

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION
BRISTOL DISTRICT REGISTRY

Bristol Civil and Family Justice Centre,
Redcliff Street,
Bristol. BS1 6GR

Before:

HIS HONOUR JUDGE WILDBLOOD QC
Sitting as a Judge of the High Court

Between:

Karen Jayne Hart **Applicant**

- and -

John Ralph Hart **1st Respondent**

-and-

Brondesbury Limited **2nd Respondent**

-and-

Susan Byrne **3rd Respondent**

-and-

Halesowen Estates Limited **4th Respondent**

Peter Mitchell (instructed by Irwin Mitchell LLP) for the Applicant

Grant Armstrong (instructed by The Law Practice) appeared for each of the Respondents

Sentencing remarks of HHJ Wildblood QC, dated 15th March 2018

HHJ Wildblood QC:

1. On 23rd February 2018 I found that Mr Hart had acted in serious contempt of this court within divorce proceedings. It now falls to me to sentence him for that contempt. The proceedings before me also extend to allegations of contempt against Mr Hart's sister, Susan Byrne and a company that Mr Hart controls through his sister, Halesowen Estates Limited. However, it has been necessary to adjourn the proceedings relating to Mrs Byrne and that company; there is no suggestion that I should adjourn this exercise until conclusion of the proceedings relating to those others and I accept that there is no reason to do so.
2. The issues that led to this hearing arise in the aftermath of divorce proceedings in which I found that Mr and Mrs Hart had total wealth of £9.375 million pounds. Thus, they are rich and privileged people. In a judgment and order dated 25th June 2015, I divided their wealth as to 38%, or about £3.5 million, to Mrs Hart with the balance remaining with Mr Hart. As part of the provision that I ordered in favour of Mrs Hart within the proceedings, I directed that shares held for Mr Hart in a company called Drakestown Properties Limited should be transferred to her. The shares have been transferred to her and so she is now the owner of that company. The company, which owns two estates of industrial units in the West Midlands, amounted to a substantial part of the wealth that Mrs Hart was to have as a result of my order. The management of the company by Mrs Hart should have been simple but Mr Hart has done his utmost to frustrate her ability to run it efficiently and effectively.
3. In the judgment of 25th June 2015 I explained why I considered Mr Hart had been an irresponsible litigant and an unsatisfactory witness within the substantive divorce proceedings. I said that *'Mr Hart treats corporate and trust assets as though they were his own'* - that remains the position now and he bitterly resents that Drakestown Properties Limited has been transferred to his former wife. I found that Mr Hart had ceased making interim maintenance provision for Mrs Hart without any justification and was £92,229 in arrears. I said that Mr Hart filed evidence that was *'thoroughly unsatisfactory and often contradictory'*. I found that he chose to provide as little information as possible about the family trust, which is worth about £5.5 million, and treated that trust as if every penny were his own money. I said that Mr Hart's *'approach to disclosure has been very poor indeed. His evidence about past events has been under-researched by him and, at times, his approach has been deliberately obstructive'*.
4. Overall, I said that *'during the hearing Mr Hart was polite and, at times, refreshingly humorous but as a witness he was a disaster'*. I described him as a fit 80-year-old who plays racket ball frequently, remains alert and canny in his property dealings but, I said, *'the resources, past and present, of Mr Hart have been very difficult to identify as a result of Mr Hart's lack of proper engagement in these proceedings'*.
5. Within the order of 25th June 2015 Mr Hart gave an undertaking *'to take all steps necessary (including, for the avoidance of doubt, the provision of information and documentation and the notification of third parties of the cessation of his interest in Drakestown Properties Ltd) to ensure that the Applicant is forthwith hereafter able to conduct the efficient and effective management of*

Drakestown Properties Ltd and its assets?. The order also contained a warning that, if he failed to comply with the undertaking, he would be in contempt of court and liable to be imprisoned, fined or to have his assets seized.

6. Without any justification, Mr Hart then delayed the effective transfer of Drakestown Properties Limited to Mrs Hart. It was necessary for proceedings to be taken in the Chancery Division of the High Court for Mrs Hart to gain possession of the company premises. Then, when Mr Hart and his staff finally vacated the premises they stripped out all of the management records of the company only leaving behind two bank statements and a collection of current licences and leases relating to the units that the company lets. Nobody could possibly manage the company efficiently or effectively on the basis of that information alone, as Mr Hart well knew.
7. Therefore, it was necessary for Mrs Hart to take further proceedings to force Mr Hart to provide information that was essential to the running of the company. On the 24th February 2016 an order was made by me for him to provide information; that order was made following an earlier application by Mrs Hart, dated 1st October 2015, to commit Mr Hart. He did not produce the documentation that he was directed to produce by the order of 24th February 2016, despite the fact that he had specifically consented to the terms of the order. As a consequence, the case had to return to court and, on 29th July 2016, a further order was made for Mr Hart to provide information. The order of 29th July 2016 specifically recorded Mr Hart's confirmation that 'the documents [that he was ordered to provide] were available and could be provided'. Mr Hart did not provide that information as ordered either. The orders of 24th February 2016 and 29th July 2016 contained penal notices – that is warnings that failure to comply with the orders would render Mr Hart in contempt of court and liable to imprisonment, a fine or the seizure of his assets.
8. So it was that in September 2016, 18 months ago, Mrs Hart applied for Mr Hart's committal. It has taken a great deal of time for these proceedings to be concluded. There was a hearing in March 2017 for which Mr Hart did not prepare properly. The case had to be adjourned and a list of documents was drawn up by Mrs Hart's barrister on the basis that, if Mr Hart produced that information, the committal hearing would not proceed further. Mr Hart did not produce that information and so, eventually, the case came back before me in February of this year and I found Mr Hart to be in contempt.
9. The effect on Mrs Hart of Mr Hart's contempt has been profound. She has not been able to file full accounts for the company and those accounts that she has filed have had to bear a caveat that they have not been based on full information. She has been unable to deal with insurance claims relating to subsidence at the company premises. She has not been able to defend a claim to rates, leading to the company having to bear a significant liability. She has had great difficulty filing VAT returns. None of that should have occurred and, if Mr Hart had done what he was supposed to do, none of it would have occurred.

10. Yesterday, without any prior notification to me, an issue was raised when I first came into court following a letter that had been sent by Mrs Hart's solicitor to Mr Hart's solicitors on 9th March 2018. The letter put forward proposals from Mrs Hart saying that they were *'in a final attempt to compromise these committal proceedings and our set aside application'*. The proposals would have conferred significantly greater financial benefits on Mrs Hart than those which arose from the substantive order. Although, initially, there was disagreement about whether I should see the letter (and I heard arguments about 'unambiguous impropriety' forming the basis upon which without prejudice material should be before the court) it was eventually agreed that I should see it. It was contended that its contents showed that Mrs Hart's motivation in bringing these contempt proceedings has been to secure further financial advantage only rather than information. I have not heard that issue litigated on evidence but on the face of the document, without ruling on the contentions about unambiguous impropriety and on the basis of my now lengthy involvement in this case:
- i) I do not accept that Mrs Hart has been motivated solely by a wish to secure financial advantage when pursuing these committal proceedings. She has needed the information that has been sought and the pursuit of that information has been her primary motivation. I am the author of the orders directing Mr Hart to produce the information, not Mrs Hart. I said this about Mr and Mrs Hart in paragraph two of the February judgment: *'He is an exceptionally poor and untruthful witness. Mrs Hart is at the opposite end of the spectrum of veracity. She is reliable and truthful; she has also been exceptionally patient with Mr Hart in these proceedings.'*
 - ii) The position as at the time of the letter is that some information has been given. That is very different to the position when these committal proceedings started. She could not have run the business effectively or efficiently on the basis of the information that Mr Hart provided (i.e. two bank statements and the current licences).
 - iii) This offer came on 9th March 2018, some 18 months after these committal proceedings were started.
 - iv) There has been a very extensive examination indeed about the need for Mrs Hart to have the information that she has sought. I now have twelve lever arch files and two smaller files of material. I have heard eight days of this committal hearing. That is what it has taken to obtain the still only partial information that Mr Hart has eventually produced.
11. I wish to stress that every effort has been made by me and also, I have already found in February 2018, by Mrs Hart and her legal team to avoid having to bring this contempt hearing to this crisis point. I emphasised to Mr Hart in the clearest possible terms in March 2017 (a year ago) that he had an opportunity then to produce the information that he had been ordered to produce. I also warned him that, if he did not take that final chance of many to produce the information, I would be driven to sentence him for any contempt that I found against him. I had given him previous

warnings to the like effect. Therefore, this is a man who has received repeated warnings already that he must comply with court orders and he has chosen, repeatedly, not to do so.

12. In February of this year I said this:

- i) *I am satisfied so that I am sure that Mrs Hart has proved with ease that Mr Hart has acted in contemptuous disregard of the undertaking that is recorded in the substantive order and of the orders dated 24th February 2016 and 29th July 2016 as set out in the tables above. I have no doubt at all that Mr Hart has had it in his power to produce the information that he has been required to give and to remedy the contempt that he has committed. He has chosen not to do so. It is not for me to try to guess where the records are now.*
- ii) *As to the level of contempt I find:*
 - a) *Mr Hart's contempt was persistent and continued from the time of his undertaking to the time of the committal application. Since that application he has only remedied his contempt in part.*
 - b) *During the course of his oral evidence in March 2017 and February 2018 he gave untruthful evidence on many issues in an attempt to conceal his contempt.*
 - c) *He has shown no remorse about his failure to comply with his undertaking or with the two enforcement orders.*
 - d) *His contempt has been motivated by a wish to demonstrate his resentment against Mrs Hart about the financial orders that were made in these proceedings in her favour. He has sought, deliberately, to obstruct her in the efficient running of the company.*
 - e) *His contemptuous actions have brought very significant pressure and expense upon Mrs Hart, as he intended they should.*
- iii) *Within the context of financial proceedings therefore, I regard Mr Hart's contempt as extremely serious. I give forewarning that my current very clear opinion is that a substantial and immediate sentence must be imposed either by way of a significant term of imprisonment, a significant financial penalty or both'.*

13. Referring to the factors identified in the case of *Crystal Mews Ltd v Metterick and Others* [2005] EWHC 3087 (Ch) I find:

- i) Mrs Hart has been seriously prejudiced by Mr Hart's actions.
- ii) Mr Hart has not acted under pressure. He acted out of a wish to put Mrs Hart under pressure due to his dissatisfaction with the outcome of the substantive proceedings.
- iii) His breaches were deliberate and sustained.
- iv) The breaches lie at a high level of culpability. They are persistent, damaging, motivated, continuing in part and bear no remorse at all from him. Those are each serious aggravating factors in my judgment. In the language of section

143 of The Criminal Justice Act 2003, his contempt has caused deliberate financial and emotional harm to Mrs Hart.

- v) He is solely responsible for the breaches that he has committed. Whether his sister and Halesowen Estates Ltd share that culpability, and if so to what extent, will have to be determined on another occasion. Any guilt that they might bear does not detract from Mr Hart's.
- vi) He has not co-operated in these enforcement proceedings and does not appear to recognise the seriousness of what he has done.

14. Balanced against those aggravating factors I take into account the following mitigating factors:

- i) Mr Hart is a man who has no criminal convictions recorded against him. In criminal proceedings he would be described as a man of good character.
- ii) A prison sentence will have a very marked effect on him.
- iii) Mr Hart is now aged 83 and nobody wants to see a man of that age going to prison unless it is genuinely necessary.
- iv) Mr Hart has been a successful businessman and has contributed to society through the businesses that he has run and the employment that he has provided for others. I also take into account the contribution to society that he has made on a much wider scale as set out in the letters at pages p370-374 of the bundle that was handed to me in court, yesterday.
- v) The effect of these proceedings is that Mr Hart has not only lost some of the money which he holds so dear, but he has also experienced the loss of his relationship with his former wife and children. From the upbeat, proud and canny business man that I first saw three years ago, he is now an isolated and sad man seemingly unable to enjoy for his remaining years the millions of pounds that he still owns.
- vi) He also suffers from ill-health, including a requirement for monitoring of his prostate cancer. I have taken into account the contents of the letter of 8th March 2018 that is written by Mr Alan Doherty.
- vii) Since the hearing in February he has produced bank statements that appear to make good the deficiencies within the banking information of which I spoke in paragraphs 72 and 73 of the February judgment (the unexplained £150,000). That information was provided on the first morning of this sentencing hearing without any forewarning to me in the second lever arch file of documents. Mr Mitchell had no opportunity to check it properly before it was handed in but I could not delay the sentencing because of it. I therefore take it that the information that has now been provided does fill this particular gap in the

documentation provided by Mr Hart. However: a) that does not detract from the fact that the information should have been provided far earlier; b) the finding that I made was not there was £150,000 elsewhere in an account – the finding was that the documentation did not explain what had become of this sum of money and c) this issue was raised in the hearing in March 2017 and it has taken a year since then for the current documentation to be provided. For the purposes of this exercise I accept that Mr Hart was not himself responsible for the original redaction of the information but it did remain his responsibility to comply with the court's orders and his own undertaking. Further, on the overall scale of Mr Hart's contempt, I regard this as a factor of limited significance where there have been multifaceted breaches in relation to so much other information and documentation. It is a small amount of water in a very large lake.

- viii) He has agreed to pay the substantial costs of Mrs Hart in these committal proceedings. Those costs are said by Mrs Hart to be about £100,000.
15. I also bear in mind, in accordance with sentencing policy, the desirability if at all possible of keeping offenders, and in particular first-time offenders like Mr Hart, out of prison and that any term of imprisonment should be as short as possible, having regard to the circumstances of the case.
 16. Mr Hart, so serious are these acts of contempt that only a sentence of imprisonment is justified. Having reflected on the contempt that you have committed I have concluded that a financial penalty would be wholly inadequate. Having given you so much opportunity to remedy your breaches, there would be no justification at all for a suspension of the inevitable prison sentence that I must now impose, as I warned you in March 2017 – a year ago. Orders of the court and the rule of law must be observed.
 17. The sentence that I impose must reflect two different parts. First, that you must be punished for your past breaches of the undertaking and of the two orders. That is, you must be sentenced for three separate breaches. Second, the sentence must have a coercive element because you remain in breach of your undertaking and of the order of 24th February 2016. Thus, the second purpose of the sentence is to coerce you to comply with the undertaking and the order of 24th February 2016, even now, so that you might make reparation to your victim, Karen Hart, by providing her with the information that she needs. The sentence that I impose will reflect both parts of the necessary sentencing exercise that I have to conduct. It is not alleged that there is any relevant continuing breach of the order of 29th July 2016 and therefore, breaches of that order do not bear a coercive element in sentencing.
 18. The information that is still outstanding is set out in the judgment of 23rd February 2018. However, in light of some of the submissions that I have heard at this sentencing hearing I wish to list the specific documents that I identified within that judgment as having still not been produced by you. They are:
 - i) Computerised company records [paragraphs 7(vii) and 71].

- ii) Written ledger books [paragraphs 7(vii), 34 and 86].
- iii) Invoices relating to VAT inputs and outputs [paragraphs 7 (vii) and 83 (iii)].
- iv) Previous (i.e. 'old') licences and leases [paragraphs 18, 19 and 34]. In paragraph 34 I said: *'the suggestion that historic licences and leases were not kept is risibly untrue – of course they were kept as essential company records'*. They were not left by you in Unit 55.
- v) Details of inter-company liabilities [paragraph 19].
- vi) Rental invoices [paragraph 34].
- vii) Documentation relating to creditors and debtors [paragraphs 34 and 35].
- viii) Full documentation to explain how the alleged debt of £1.638m was made up [paragraph 48].
- ix) Documentation that would allow the company to evaluate and defend the action by Sandwell Council for rates [paragraph 70].
- x) Details of past insurance policies. In paragraph 83(iv) of the judgment I said: *'The letter from Irwin Mitchell to Mr Hart at 3-1232 deals with the subsidence claim and sets out three categories of documents that were sought from Mr Hart in relation to it - i) detailed copies of maintenance records since 2006; ii) details of any previous subsidence claims; and iii) the previous policy inception date. The same enquiries were made of Mrs Byrne - 3-1239. The information has not been provided'*.
- xi) Notices to tenants [paragraph 86].

19. That is important documentation and information that you have chosen not to produce. It was for those reasons that, in the tables that I produced in the judgment of 23rd February 2018, I found that there was a continuing multi-faceted breach of the undertaking (see paragraph 91). It is also why, in paragraph 89, I found that there were continuing breaches of the order dated 24th February 2016 as summarised in paragraphs:

- i) 10 (i).
- ii) 10 (ii).
- iii) 10 (iii) in part.
- iv) 10 (iv) in part.

- v) 10 (xvi) – where ‘yes’ should have been qualified by ‘but only in part’ and I amend it accordingly.
- vi) 10 (xvii) - where ‘yes’ should have been qualified by ‘but only in part’ and I amend it accordingly.

20. In his speech in mitigation Mr Armstrong submitted that it was apparent that there were no further documents that you could produce because, if there were such documents, there would have been no point in you withholding them now. I reject that argument for the following main reasons:

- i) Right from the start, there was no logical reason or legal justification for you to withhold documentation and information. However, you did so.
- ii) In the judgment I specifically rejected many of your explanations as to why you have not produced documents and information (e.g. a) because they were not retained (old licences); b) they were left in Unit 55; c) they cannot be found, etc).
- iii) I found, specifically, that the documents could and should have been produced. I said: *‘It is and always has been entirely within Mr Hart’s power to provide the information which has been sought and ordered. He has simply chosen not to do so’* – paragraph 7 (viii).
- iv) I found that you have shown no remorse for your contempt and you have *‘been motivated by a wish to demonstrate your resentment against Mrs Hart about the financial orders that were made in these proceedings in her favour. You have sought, deliberately, to obstruct her in the efficient running of the company’*. That lack of remorse and that motivation remain.

21. In paragraph 94 of the judgment of 23rd February 2018 I said: *‘Within the context of financial proceedings I therefore regard Mr Hart’s contempt as extremely serious’*. I meant it.

22. The sentence that I impose is one of a total of 14 months imprisonment. That sentence is made up as follows:

	Punitive element	Additional coercive element
Undertaking	9 months	5 months
Order of 24 th February 2016	9 months	5 months
Order of 29 th July 2016	9 months	No coercive element

23. The sentences on each of the breaches will run concurrently but the coercive elements will be additional to the punitive elements on each relevant breach, bringing the total to 14 months. Having given a great deal of thought to this sentencing exercise, I consider that, if the coercive element that I have ordered does not produce the outstanding information in the circumstances that you now find yourself, a longer sentence would not either.

24. You will serve one half of that sentence in prison in accordance with section 258(2) of The Criminal Justice Act 2003. You are entitled to apply to purge your contempt; your lawyers must give you detailed advice as to how you might go about doing so.

25. Finally, having expressed the sentence, I wish to observe this. Although these parties have funded their own legal costs from the assets that they have, the courts in which this unnecessarily protracted litigation has been fought out for the past 6 ½ years and all those working within it (including myself) are funded from the public purse. This case has placed an immense burden on limited public funds, a burden that will continue now as a result of your incarceration.

HHJ Wildblood QC
Sitting as a Judge of the High Court.
15th March 2018