remind myself that the burden of proof rests on the Applicants and that the standard of proof is the criminal standard (that is proof beyond reasonable doubt or so that I am sure) only in the context of

finding and weighing facts which may tend to aggravate any sentence to be imposed. This standard applies equally to the drawing of inferences adverse to the alleged contemnor in committal applications.

Decision and Sentence

71 I start by noting two very important circumstances (1) each of the Directors now admits his respective breach and that he is in contempt, and (2) it is said by the Directors and, for present purposes, accepted by the Applicants, that the Disclosure Order has, belatedly, been complied with.

72 The second circumstance effectively overtakes the need to consider the imposition of a coercive sentence to encourage compliance. That inevitably has a lightening effect on the appropriate sentence.

73 The guidance from the JSC BTA contempt litigation is very helpful, however there is a significant factual difference between the position of the Directors and that of the defendants in the JSC BTA litigation. Those defendants are careful to remain outside the reach of the English courts and spare little or no expense on their representation; in contrast, the Directors are not seeking to defend the litigation from a safe haven and three of them are litigants in person today and the fourth, although very ably represented by experienced and highly skilled counsel, is not also represented by an instructing solicitor.

74 The fact that the Disclosure Order is not itself embodied in a freezing order is of no significance; in the litigation before me, both the freezing order and the Disclosure Order are part and parcel of the Applicants' efforts to recover N&H's assets which are alleged to have been unlawfully transferred out of N&H by or at the behest of the Directors. Moreover, the Disclosure Order was only necessary because the Directors chose to conduct aspects of N&H's business and affairs relating to the disposal of its business and assets using their personal e-mail accounts and other personal communication media.

75 There is a clear distinction to be drawn between the position of PSS and DV on the one hand and RJH and RAH on the other as to culpability.

Each of the Directors' positions has differentiating features and I express my conclusions individually.

DV

76 DV's case has the least aggravating features and the best mitigation. He can genuinely say that, to an extent though not entirely, he was placed in breach by reason of the conduct of others because the funding and structure of the disclosure exercise was presented to him as a fait accompli. In addition, DV was alive to and raised the need to apply to the court as non-compliance became probable and, shortly after expiry of the Disclosure Order's deadline, he sought to make an arrangement, albeit one that was not viable, with the Applicants through Gateleys. All of that, together with DV's good character, is significant mitigation. Also to his credit, albeit to a limited extent, is his eventual acknowledgment of breach of the Disclosure Order and the sincerity of his apology. Against that, I accept Mr Morgan's submissions as to serious prejudice caused by non-compliance with the Disclosure Order. DV cannot be said to have acted under pressure and he must have appreciated from his knowledge of the running of N&H's business and the dealings with its business and assets in the face of insolvency that the disclosure being sought by the Applicants was very important either to exonerate the Directors and exculpate the Corporate Respondents or to confirm and make good the Applicants' allegations.

77 DV's equivalent of a guilty plea was genuine and is deserving of recognition. Taken in the round, DV's conduct reveals a degree of indifference to compliance with the Disclosure Order which cannot be excused as entirely unintentional, however I am satisfied that this application has had a salutary effect on DV.

78 In these circumstances, a custodial sentence would be inappropriate. In DV's case, it would be an excessive punishment and is not required in his case as a deterrent either in the public interest or to encourage compliance with future orders that might be obtained by the Applicants or the statutory tasks of the Official Receiver. A modest fine of £2,000 reduced by a 10% discount to £1,800 coupled with a costs order, i.e. an

order requiring him to make a modest contribution to the Applicants' costs of this application, is a just sanction for DV's contempt.

PSS

79 PSS's starting position is similar to that of DV. His mitigation is less strong because he neither raised the question of an application to the court nor attempted to make direct arrangements with the Applicants. He too is of good character and I accept that this application has had a salutary effect on PSS. However, the aggravating features applicable to DV apply also to PSS together with the further aggravating feature of failure to engage with the Applicants or Gateley during or after the expiry of the Disclosure Order deadline.

80 For PSS also, a custodial sentence would be an inappropriate sanction. PSS's lack of engagement is an aggravating feature which should be reflected in the level of the fine. A higher, but still modest, fine of £5,000 similarly reduced by 10% to £4,500 coupled with an appropriate costs order is a just sanction for PSS's contempt.

RJH

81 RJH's and RAH's contempts are in an altogether different category from those of DV and PSS. True it is that all four were directors of N&H and that the Disclosure Order was aimed equally at the Directors requiring them provide disclosure to enable the Applicants to access information about N&H's business and affairs conducted through the Directors' personal email accounts and other personal communication media. However, RJH and RAH took the lead in formulating and proposing a disclosure process which became embodied in the Disclosure Order. They were legally advised at the time and it was they who were in a position to formulate a viable proposal, including as to funding. There is no evidence that they were unaware of their respective financial positions, indeed following the granting of the freezing injunction on 19.3.15 they cannot but have been acutely aware of their own financial circumstances. It is an open question whether third party funding from their father and/or uncle was or might have been available to ensure compliance, but the evidence does not suggest that it was either sought or contemplated.

82 Accordingly, my starting point is that it is an irrefutable fact that RJH (1) was not in a position to contribute to the funding of compliance with the Disclosure Order on the terms that he and RAH proposed and (2) had no realistic basis for believing or thinking otherwise. The evidence is that neither RJH nor RAH was to bear the full funding cost. I reject as utterly untenable and fanciful the submission that RJH's breach was unintentional or the result of a catalogue of errors or blunders. In my judgment, it was deliberate and it reveals a conscious disregard of the court's order and the rule of law.

83 Proceeding on the basis that disclosure has now been given does eliminate the need to consider the coercive purpose. However, the circumstances of eventual compliance do not provide much in the way of mitigation because the Further Disclosure Order, setting another timetable proposed by RJH and RAH was also flouted.

84 An example of what has resulted from the delay to the disclosure exercise is that the Applicants have been delayed in establishing their case against F2GRS by some four months and that is, as Mr Morgan has submitted, serious prejudice. In the context of this committal application it is an aggravating feature made all the more so by the circumstances of RJH's (and RAH's) plea as to lack of involvement with F2GRS in the Points of Defence.

85 Mr Maguire made telling mitigation points in RJH's favour, in particular his good character, his acceptance that he was in contempt at the first opportunity and his unreserved apology for his contempt. I also accept that to an extent this litigation, and the freezing injunction in particular, have had a significant impact on RJH's personal life but there is no evidence that "his world has been turned upside down". I attach very little weight to the submission that RJH is very much RAH's younger brother in so far as that is intended to imply that he is subordinate and defers to RAH on all matters; there is not one word about that in the written evidence; had RJH submitted to cross-examination the point would have been explored and it might have become evidence in his favour but, at best, it amounts to no more than a vague submission.

86 I accept that, as for DV and PSS, this application is likely to have had a salutary effect on RJH, and it may have been instrumental in bringing about eventual compliance with the Disclosure Order, but the plain fact is that it has been necessary and is an entirely proportionate response to the Directors' non-compliance with the Disclosure Order and to RJH's and RAH's contumelious attitude to that and the subsequent order.

87 RJH has put forward a proposal for funding payment of a substantial fine and costs. I take that in the way that it is intended, not as an attempt to buy off a prison sentence but as the provision of an assurance that a substantial fine is capable of being met without undermining the Applicants' recourse to recovery from RJH's assets to the extent that their claim succeeds (and it has been admitted in part). However, a fine is not an appropriate sanction for RJH's conduct.

88 Had it been necessary to coerce RJH into compliance, and before taking into account a reduction or discount for early admission of contempt, I would have imposed a sanction of 12 months imprisonment, broken down as six months for coercion, and six months for punishment and deterrence. The coercive element has fallen away which leaves a term of six months.

89 In relation to deterrence, I reject Mr Maguire's submission that it is not necessary to send a message to the business community and that there is no private interest in deterrence in this litigation. There is a strong public interest in the enforcement of orders made to aid office holders, including the Official Receiver and liquidators; that is a message which should be relayed to the business community via cases such as this; and, there is a private deterrent interest in this litigation of checking RJH's (and, for that matter, RAH's) deliberate disregard of orders. As has been demonstrated in this case, such conduct leads to delay and other serious prejudice. In my judgment, it is necessary to bring the concept of adherence to the rule of law, which includes compliance with court orders, to the foreground of RJH's outlook.

90 Even though it may be said that a finding of breach of the Disclosure Order was inevitable and reduced credit should be given for so doing at an early opportunity, it is appropriate to reduce the six months sentence in order to reflect the early recognition of responsibility and unreserved apology. For my part I consider a two month reduction to four months, rather than a one month reduction appropriate. The effect of s.258(2) of the Criminal Justice Act 2003 is that the period to be served is two months following which RJH will be entitled to be released unconditionally.

RAH

91 RAH's case is the more serious of the Hodges brothers. There are features which distinguish his position from that of his brother.

92 First, having regard to all the evidence and to RAH's submissions, I am in no doubt that RAH regarded his obligations under the Disclosure Order as being of trivial, if any, importance. This is well demonstrated by his own explanation of why he failed to comply with the initial deadlines under the Disclosure Order and of why he failed to take any steps in relation to the Disclosure Order in the weeks that followed. It was his own submission that from late May onwards he devoted his energies to running of the new "Floors 2 Go" business for, as he explained it, his own benefit (or that of himself and a business partner). This is revealing of RAH's attitude to these proceedings in general and the Disclosure Order in particular. This marks RAH out from the others of the Directors, including RJH.

93 Secondly, unlike RJH, RAH maintained that he was not in breach until a late stage in the committal hearing.

94 In my judgment, the first of the factors is an aggravating feature warranting an uplift in sentence for RAH over that for RJH. That said, the aggravation is matched by the appropriate, lesser, discount for belatedly accepting responsibility.

95 RAH's evidence and submission that funding was "beyond [his] ability and control" is untenable, as was RJH's similar evidence. By this, RAH reveals himself as a person who does not give thought to his ability to keep his

word, rather he is prepared to say whatever is necessary to achieve his personal objective or to serve his personal ends.

96 Overall, and after allowing a discount for RAH's late acceptance of breach, the appropriate sanction is a sentence of imprisonment for six months. The effect of s.258(2) of the Criminal Justice Act 2003 is that the period to be served is three months following which RAH will be entitled to be released unconditionally.

Immediate or suspended custody

97 Having decided that imprisonment is the appropriate sanction for RJH's and RAH's contempts, I must consider whether each sentence needs to be immediate or whether it may be suspended.

98 There are two reasons why, on this occasion, suspension is appropriate.

99 First, both the liquidation of N&H and the litigation are ongoing. It is not in the interests of the liquidation of N&H that RJH and RAH are out of circulation. For example, RJH is to attend for examination by the Official Receiver on 3.12.15. Further, and no less importantly, the Applicants' proceedings would be further delayed and the trial presently scheduled for April 2016 would be jeopardised if RJH and RAH were to be indisposed for two / three months respectively.

100 Secondly, suspension on this occasion may be utilised to emphasise deterrent element in sanctioning contempt of court, which is in both the public interest and the private interests of this litigation.

101 The conditions for activation of the sentence are either (1) breach of an order affecting the individual (RAH or RJH) endorsed with a penal notice made on an application by the liquidators of N&H (or any of them) in their capacity as liquidator(s), whether in these proceedings or other proceedings or (2) breach of any of the obligations as a former officer of N&H under s.235(2) of the Insolvency Act 1986 (which are (a) to give the Official Receiver or the liquidators (or any of them) such information concerning N&H and its promotion, formation, business, dealings, affairs or property as the Official Receiver or liquidators (or any of them) may

reasonably require and (b) to attend on the Official Receiver or liquidators (or any of them) at such times as the latter may reasonably require). The conditions will run for a period of 18 months.

102 The start date for the 18 months suspension is today and the end date is 15.4.17.

103 The public interest in enforcing orders made to aid officers of the court, which is the position of the Applicants and the Official Receiver, will be served as will the public interest in encouraging co-operation with office holders in the performance of their duties; and, the inevitable consequence of another breach – the clang of the prison door for a past contempt – will not be lost on RAH and RJH and should serve the private interests of deterrence.

104 Of course, should there be another breach, the first objective of suspending the sentences will be thwarted, but that is a necessary consequence of the just determination of this application.

105 As a footnote I add that, very recently, I have been informed that without prejudice discussions involving all parties aimed at resolving the Applicants' claims in their entirety, on the basis of no admissions as to liability, are at an advanced stage. The relevance of this is that RJH and RAH are engaging with the legal process, or, at least, with the process of legitimately avoiding the legal process. If a further reason for suspension were needed, this might also have weighed in the balance.