Neutral Citation Number: [2019] EWHC 1281 (Ch)

Case No: IL-2018-000199

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21/05/2019

Before :

MR JUSTICE MANN

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Between :

(1) JUUL LABS, INC
(2) JUUL LABS UK LIMITED — **Claimants**

- and -
(1) QUICKJUUL LIMITED
(previously QUICK XUUL LIMITED and QUICK JUUL LIMITED)
(2) LINDA MCVEIGH
(3) NICHOLAS JASON JUUL
(AKA NICHOLAS JASON PLACE)
(4) GARY WILSON
(5) CAXESS CORPORATION — **Defendants**

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Mr Tom Moody-Stuart (instructed by **Pinsent Masons LLP**) for the **Claimants**
Mr Nicholas Towers (instructed by **Hodge Jones & Allen Solicitors**) for the **Fourth Defendant**

Hearing dates: 16th April 2019

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Judgment Approved by the court for handing down (subject to editorial corrections)

Mr Justice Mann :

1. This is an application, within a trade mark and passing off action, by the claimants to commit Mr Gary Wilson, the fourth defendant in these proceedings, to prison for breach of an order of Snowden J dated 3rd December 2018. By that order Mr Wilson, who was the registered owner of a domain name and website, was ordered to sign specified documents in order to transfer the website to the claimants and to take down the website in the following terms:

> "Transfer of ownership
>
> 4. the Fourth Defendant and the Fifth Defendant must immediately and in any event within 24 hours of the time of service by email of this order upon them (the "Time Period"):
>
> (a) instruct the transfer of ownership and control of the domain name quickjuul.com (the "Domain Name") to the Second Claimant by signing and returning to the Claimants' solicitors the letter marked A attached to this order by email to CTJuulEnforcement@PinsentMasons.com; and
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> (b) instruct the take-down of all content on www.quickjuul.com by signing and returning the letter marked B attached to this order and sending this by email to CTJuulEnforcement@PinsentMasons.com."

2. The purpose of that provision was so that the claimants' solicitors could present the letters to the registrar of the domain name and the hosting company of the website in order to achieve the transfer and closing down. A backup provision in the order catered for the possibility that the letters would not be signed by providing authority for the Master to sign them so that the documents thus signed could be used for the same purpose. That order was validly served by email in accordance with its terms. After the numbered paragraphs of the order there was a provision dealing with service, and it provided that it could be served on Mr Wilson and the fifth defendant at two email addresses, one of which was gary@ninjatech.com ("the ninjatech email address"). That was an address from which a lot of prior correspondence with the claimants and their solicitors had emanated and it was believed to be that of Mr Wilson. Snowden J was satisfied that that service order was appropriate in place of the usually required personal service. It has not been challenged; so the order must be taken to have been validly served for the purposes of this application.

3. The order was not complied with, and indeed steps were taken to obstruct its implementation by signature by the Master of the relevant documents. That led to the initiation of these committal proceedings on 14th December 2018, in which I myself gave directions. The full hearing came before me on 16th January 2019. Mr Wilson did not attend. An application notice purportedly in his name had sought an adjournment of the hearing, and I adjourned that application to the hearing itself. Mr Wilson did not attend, and the application notice was probably not genuinely Mr Wilson's. On 17th January 2019 I delivered a judgment on liability, reserving sentence. I found Mr Wilson to have been guilty of serious, flagrant and contumacious breaches of the order and (at the invitation of the claimants) adjourned the matter for sentencing, issuing a bench warrant for Mr Wilson's arrest. That judgment ([2019] EWHC 59) shows how the matter appeared at that time, should it be necessary to understand the procedural background as to how matters arrived at Mr Wilson's engagement with these proceedings. I make it clear that the findings against Mr Wilson do not stand for these purposes (though the documents containing evidence of the flagrancy, as referred to in that judgment, were non-controversial so far as their contents were concerned), and indeed the flagrancy findings were not propounded as such by the claimants in the final form of the application.

4. At the request of Mr Moody-Stuart QC, who appeared then (as now) for the claimants I did not proceed to sentencing, but adjourned sentencing to 24th January, and I ordered Mr Wilson to be arrested under a bench warrant. The police were informed of the bench warrant and their turning up at Mr Wilson's door seems to have got his attention. On 24th January 2019 he attended court with counsel to explain himself. On that occasion, represented by solicitors and through counsel, he asserted that he did not know of the proceedings, the Snowden J order or the committal proceedings until he found out about the order after the attempt to arrest him. Shortly before the hearing the claimants had received an email from the third defendant, Jason Juul ("Jason"), providing certain codes which it was said the claimants could use to render the domain and website into their name and control. They sought to do that, and thought they had achieved it, but shortly afterwards it transpired that it was not sufficient to enable them to retain control and the website was transferred away again, as appears below.

5. At the hearing on 24th January I recalled the bench warrant to give Mr Wilson an opportunity to put his case on ignorance at a further hearing, for which I gave directions. Unfortunately he parted company with his solicitors before that further hearing and appeared in person on the next occasion. On that occasion Mr Wilson advanced a case for setting aside the findings of contempt as being findings made at a trial in his absence. His case was that he did not know anything about the committal proceedings or the order until January 2019. I delivered judgment on 8th March when I found, narrowly that he had established a good reason for not attending and that he had an arguable basis for challenging my flagrancy findings but not my findings of contempt. He had, on any footing, not complied with a validly made order so there was at least a technical contempt. Reference to that (unreported) judgment can be made as to the basis of my determination as to what Mr Wilson did and did not know, but bearing in mind that not all of my findings in that judgment were made to the criminal standard they cannot, so far as Mr Wilson's knowledge and attitude are concerned, be relied on in the final form

of the committal application and I have (so far as relevant) to determine them again to that higher standard.

6. Faced with that decision, the claimants decided that they would not wish to re-run the case against Mr Wilson so far as the original, allegedly flagrant, aspects were concerned, and would confine themselves to other matters – basically the technical failure to comply, and the knowing nature of that non-compliance since 21st January or thereabouts. In order that it should be clear what it was they were now relying on, I directed that they serve a statement of facts which would define the points still in issue. The proceedings were adjourned in order to allow Mr Wilson to consider the point and get legal aid and legal representation. Fortunately he has now managed to do that and he has been ably represented by Mr Nicholas Towers.

7. The Statement of Facts was directed to be served on 12th March 2019. I had directed it be served by "close of business" on that day. Because of what I am told was an error by the couriers, it was not delivered until 8.44 pm. Mr Towers drew attention to that fact, and said that bearing in mind that this was a committal application with Mr Wilson's liberty at risk, the claimants should have made sure the order was complied with. He did not say that the hearing should not proceed, but in his skeleton argument he invited me to make a formal statement of the court's disapproval of that failing. All I will say is that the failing was unfortunate, but it does not seem to have caused any prejudice whatsoever. It is not worth spending any time on that particular failing, as Mr Towers conceded at the hearing, and so far as necessary I waive it.

8. The case now relied on by the claimants in their statement of facts does not have any of the seriously aggravating factors that I had found in my first judgment, and the claimant now relies on the following matters, in outline:

(a) Even before 21 January 2019, Mr Wilson was aware that he had some involvement in the proceedings and was wilfully blind as to it.

(b) Despite the fact that he must have known, by 21 January 2019 at the latest, that he was obliged to sign the two forms of letters, he did not sign until 26 February 2019. He did not take opportunities to sign in the intervening period and was (according to the claimants) deliberately evasive and obstructive. These are the material breaches relied on.

(c) Because of his tardiness in signing the letters, other persons were able to reverse the transfer of the domain name to the claimants and to procure its vesting elsewhere.

(d) Mr Wilson has still not given a full and frank explanation of the use of the ninjatech email address which was ostensibly his, and which was used in his

name in earlier communications about this matter and which he denies using. Furthermore, he has not taken any steps to get control of that address.

(e) He was slow to identify the person responsible for using his name and only identified that person (Jason) in cross examination on his application to discharge my original findings. Furthermore, he allowed Jason to provide him with irrelevant and argumentative material in a witness statement which he then disavowed in cross-examination.

(f) He was evasive and implausible in cross-examination and was not cooperative with the court or the claimants; nor has he been full and frank in his disclosures.

(g) Despite being made aware of complaints made in his name to the SRA about Pinsent Masons, he has not made any efforts to withdraw those complaints on the basis that they were not made by him. This point was not pursued at the hearing.

(h) He has not apologised to the court or to the claimants or demonstrated any real contrition.

9. Mr Towers did not resist the approach of dealing with the allegations in the statements of fact at the hearing of the committal application and in particular did not insist that these were somehow separate breaches arising after the initial committal application which required fresh committal proceedings. He was content, on behalf of his client, to deal with the matters procedurally in the manner in which they were actually dealt with. It was therefore proper to continue to proceed down the route down which this application travelled. Were it necessary to have done so, I would have waived the need for a fresh committal application. All the safeguards built into the procedures for committal were available to Mr Wilson. The statement of facts was in substance the content of a fresh or amended committal application.

10. In order to deal with those matters I need to set out and find some more facts and to go back to when Mr Wilson first says he found out about the order made against him. Since this is a committal application any relevant facts relied on by the applicant have to be established beyond reasonable doubt, and I have applied that standard in making my findings. In truth most of the relevant facts, other than Mr Wilson's state of mind and intentions, were not disputed. I make these findings principally on the basis of two affidavits (his 5th and 6th) sworn by Christopher Sharp, solicitor to the claimants, on evidence given by Mr Wilson in a witness statement (dated 12th April) provided in connection with the final committal hearing and his cross-examination on that evidence, and to a limited degree on his oral evidence when he applied to have the initial contempt findings set aside and on his cross-examination on this final committal hearing. Mr Towers expressly told me that he did not wish to rely on any prior witness statements or affidavits signed or sworn by Mr Wilson because he did not want to rely on material which Jason Juul had probably had a hand in. After the hearing Mr Wilson swore a further affidavit dated 18th April 2019 (previously available to the court in unsworn form) and another dated 15th May 2019, the introduction of each of which was not opposed by the claimants, and each of which I have taken into account as well.

11. Prior to 21st January 2019 Mr Wilson was aware that he was somehow involved in an action which also involved the first defendant. He may not have known of his full involvement, and I am unable to find beyond reasonable doubt that he knew, at that time, that there was an order which required him to do something. However, by 21st January 2019 Mr Wilson knew at least of the application. He was alerted to the need to attend court when a neighbour told him that the police had been to his house and were looking for him. They were looking to arrest him pursuant to the bench warrant that I had ordered to be issued. He did not wish to surrender himself to the police and spend a night or nights in the cells so he did not do so. His evidence at the 8th March hearing was that he spoke to Jason, who told him there was an order against him. At one stage in his evidence he suggested that he knew only that he was required to attend court, but at another he accepted that he knew he had failed to comply with an order which required him to sign two letters. I find, beyond reasonable doubt, that having spoken to Jason he knew about the order and what it required. If it was not Mr Wilson who was accessing the email accounts to which the orders were sent, then it must, on the available evidence, have been Jason. That is how Jason will have been able to tell Mr Wilson that there was an order against him and it is inconceivable that Jason would not tell him the nature of the order. Jason is an old friend or associate of Mr Wilson. He told me they met in prison and formed their association there, and there are periods now when he seems or contacts him daily. He is far from being a casual acquaintance; he seems now to be a fairly close associate. I also find that Mr Wilson knew the order was to do with the case of which he had some knowledge.

12. Mr Wilson then went to consult Rustem Guardian, who were apparently Jason's solicitors, and they represented him at the hearing on 24th January. They must have found out about the order (they did not seem in a state of ignorance at the hearing) and I find that they told Mr Wilson about it and what was required under it. While I think there can be no doubt that Mr Wilson knew about the content of the order by 21st January, it is even plainer that he knew what it required by 24th January.

13. He did not sign the required documents at that stage. Because the claimants had been given to understand, before the 24th January hearing, that they would be given the codes (and indeed had been given them) which they believed would give them control of the website, there seems to have been no further request on that day for Mr Wilson to comply with the order by signing the relevant letters. However, by the next day, 25th January, it appeared that the apparent transfer of the domain name and website had been reversed by the registrar because of what the registrar in Malaysia said was "a sudden inconsistency of updates". On that day Pinsent Mason wrote to Rustem Guardian pointing out that the order had required the signature of letters and urging Mr Wilson to ensure that the transfer of the domain name was completed without further delay. I infer and find that those solicitors would have informed Mr Wilson fairly promptly about that.

14. No steps were taken to that end, and the signed documents were not produced. It became apparent a couple of weeks later that on 26th January the registrant details for

the domain name were redacted for privacy. I am invited to infer that that was on a change of ownership. That is quite conceivable, but one cannot be certain about that. What is clear is that when eventually Mr Wilson did sign the two letters, and when they were sent to the registrar in Malaysia, they were not accepted as effective, and that is likely to be because by then, if not before, he was no longer the registered owner. Nothing is likely to turn on this limited area of uncertainty.

15. On 30th January Rustem Guardian informed Pinsent Mason that they and Mr Wilson had parted company because of "professional embarrassment". Mr Wilson was due to file affidavit evidence, pursuant to directions given on 24th January, by 7th February and on 4th February he telephoned Pinsent Mason and his call was recorded in a full attendance note by Ms Emily Swithenbank of that firm. He told her he needed to do an affidavit and asked her how he could do it without a solicitor. She explained that he did not need a solicitor to draft the affidavit but he needed to get its signature witnessed in front of one. He asked if he could come to their office and do it there and she explained that that was not appropriate. He responded: "I know I just thought it would be funny." Ms Swithenbank went on to explain 12 other things about the affidavit in a conspicuously fair manner.

16. Mr Moody-Stuart QC, for the claimants, suggested that Mr Wilson's remark about it being funny if he swore the affidavit at Pinsent Masons demonstrated that he was not taking the matter particularly seriously. Having seen Mr Wilson give evidence on two occasions, and having considered his evidence, I do not think that that is a fair interpretation of what he was saying on this occasion. I think he was trying to be friendly. The fact that he was ringing for information about how to go about an affidavit, which he understood he needed to put in for the purposes of the still outstanding committal proceedings, demonstrated that he was, at least to a degree, taking the situation seriously.

17. Two days later, on 6th February 2019, Pinsent Masons wrote to Mr Wilson referring to the committal application. The letter pointed out that the order of 3 December 2018 required him to sign the letter marked A and also pointed out that he had thus far failed to comply with that provision. It was pointed out that I had found him in contempt of court for that failure. The letter pointed out that it seemed that either Mr Wilson or someone else with the capacity to do so had taken steps to disrupt the transfer and requested "as a matter of urgency" that he review the emails and confirm what was happening. The letter requested that he take steps to transfer the domain name and comply with the order and enclosed again the two letters which the order referred to. It asked that he provide the solicitors with a copy of his passport showing his signature and that he send an email from the ninjatech email address confirming that he wished to transfer the domain name. The letter ended with bold type pointing out that if he did not immediately comply with the order the claimants would submit to the court that the flagrancy of his conduct, coupled with his efforts to frustrate the 3rd December order, were a contempt which required the maximum custodial sentence.

18. On 8th February two conversations took place between Mr Wilson and Lucy Flascher of Pinsent Masons. In the first (recorded in an undisputed attendance note) Miss Flascher asked Mr Wilson to send or bring in to their offices the affidavit which he was due to file. She offered to send him the names of some local solicitors before whom he could swear the affidavit. Then she asked him if he had received the letters that she had sent two days before and he confirmed that he had. She referred to the two letters marked A and B and said they needed him to sign them and send them back when he sent in the affidavit. He asked if she wanted them together and she said yes. He indicated that he would do that. She also asked for a copy of his passport.

19. The second conversation (again recorded in an undisputed attendance note) took place 20 minutes later when Miss Flascher gave him the names of two firms of solicitors. She re-capped that they were expecting the affidavit, the two signed letters (as per the December order) and a scanned copy of his passport. Then she went on to ask him to send a confimatory email to the registrar from the ninjatech email address. She ended by saying that they looked forward to receiving the documents in the post and Mr Wilson, as it seemed, confirmed that he would do that.

20. Mr Wilson did send in a short form of affidavit (one of the documents which Mr Towers did not wish to rely on at the final hearing) and he also sent two letters bearing his signature, but they were the wrong two letters. He apparently went down to his car and added his signature and a date to a copy of a letter from Pinsent Masons to Rustem Guardian of 24 January 2019 and a letter of 24 January 2019 from Pinsent Masons to Mr Wilson enclosing a copy of my judgement and reminding him that he needed to put in evidence by 7th February; he sent those copy letters signed by him.

21. On 13 February Miss Flascher rang Mr Wilson to discuss this. Her note of the conversation (which is undisputed) pointed out that he had signed the wrong letters and said that it was important that she should explain this because until he signed the two letters that he was required to sign, he remained in contempt of court. He asked her to confirm that he had sent the "wrong bits" and, when she confirmed that, he invited her to send to him the two pieces of paper that she wanted signing and he would sign them and send them straight back. She offered to have him come into the offices to sign them that afternoon but he said getting up to the offices was hard work because he lived in Plumstead. She accepted he could do it by mail but she again flagged the seriousness of the position. She pointed out that he had been found guilty of being in contempt of court for failing to sign the letter before. She ended by telling him the nearest tube station to her office in case he wanted to come in in person.

22. Just over five minutes later Mr Wilson rang again. He asked what the letters said and she explained what they were. He went on to explain that he had never owned a website

and was happy to sign but his instructions would not be accepted. He thought that it was Ms McVeigh (the second defendant) who owned it and expressed concern that if he signed it and she were to say that he had not got authority then he would get into trouble. Miss Flascher said she could not advise on such things but asked if he could come into the offices that afternoon. He said he was going to try but he preferred it if she made it simple by sending the letters to him in the post. There was then a part of the conversation in which he said that Jason Juul seemed to have taken charge of things and the conversation ended by his suggesting that if the letters were sent to him he would bring them in the next day.

23. Although the letters were sent to him, he did not sign and return them. His witness statement provided in connection with this phase of the proceedings explained that he was told that it would not be proper for him to sign the letters so he did not. In his cross-examination he elaborated on this by saying that he spoke to Jason Juul about it and Jason told him not to sign. His evidence was that he understood Jason to be saying that because it was not in his (Jason's) interest to do so; he did not understand that he was being advised not to sign in his own (Mr Wilson's) interests. He said that he thought that Jason was going to sort it out with his (Jason's) lawyers. He also acknowledged that he had "withheld certain facts" about this (ie the instruction from Jason Juul) from his witness statement.

24. I need to make some additional findings about these events because Mr Moody-Stuart puts a particular interpretation and significance on them. He submits they are part of a pattern in which Mr Wilson knowingly put himself in further breach of the orders and obstructed their implementation. He submitted that Mr Wilson's signing and return of the wrong letters was a deliberate act in wilful disregard of what he knew to be his responsibilities in order to obstruct and delay. His evidence portrayed a false and misleading version of events. His conduct was the antithesis of the cooperation and remorse which Mr Wilson said he had demonstrated.

25. I accept those submissions. I consider that when Mr Wilson decided latterly not to return the correct form of the letters he did so knowing that he was not complying with the order (it had been explained a number of times) and that he was doing it in Jason's interests and because Jason wanted it, and not because he thought that his own interests would be better served by somehow letting someone else deal with it. He misguidedly let himself be persuaded by Jason, but in this context that is culpable conduct. It was made quite clear to him what the court order required, and I am satisfied that he knew that he was not complying with it when he did not follow through with his indication that he would deliver signed copies of the letters. I think he knew exactly what he was doing for these purposes.

26. So far as his signing and return of the wrong letters is concerned, I consider that he knew what he was doing in that he knew he was not signing the required letters. It had

been carefully explained to him what was required, and I am satisfied that his previous solicitors will inevitably have explained to him what was required of him in relation to a signature. The order and the letters were plain. For some reason, probably to achieve delay and perhaps give the impression that he was more simple than he really is, he dashed off his signature on a couple of letters which I do not believe he thought were the right letters. In the witness box he offered an explanation to the effect that he thought that the claimants just wanted his signature per se. That is completely incredible evidence. I consider that he knew what was important was his signature on the right documents and he cannot conceivably have thought that his signature on two random letters was what was required. I have already observed in a previous judgement that Mr Wilson is not a sophisticated man, but he is not as completely simple as he would have to be if I were to accept his explanation of why he signed the wrong letters.

27. I therefore find, beyond reasonable doubt, that Mr Wilson was deliberately indulging in behaviour that he knew to be obstructive of the implementation of a court order which he knew he had to comply with.

28. Thus the letters were not signed by the time of the hearing of Mr Wilson's application to set aside the committal findings. At the hearing of that matter on 26th February Mr Wilson signed the two letters in the courtroom during the hearing, expressing (as I recall) absolutely no reluctance in doing do so. However, when those letters were transmitted by the claimants to the registrar with a request to transfer ownership the request was rejected on the footing that "the registrant details you have provided are not accurate". The registrar declined to provide details of the owner. Because the owner's details have now been rendered private they cannot be ascertained from public records. The last publicly recorded owner was Mr Wilson, as at 11th January 2019.

29. The position in relation to the website is therefore that it has still not been transferred in accordance with the order of Snowden J, or indeed in accordance with a subsequent order requiring transfer made by Fancourt J on 22nd February 2019 against Jason Juul and Linda McVeigh (the second defendant) on a summary judgment application, and against Mr Wilson in default of acknowledgment of service. The "content" of the website since 18th February 2019 has varied. It has variously pointed to a site selling vaping equipment, a display of the summary judgment order, messages about non-existent pages, a Walt Disney website (by redirection), an article about the claimants, a video about the claimants (probably offensive, judging by its title) and an online petition about these proceedings. I do not consider that Mr Wilson is personally responsible for that varying content, and it was not suggested to him that he was.

30. At the hearing of this part of the committal proceedings Mr Wilson relied only on his third witness statement. As explained above, Mr Towers expressly disclaimed reliance on prior witness statements because of the likelihood that they had input form Jason Juul. There are various aspects of that witness statement with which I need to deal.

This statement was, it is to be inferred, created with the professional assistance of Mr Wilson's current solictors and/or counsel.

31. In that witness statement he sought to say that it was a "procedural error" that he was registered as owner of the website rather than Ms McVeigh, who was the intended owner. So far as it is relevant at all it would have been easier to accept that if were not for the fact that for weeks leading up to the original committal application he was deliberately put forward as the owner of the domain name and the controller of the website in the events described in my first judgment. That judgment describes communications and other matters (not now said to have been with Mr Wilson) in which Mr Wilson was clearly portrayed as the owner and operator of the domain name and the website. Someone was clearly using his name. The person putting forward that case was either Ms McVeigh herself, or (much more likely) Jason Juul (her son). That picture is completely inconsistent with the suggestion that his being the owner was a sort of residual mistaken hangover, even though it seems that Mr Wilson was not responsible for that correspondence himself.

32. In paragraph 8 Mr Wilson said that he offered to attend Pinsent Masons' office to sign the letters but he was told it would not be proper, so he did not attend. That is fundamentally inaccurate, as appears above. The accuracy of the attendance notes of the conversations between Pinsent Masons and Mr Wilson was not challenged. They show that he did not offer to attend to sign the letters, but expressed a willingness to do if he could get there, which he seems never to have attempted. He was told he could not sign his affidavit there, but that is different and in my view the difference would have been plain even to Mr Wilson. He accepted that the paragraph was not right in referring to the letters. I consider that this is at best reckless evidence, or at worst an attempt to mislead.

33. Paragraph 10 of his witness statement refers to the wrong letters that he sent back. He says there:

> "But I assume that these letters were not received by Pinsent Masons or were the wrong ones."

That is a strange thing for him to have said. He does not challenge the accuracy of the attendance notes of his conversations with Pinsent Masons, and those notes show that he was told of the mistaken letters and that they had been received. He had no answer to questions about why he "assumed" the letters had not been received. I consider that this demonstrates what he has exhibited elsewhere, which is a cavalier attitude to the matter generally.

34. On the basis of the matters set out or referred to above, I make the following findings:

(a) Mr Wilson was aware generally of these proceedings and that he had some involvement in them before 18th January 2019.
(b) I do not need to make a specific finding about his awareness of the Snowden J order prior to 18th or 21st January because the claimants do not seek to rely on any such matters prior to that date.
(c) Shortly after he became aware of his liability to be arrested he became aware of the order and that he was under obligations pursuant to that order, from both Jason Juul and from Rustem Guardian. He was certainly aware of those matters before the hearing on 24th January 2019.
(d) He did not comply with the order and did not offer to comply with it, until he expressed a willingness to sign the letters in his conversations with Miss Flascher.
(e) He did not respond to the request to sign impliedly made through Rustem Guardian , but was not pressed further until Pinsent Masons' letter of 6th February, and the conversations with Miss Flascher.
(f) Nonetheless he was in breach of the order. He had failed to sign letters which the order required him to sign.
(g) Thereafter he deliberately failed to sign the correct letters and sent back the wrong ones in a false display of innocence and ignorance.
(h) When he had the next opportunity to return the signed letters he deliberately chose not to do so because he chose to assist Jason Juul by not signing. This was a deliberate act, done knowingly, in the face of an order whose effect he had known of for some time. I consider that his reluctance to refer to his instruction from Jason Juul in his witness statement was because he knew he should not have complied with that instruction and hoped it would not emerge.

35. I also find:

(a) There was a breach of the Snowden J order when it was not complied with after it was made. An order was made, and it was properly served in accordance with its terms on an email address which was actually Mr Wilson's. However, it was not established that Mr Wilson knew of it at that stage, so any breach was technical and should not be taken into account in considering the present matter other than as background.
(b) The breach became knowing for these purposes by 21st January, and certainly by 24th January, in the sense that he knew there was an order against him which required the signature of documents.

Sentencing – the principles

36. Recent Court of Appeal decisions have given guidance as to the principles to be applied in sentencing for a committal. Although they concern different sorts of cases (one a breach of a freezing order and the other deliberate mis-statements in a document accompanied by a statement of truth) the principles still apply (with appropriate adjustments) to the present case.

37. *Sellers v Podstreshnyy* [2019] EWCA Civ 613 was a freezing order case in which Rose LJ adopted what had been said by Popplewell J in an earlier decision as summarising many of the principles applicable:

> "27. The relevant factors for the court to take into account when sentencing for breaches of a freezing order have been set out in many recent authorities of which Mr Fidler referred us to three: *Crystal Mews Limited v Metterick & Others* [2006] EWHC 3087 (Ch), *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Limited* [2015] EWHC 3748 (Comm) and *JSC Mezhdunarodniy Promyshlenniy Bank and ors v Pugachev* [2016] EWHC 258 (Ch) In *Asia Islamic* at [7] Popplewell J derived the following principles from the case law he considered:
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> "(1) In contempt cases the object of the penalty is 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 achieve.
>
> (2) In all cases it is necessary to consider (a) whether committal to prison is necessary; (b) what is the shortest time necessary for such imprisonment; (c) whether a sentence of imprisonment can be suspended; and (d) that the maximum sentence which can be imposed on any one occasion is two years.
>
> (3) A breach of a freezing order, and of the disclosure provisions which attach to a freezing order is an attack on the administration of justice which usually merits an immediate sentence of imprisonment of a not insubstantial amount.
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> (4) Where there is a continuing breach the court should consider imposing a long sentence, possibly even a maximum of two years, in order to encourage future cooperation by the contemnors.
>
> (5) In the case of a continuing breach, 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 a sentence the court might consider remitting in the event of prompt and full compliance thereafter. Any such indication would be persuasive but not binding upon a future court. If it does so, the court will keep in mind that the shorter the punitive element of the sentence, the greater the incentive for the contemnor to comply by disclosing the information required. On the other hand, there is also a public interest in requiring contemnors to serve a proper sentence for past non-compliance with court orders, even if those contemnors are in continuing

> breach. The punitive element of the sentence both punishes the contemnors and deters others from disregarding court orders.
>
> (6) The factors which may make the contempt more or less serious include those identified by Lawrence Collins J as he then was, at para.13 of the *Crystal Mews* case, namely:
>
> (a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;
>
> (b) the extent to which the contemnor has acted under pressure;
>
> (c) whether the breach of the order was deliberate or unintentional;
>
> (d) the degree of culpability;
>
> (e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;
>
> (f) whether the contemnor appreciates the seriousness of the deliberate breach;
>
> (g) whether the contemnor has co-operated;
>
> to which I would add:
>
> (h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

38. *McKendrick v Financial Conduct Authority* [2019] EWCA Civ 524 was another freezing order case. The Court of Appeal (Hamblen and Holdroyde LJJ) held:

> "39. In *LVI v Zafar* at [58] this court considered the correct approach to sentencing for a contempt of court involving a false statement verified by a statement of truth. We consider that a similar approach should be adopted when - as in this case - a court is sentencing for contempt of court of the kind which involves one or more breaches of an order of the court. The court should first consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order. In this regard, aggravating or mitigating factors which are likely to arise for consideration will often include some of those identified by Popplewell J in *Asia Islamic Trade Finance Fund* (see [32] above). Having determined the seriousness of the case, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified, even if the

> contemnor's means are so limited that the amount of the fine must be modest.
>
> 40. Breach of a court order is always serious, because it undermines the administration of justice. We therefore agree with the observations of Jackson LJ in *Solodchenko* (see [31] above) as to the inherent seriousness of a breach of a court order, and as to the likelihood that nothing other than a prison sentence will suffice to punish such a serious contempt of court. The length of that sentence will, of course, depend on all the circumstances of the case, but again we agree with the observations of Jackson LJ as to the length of sentence which may often be appropriate. Mr Underwood was correct to submit that the decision as to the length of sentence appropriate in a particular case must take into account that the maximum sentence is committal to prison for two years. However, because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum."

39. *Liverpool Victoria Insurance Company v Zafar* [2019] EWCA Civ 392 gave guidance as to the interaction between the possible penalties of a fine and prison sentence.

> " 58 … In particular, the Sentencing Council's definitive guidelines on the imposition of community and custodial sentences (see [30] above) and on reduction in sentence for a guilty plea are relevant in cases of this nature. It is therefore appropriate for a court dealing with this form of contempt of court to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the contempt of court. Having in that way determined the seriousness of the case, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified, even if the contemnor's means are so limited that the amount of the fine must be modest."

The reference to "this form of contempt" is a reference to the false statements made in the case, but in my view the remarks in that paragraph are capable of applying to the contempt in this particular case. So are the remarks about attempts to cover up the wrongdoing:

> "63. … Also relevant to the culpability of an expert witness who commits this form of contempt of court is the extent to which the witness persists in the false statement and/or resorts to other forms of misconduct in order to cover up the making of the false statement…."

Remorse and ill-health are dealt with in paragraph 65:

> "65. … In determining what is the least period of committal which properly reflects the seriousness of a contempt of court, the court must of course give due weight to matters of mitigation. An early admission of the conduct constituting the contempt of court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made. So too will cooperation with any investigation into contempt of court committed by others involved in the same proceedings or in other fraudulent claims. Where the court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account."

40. Finally, a reduction of sentence can be made for an admission (paragraph 68) and then I must consider suspension (paragraph 69).

41. I bear all those factors in mind considering the appropriate punishment in this case.

Conclusions on sentencing

42. I have found that Mr Wilson was guilty of contempt in not complying with the Snowden J order. The contempt started with a technical one for which he would not have been sentenced, but moved to a substantial one once he had sufficient knowledge to lead to his turning a blind eye to it, and then acquired knowledge of it. Furthermore, its significance for these purposes is increased by the fact that it took place in the context of what he knew to be outstanding committal proceedings. One would have thought that a genuinely remorseful respondent who had had his defaults pointed out to him, and who knew of outstanding committal proceedings would have hastened to comply. But Mr Wilson did not. He remedied the position only when he finally signed the relevant documents at the February hearing.

43. It will be useful to consider the remaining aspects of the application by reference to Popplewell J's list, before adding in the other elements appearing from the authorities.

(1) So far as coercion is concerned, the coercive element has now largely gone because Mr Wilson has belatedly signed the documents. However, the punitive element still looms large in the case, because the breach was serious. The order was an important one for the purposes of safeguarding what the court considered to be the legitimate interests of the claimants. Mr Wilson's failures have thwarted the court's objectives, whether or not the signing of the letters would have achieved what the claimants sought. That is a very serious matter which is likely to attract significant punishment.

(2) I shall postpone considering the appropriateness of prison and the length of any sentence until I have factored in the other matters which require consideration.

(3) This is not a freezing order case, and it is unnecessary to determine whether or not it is generically of a kind whose breach is automatically an assault on the administration of justice, other than to say that it is a very significant order and any wilful disobedience to an order of that general type can be seen to be such an assault. As was observed in *McKendrick* at paragraph 40, breach of a court order is always serious because it undermines the administration of justice.

(4) and (5) There is no longer a continuing breach by Mr Wilson. It may be that those who now control the domain name and website could provide that to which the claimant is entitled but that is no reason for treating this as a continuing breach which should attract a long term with a view to coercion.

(6) As to the other factors:

(a) There was an issue as to prejudice. Mr Towers suggested that there was no prejudice in this breach because there was nothing that Mr Wilson could have done in time which would have enabled the claimants to acquire the website. Others (probably Jason Juul and/or Ms McVeigh) had powers of control and disposition and they operated independently of Mr Wilson and from 26th January at the latest the website had apparently been put beyond the reach of Mr Wilson's authority. So his failure to sign since then has caused no real prejudice and his failure to sign prior to then (or at least from about 23rd January) was seen at the time to be not material because the claimants believed (as a result of information provided by Jason Juul) that they could achieve their objectives by being given some relevant codes.

I do not accept that analysis. It may well be the case that if Mr Wilson had provided the documents immediately he became aware of the order then the claimants could have made effective use of them. They may even have been able to make some use of them in the subsequent period. It may well not be without significance that Jason Juul thought it to be to his advantage on 8th February that the claimants be not given the signed letters, because he told Mr Wilson not to sign them and hand them over. It is impossible to say one way or the other that the claimants would or would not have been able to use the letters successfully, but it is possible to say that they have been deprived of the possibility that they be used. It hardly lies in Mr Wilson's mouth to say that the effect of his original delay, which might have caused prejudice, has been robbed of significance because, after that delay, others have managed to frustrate the purpose of the order. If anything that makes his conduct worse, not better. The claimants have

suffered plain and significant prejudice in not having the benefit of the order that they were supposed to have.

(b) Mr Wilson did not act under pressure. He was apparently in almost daily contact with Mr Juul (that was his general practice) but he gave no evidence of pressure. What he did he did as a result of his own independent will. When he chose to comply with the request, direction or suggestion (it matters not which) of Mr Juul that he should not sign on 8th February he did so because that was his choice. He put it down to "misguided loyalty", but it was still his free choice.

(c) The breach certainly cannot be characterised as unintentional. In the very early stages (maybe measured in hours) it may have been out of puzzlement, but it will not have taken long to realise what he ought to have been doing and his failure to do it was intentional. It can hardly be characterised as anything else.

(d) I consider that Mr Wilson bears a very significant degree of culpability. It is perhaps not as great as it would be in the case of a man who calculated that he wished, for his own worked-out purposes, not to comply and who had chosen to embark on a course of evasion and obfuscation (to take a clear case of serious culpability). Mr Wilson did not do that. I accept once more (as I have already accepted) that Mr Wilson is not a sophisticated man who would be likely to plot such a course of action, and he did not really have the motivation to do so. However, he was still a man who, on my findings, knew he ought to be doing something, and did not do it, without any good reason. His not doing it because Jason Juul said he should not do it (for Jason's own purposes) is actually a very bad reason. So he bears a real degree of culpability.

(e) He has not been placed in the present position as a result of the conduct of others. The domain name and website have been placed beyond his reach (apparently) because of the conduct of others but that is different. It was his own free will that led to his not signing the letters.

(f) I think that Mr Wilson does now appreciate the seriousness of his breach, and I consider that he will have known it, from the latest, when he instructed Rustem Guardian and then at the subsequent hearing when they represented him. Even if he did not know it then that does not detract significantly from his culpability. He ought to have realised the seriousness of the breach because he ought to have realised that court orders ought to be obeyed (and he himself, in his third witness statement, has said that he strongly disapproves of attempts to undermine a court order).

(g) I do not consider that Mr Wilson has co-operated materially until he finally signed the documents in court, a step which was in effect forced upon him by his circumstances at the time. As Mr Moody-Stuart submitted, his returning the wrong signed documents and his subsequent declining to sign and return the right documents are the antithesis of cooperation. As appears below, his solicitors have recently (since the hearing) written to Jason Juul and Ms McVeigh asking them to procure the transfer of the domain name and the website, but without success. I do not regard that as significant in this case.

(h) He has, belatedly, apologised. He started his evidence before me in this part of the proceedings with an apology. Bearing in mind how late it has come, and the circumstances in which it was given (that is to say, when he was faced with proceedings which might end up with a prison sentence) I do not consider that it

counts for much, though I do not disregard it. I think his remorse is genuine, but it is late and it has in effect been forced on him.

44. I also take into account Mr Wilson's health. He is 66 and not in the best of health. He has suffered from bladder cancer and at the time of the hearing was 2 weeks away from a hospital admission to have the remainder of it removed. He complains about bad eyesight and bad hips, though none of this was supported at the hearing by proper medical evidence.

45. In the light of his impending hospital admission and treatment I decided to defer giving judgment until after his likely discharge from hospital, which he told me would be after 3 days, or possibly as much as 10 days if there were complications. I deferred judgment until the week beginning 20th May, and directed (without objection) that Mr Wilson file a medical certificate as to his current state of health by 15th May so that I could assess how to sentence in the light of any complications in his bladder treatment (or anything else revealed by the certificate). It would have been material if, for example, there had been complications which required significant ongoing treatment.

46. I have received that certificate and a further affidavit from Mr Wilson. Neither the medical certificate letter from his GP nor his affidavit indicate that there were any complications from his operation He went in on 29th April and was apparently discharged in the same week (date unspecified), and the letter from his GP does not indicate any particular conditions, follow-ups or need for tests which would make a prison sentence inappropriate – Mr Wilson refers to a follow-up appointment but does not say when it is.

47. Mr Wilson's affidavit also goes on to deal with steps that his solicitors have taken to get Jason and Ms McVeigh to transfer the website and domain name in accordance with the December and later orders. Letters have been written to them by his solicitors. He seems to have thought that I said that if the transfers took place before delivery of my judgment then "I wouldn't have to go back to prison". (The reference to "back" to prison is a reference to the fact that he has served substantial prison sentences in the past, a fact which he never hid from me. It is where he met, and formed a relationship with, Jason Juul.) I should make it clear in this judgment that I never said any such thing. When I adjourned the matter to prepare this judgment (delayed by the medical treatment) I did refer to the fact that if the transfers had taken place it <u>might</u> have a significant effect, because the consequences of the contempt would have been undone, and that will always be of some significance, but I did not say that prison could necessarily be avoided even by that event.

48. Mr Wilson's affidavit expresses concern that I should understand that he has tried to take steps to try to get the website transferred. I accept that his solicitors wrote letters to Mr Juul and Ms McVeigh to that effect, and that those attempts have not borne fruit. Those letters strike me as being matters of form in all the circumstances. He is also concerned that the content and tone of a response from Jason Juul, which is dismissive and derogatory in its content, should not be held against him. I can tell him through this judgment that it will not be. He will be sentenced for his own failings, and not for those of others.

49. Bearing all those factors in mind, I consider that a fine is not an appropriate sanction. It is not sufficient to mark the seriousness of Mr Wilson's failings. When he became aware of the order, and in the context of outstanding committal proceedings, he still failed to comply in a manner which was culpable. He may have been driven by the desires or instructions of others, but he still has a responsibility for his own acts. I consider that only a prison sentence will suffice for that culpability on the facts of this case. Mr Moody-Stuart suggested that the right period was 16 weeks. I consider that to be too much. That length of time, and possibly rather more, would have been appropriate if Mr Wilson was more of a schemer than I consider him to have been. While he knew he was not complying with an order he ought to have been complying with, he lacked the scheming nature which would have made his breach a much worse one. I consider that a prison sentence of 2 months would be appropriate. That will be sufficient punishment for him and a sufficient mark of the court's need to have its orders obeyed. He is no stranger to prison, since he has told me (with commendable frankness) that he spent 24 years in prison over the course of his life, but he will not relish a further stay there because it will deprive him of family contact. I consider that 2 months is appropriate punishment to mark the seriousness of the shortcomings.

50. I do not consider that suspension is appropriate. It would not serve any coercive purpose, and I cannot identify any other reason why the sentence should be suspended. An immediate custodial sentence is appropriate. The sentence will therefore take effect immediately.