

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
COMPANIES AND INSOLVENCY LIST (ChD)

Case No: 357 of 2017

Wednesday, 18th December 2019

Before:
HIS HONOUR JUDGE MARK RAESIDE QC

B E T W E E N:

MICHAEL CHRISTIAN KIENLEN & MARK NICHOLAS RANSON
(JOINT LIQUIDATORS OF HADLEIGH RESIDENTIAL PROPERTIES LIMITED (IN
LIQUIDATION))

and

MICHAEL BAILEY

MS C TOMAN appeared on behalf of the Applicants
NO ATTENDANCE by or on behalf of the Respondent

JUDGMENT
(Approved)

This Transcript is Crown Copyright. It may not be reproduced in whole or in part, other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

HH JUDGE MARK RAESIDE QC:

1. This ex tempore oral judgment concerns the sentencing of Michael Bailey ('Mr Bailey'), in his absence in consequence of a finding that he was in contempt of court in failing to comply with a court order made in this insolvency case.

Background proceedings and court orders

2. At all material times, Mr Bailey was the sole director and shareholder of Hadleigh Residential Properties Limited ('the Company').
3. On 13 June 2017, the Company was placed into Compulsory Liquidation by an order of District Judge Pema.
4. On 16 June 2017, Michael Christian Kienlen and Mark Nicholas Ranson ('the Joint Liquidators'), were appointed the Joint Liquidators of the Company.
5. Over two years ago, on 3 August 2017, an application was made by the Joint Liquidators, supported by a witness statement of Michael Christian Kienlen, on short notice under Section 234 of the Insolvency Act 1986, for an injunction that Mr Bailey do, by 18 August 2017, deliver, transfer, surrender or pay the Joint Liquidators all property of the Company which was in his custody or under his control; including but not limited to a cheque or bankers draft for €247,000, representing the sale of proceeds of a property of the Company in Tenerife, any rental or other income from the property of the Company in any part of the world... and any other property, books, papers or other records, together with an order under Section 236 of the Insolvency Act 1986, that Mr Bailey do on 30 August 2017, submit to the court and the Joint Liquidators, a witness statement containing full particulars of all property and assets... on account of his dealings with all money, property and other assets of the Company, including, but not limited to, full particulars of any property or assets sold, transferred or otherwise disposed of from 4 April 2015 to date, of which there was a long list ('the Application dated 23 November 2017').
6. On 11 August 2017, the Application dated 23 November 2017, came before His Honour Judge Davis-White QC (sitting as a judge at the High Court), who made an order with a penal notice for an injunction under Section 234 of the Insolvency Act 1986 in paragraph 2 and under Section 236 of the Insolvency Act 1986 under paragraph 5 which, in so far as material to the contempt of Mr Bailey and this sentencing provided the following,
'In paragraph 2(a) Mr Bailey by 12noon on Friday 18 August 2017, to deliver, transfer, surrender or pay the Joint Liquidators the cheque, or bankers draft for €247,000 representing the proceeds of sale of the property of the Company',
'In paragraph 2(b) Mr Bailey by 12 noon on Friday 18 August 2017, to deliver, transfer, surrender and pay the Joint Liquidators £450 (or such other amount) in rental or other incomes'.
'In paragraph 2(d), Mr Bailey by 12 noon on Friday 18 August 2017, to deliver to the Joint Liquidators the account of records of the Company held with Yorkshire Bank and financial statements of the Company comprising management or other draft accounts and such other financial statements as he had in his custody or under his control', and,
'in paragraph 5, Mr Bailey by 12noon on 30 August 2017 to submit to the court and the Joint Liquidators a witness statement containing; (a) full particulars of all property and assets of any kind of the Company, with particulars to include the minimum description of each and every item of property or assets and its current location... (c) an account of Mr Bailey's dealings with all money, property and other assets of the Company, to include full particulars of any property or assets sold, transferred or otherwise disposed of from

- 4 April 2015 to date... ('the Interim Order dated 11 August 2017').
7. Mr Bailey failed to comply with the Interim Order dated 11 August 2017.
 8. On 25 August 2017, the matter came before His Honour Judge Klein (sitting as a judge in the High Court) who made an order with a penal notice that the injunction, pursuant to Section 234 of the Insolvency Act 1986 under Section 236(a)(b) and (d), remain in full force and effect pursuant to that Section of the Insolvency Act 1986, and paragraph 5 also remains in full force and effect ('a Final Order dated 25 August 2017').
 9. Mr Bailey failed to comply with the Final Order dated 25 August 2017.
 10. On 23 November 2017, the Joint Liquidators issued an application notice with a penal notice, setting out particulars of the acts of contempt of Mr Bailey by reference to the Interim Order dated 11 August 2017 and the Final Order dated 25 August 2017. The application was supported by a witness statement, dated 23 November 2017, from Carla Lloyd, a senior manager of Armstrong Watson LLP, solicitors then instructed by the Joint Liquidators. The witness statement provided details of the documents handed over to Carla Lloyd by Mr Bailey after the hearing on 25 August 2017, being cash of £550 in relation to rent, together with a few further documents provided on 4 September 2017. The statement also set out Mr Bailey's curious excuse in not providing the cheque or bankers draft for €247,000 (his inability to retrieve it from the Spanish boat yard) and the fact that he had £1,000 in cash at his home in respect of rent, but he had failed to provide any witness statement as ordered.
 11. There followed a further order made by Barling J on 21 December 2017, adjourning the application due to the inability to serve and non-attendance of Mr Bailey at court.
 12. A further witness statement dated 28 February 2018, from Philip Middleton a legal assistant with Irwin Mitchell, who then were instructed by the Joint Administrators, provided an update of the investigations of Mr Bailey and the Company, and the inability to serve Mr Bailey with the relevant proceedings.
 13. On 12 March 2018, Barling J, due to the continued inability to effect service, issued a warrant for the arrest of Mr Bailey.
 14. Mr Bailey was arrested and produced to the court, pursuant to a bench warrant before His Honour Judge Klein (sitting as a judge at the High Court) but released to attend a committal hearing adjourned to 9 May 2018 before Barling J.
 15. At the hearing of the committal application before Barling J on 9 May 2018, Mr Bailey did not attend and the judge gave two *ex tempore* judgments; first of which decided to proceed with the application of contempt in the absence of Mr Bailey, and the second found Mr Bailey was in breach of the Interim Order dated 11 August 2017, in respects identified in the Application dated 23 November 2017.
 16. On 10 May 2018, Barling J made an order finding Mr Bailey to be in contempt of court, but that he should be given the opportunity to appear before the court to present mitigation prior to being sentenced and issued a second bench warrant for the arrest of Mr Bailey.
 17. Mr Bailey was again arrested and produced to the court pursuant to the bench warrant and attended again before His Honour Judge Klein (sitting as a judge in the High Court), and again released to the adjourned hearing on the condition that he delivered up his passport and provided an address for service of the order. The order dated 25 November 2019 permitted Mr Bailey to provide witness evidence and in the event of giving oral evidence at the hearing and required that he should be served with both the *ex tempore* oral judgments of Barling J referred to above.
 18. On 2 December 2019, a process server personally served Mr Bailey with the order dated 25 November 2019 in accordance with a pre-arranged appointment at the County Hotel Brighowgate Grimsby.

19. In fact subsequent attempts to provide Mr Bailey with the documents including a note of the two judgments of Barling J at either address provided or the hotel failed however procedural compliance was made in accordance with the terms of the order dated 25 November 2019. Mr Bailey was in breach of the order in failing to give a further address.
20. At the first hearing before me on 11 December 2019 Ms C Tomin of counsel informed me and as ordered was confirmed by her solicitor Jane McElvey, a witness statement of 11 December 2019 in paragraph 3 the following: 'At approximately 11am on 11 December 2019, I called Mr Bailey on his mobile telephone... Mr Bailey stated he would not be attending the hearing due to ill health... and stated he had collapsed at Doncaster Station and was making his way to the Accident and Emergency at Doncaster'.
21. On that basis I formed the view that it would be incorrect to proceed with the sentencing of Mr Bailey in his absence, on the basis that (assuming his information to be correct without deciding the matter) he had been unable to attend the court and make the necessary representations on mitigation. It also gave me some confidence that Mr Bailey was contactable by telephone which gave a basis for service of my order.
22. Accordingly, I made an order dated 11 December 2019, adjourning the hearing for seven days until 10.30am today, and requiring Mr Bailey to provide the appropriate medical evidence to support his assertion of ill health and his inability to attend court.

Service of proceedings and attendance of Mr Bailey

23. My order, dated 11 December 2019, made provision for good service on Mr Bailey by the Joint Liquidators by the use of the successful telephone number. However, despite numerous attempts by the Joint Liquidators, they were unable to contact Mr Bailey by telephone, but left a message on his phone and an SMS representation of the image of the order I had made, as required by my order. As a matter of record, Mr Bailey has failed to provide any medical evidence in accordance with my order by 10.30am today, nor has Mr Bailey been in contact with the court.
24. Mr Bailey has, again, not attended today. I have been provided by counsel Ms C Tomin with a note of a telephone call between solicitors instructed by the Joint Liquidators and Mr Bailey, that took place yesterday, by means of the telephone number, the subject of my order. His position was that he was poorly and too ill to attend court today and had been to hospital in Grimsby and Tenerife (but not Doncaster as previously asserted) but declined to answer questions as to whether he had a medical practitioner to confirm his ill health as required by my order. He indicated that he was staying with friends and also declined to give the address. He also indicated that he had been to the Citizens Advice Bureau and many solicitors; none of them were available to help him. However, as set out above, it had been a long time since he, on the record, has sought legal representation, and despite the court orders in which he has been required to attend court, as a draft of warrants for his arrest and being advised of his right to a legal representation, he has not taken this up on any previous occasions. On the last occasion, when he failed to attend my court, it was apparent on what he told solicitors instructed by the Joint Liquidators that he was not going to attend with the representation, but on his own. I required these facts to be confirmed in a witness statement.

Non-attendance of Mr Bailey

25. Mr Bailey's voluntary attendance at court hearings over the last two years has generally

been lamentable and the reason Barling J declined to pass sentence was in order that Mr Bailey could (with representations as he was entitled) be allowed to make any mitigation in his sentence. The general principles of attendance of parties at sentencing was considered in the following line of cases; *JSC v Stepanov* [2010] EWHC 794 (Ch) per Roth J, which is a Chancery case; *Sanchez v Oboz & Anor* [2015] EWHC 235 (Fam) per Cobb J, a family case; *Saipan v Barrett* [2017] EWHC 106 (Ch) per Aspen J (as she then was), another Chancery case; and the judgment of the judge in this case who found Mr Bailey in contempt of court in another case called *Billington v Davies* [2007] EWHC 3726 of Barling J. These cases now provide an increasingly long checklist of matters which have to be taken into account; (1) The nature and circumstance of the contemnors behaviour in absencing himself from the trial, and whether it was deliberate, voluntary or he waived his right to appear; (2) whether an adjournment might result in the contemnor attending voluntarily; (3) the likely length of an adjournment; (4) the wish to be legally represented; (5) not applicable; (6) disadvantage to the contemnor in him being unable to give his account if there is a long history; and (7) the public interest in a case being heard within a reasonable time. In *R v Jones* [2000] UKHL 5 the House of Lords in a criminal case made it clear that, 'the discretion must be exercised with great care. It is only in rare and exceptional case that it should be exercised in favour of a trial taking place or continuing, particularly, if the defendant is unrepresented'.

26. Applying the checklist to the position of Mr Bailey and fully appreciating that this is a rare and exceptional exercise of a discretion which permits in a civil case under CPR 39.3 to proceed in the absence of a party when the trial concerns a sentencing of contempt of court, the view that I formed, given the background proceedings and court orders set out above, is that Mr Bailey's behaviour in absencing himself from court shows that it is deliberately and voluntarily and he has waived his rights to appear and will not attend voluntarily. Therefore, in the absence of the issue of third warrant for arrest, Mr Bailey will not appear voluntarily and probably will give rise to another long adjournment as in two previous occasions when warrants were issued for Mr Bailey's arrest. Despite being advised on at least two occasions by the court of Mr Bailey's right to legal representation there is no present evidence that this is likely (aside from the conversation I have referred to above) and over the two years this has, in fact, not taken place though at the early stage of this case there was some evidence that he appeared to seek legal advice from a firm called Jacksons, but this was not taken up. Whilst I appreciate the reason for his attendance was his ability to mitigate the sentence, both in terms of breach of the order and his personal circumstances which I can now have to decide on the record. I am of the view that public interest favours this being heard given the delay since the finding of contempt. I, therefore, will proceed in the absence of Mr Bailey.

Finding of contempt by the court against Mr Bailey (Culpability)

27. The transcript for the second *ex tempore* judgement of Barling J, having regard to the Application dated 23 November 2017 in short summary found Mr Bailey to be in breach of the Interim Order, dated 11 August 2017 as follows;
- (1) paragraph 2:
'On the face of it there was a breach of the interim order and the judge was satisfied that Mr Bailey had known and was aware of the terms of the interim order and had failed to act in accordance with it and had noticed that Mr Bailey had even admitted himself the records were at his home';
- (2) paragraph 5:

‘There was no actual witness statement produced by Mr Bailey by the deadline required by the judge and the judge was therefore satisfied that the breach had been made in all respects’, generally, ‘The judge was satisfied that the breach had represented contempt of court in respect of the interim order’.

28. For fullness I should record that subsequent to the judgment of Barling J, solicitors acting for the Joint Liquidators discovered a further bank account of the Company called Banco Marche S.A. in Spain, which they had only obtained in October 2019. The bank statement of Banco Marche S.A. indicates receipts by the Company, on 9 June 2017, of €247,380 and payment out to Mr Bailey of a sum of a similar sum of €246,000 on 10 June 2017. The view I have formed is that given the broad basis of the Application dated 23 November 2017 and the Interim Order dated 11 August 2017 and the judgments of Barling J on 10 May 2019 this makes no difference and I should only sentence on that basis.

Submissions

29. The Joint Liquidators rely on a skeleton argument dated 10 December 2019, from Ms C Toman of counsel.
30. The approach they take of the Joint Liquidators is to ensure that the court is properly and fully informed of any material facts the court ought to be aware of in the absence of Mr Bailey, but otherwise took no positive part in the appropriate sentencing. Accordingly, I was carefully taken through the documents on mitigation (1) (Mr Bailey’s compliance with court orders); (2) his personal circumstances by reference to medical reports and the adjournments. I am satisfied that I ought to proceed today, and therefore having summarised the finding of culpability of Mr Bailey by Barling J, I consider these matters in terms of mitigation and aggravating circumstance factors first before sentencing.

Mitigating factors

31. It is clear from the judgment of Barling J, as I have indicated, that the one reason for adjourning sentencing was to allow Mr Bailey to raise any mitigating factors. Typically, these can be divided into two categories; those related to a breach of the order itself; and those relating to the, ‘Personal mitigation’, of Mr Bailey. I deal with these on the basis of the record.
32. Firstly, in relation to the order itself, after or possibly as a result of the Final Order dated 25 August 2017, Mr Bailey provided solicitors instructed by the Joint Liquidators, Carla Lloyd, with eight documents on 4 September 2017 and a further four documents related to the Company. These documents include; receipt of rent copy; invoices of Council Tax; a tenancy agreement; a gas safety certificate; and insurance documents; and probably most importantly, a paying in book for Yorkshire Bank, between 15 August 2011 and 25 February 2017. The documents provided thereafter related to a boat in Tenerife in Spain. When these documents are compared to the Application dated 23 August 2017 and the Interim Order dated 17 August 2017, on the face of it, it is apparent there has been substantial non-compliance and what has been provided is not adequate.
33. Secondly, in relation to Mr Bailey’s personal mitigation I had been provided with such medical records that Mr Bailey has, in the past, provided to solicitors instructed by the Joint Liquidators. Mr Bailey has, in fact, provided the solicitors instructed by the Joint Liquidators the following records which are historic and, with the exception of two, do not particularly assist his case. Two letters that are relevant and exhibit to a statement of

Sophie Saddleworth, solicitor for Irwin Mitchell, now solicitors for the Joint Liquidators are, dated 25 January 2017 and 28 June 2017, from North Lincolnshire NHS Trust, which give details of his outpatient appointments in respect of diabetics/endocrinology expert matters which are apparent he suffers from, with severe hypogonadism, which is associated with an unhealthy lifestyle. The records also indicate the date of birth of Mr Bailey indicates he now must be 75 years old, and the courts have regard to the age and health of a condemner (see *Norwood Ravenswood v Nabai* [2014] EWHC 4881 (Ch)).

34. The view I have taken in accordance with *Hall v R* [2013] EWCA Crim 82, despite the medical records of Mr Bailey being historic and arguably not serious and somewhat limited, the general approach I should take, having regard to this and these facts and that some material documents has been provided by Mr Bailey, is that my starting point for sentence should be reduced by a period of two months. I am unable to appreciate any other mitigating sentence available on the record before this court.

Aggravating factors

35. Unlike criminal proceedings, aggravating factors, the subject of civil proceedings for contempt of court orders, give rise to a different set of circumstances, and court orders have three elements; (1) the substantive content of the interim and final orders, which in this case empower the court to make quite draconian orders in respect of property and assets owned by the Company under which the insolvency legislation, and in particular Sections 234 and 236 of the Insolvency Act 1986, entrusted to the Joint Liquidators the right and duty to collect money, rent, documents and information relating to the Company from a director or shareholder for redistribution to the creditors of the Company; (2) the procedural aspects which provide for service of the order of on Mr Bailey; and (3) the penal notice which informs Mr Bailey what will happen if he fails to comply with a substantive court order. In some of these cases company shareholders and directors often seek to avoid the court's orders by simply doing nothing, and very often a short sentence will achieve the necessary effect of coercion. However, Mr Bailey has decided to evade this court and their orders, firstly by making it difficult for him to be served at all and therefore would not have notice of the hearing, which has resulted in warrants or his arrest, and equally the central point of any arrest in a contempt proceeding is that he has notice of the effect should he not comply with the order of the penal notice. Mr Bailey has unilaterally granted himself an inordinately long period of time, otherwise available to the Joint Liquidators, when they could have, but had been unable to discharge their statutory duties and collect the monies and rents and necessary documents in order to make payment to the creditors of the Company and bring this liquidation to an end. I consider these to be serious aggravating factors which, of necessity, have to take into account in sentencing Mr Bailey.
36. The record of these aggravating circumstances in the case of Mr Bailey are legion. When the Interim Order dated 11 August 2017 was made, and Mr Bailey failed to attend on ill health with any supporting medical records and the Final Order was made on 25 August 2017 where he again failed to attend, and then he came before Barling J on the basis of the Joint Liquidators being unable to serve notice to Mr Bailey, which resulted in his first arrest and consequent delay. As a result of this arrest he attended the court subsequently before His Honour Judge Klein (sitting as a judge at the High Court). He then failed to attend before Barling J when the question of committal was to be decided. This gave rise to a second warrant for his arrest; accordingly, it was only the result of the second warrant for arrest that Mr Bailey attended before His Honour Judge Klein (sitting as a judge at the High Court). He was informed of his right and the effect of non-compliance with the

order and he continued to breach it. On the last occasion before me, despite being served with the order, he has failed to attend again, said to be due to ill health for which he has provided no support and will not say where he can be contacted.

37. As a result, as a matter of record, Mr Bailey remains in breach of all the matters which gave rise to a finding of Barling J that he was in contempt of court.

Approach to sentencing

38. Unlike criminal proceedings, in civil proceedings for contempt of court, there is no sentencing guideline as to the nature and length of a penalty. There is only one important statutory rule, which is Section 14 of the Contempt of Court Act 1981, subsection 1 which provides, 'In any case where a court is bound to commit a person to prison for contempt of court (apart from this provision) no limitation applies for a period of committal. The committal shall be fixed for a term and that term shall not, on any occasion, exceed two years in a case of committal by a superior court'. I sit here, as have all previous judges, as a judge of the High Court; the Business and Property Court in Leeds (Insolvency and Company Courts). Therefore, within the meaning of the Senior Courts Act 1981, I have power as a superior court in sentencing Mr Bailey, just as Barling J was, in fact, a judge of the senior court.
39. In accordance with the general approach in *Liverpool Victoria Insurance Company v Khan* [2019] EWCA 392, I have to consider the seriousness of this case to be gauged by a combination of considering culpability and the consequence and harm and then to consider mitigation and aggravation, which I have set out above. I also have regard to *Hale v Tanner* [2001] WR 2377 of Hale LJ (as she then was) subsequently approved by Voss J (as he then was) in *Prosser v Prosser* [2011] EWHC 2172, which at paragraph 121 he considered it appropriate in a civil contempt case that a further factor, rehabilitation, should be considered. As Mr Bailey has committed no crime, the essence of this case, in terms of sentencing is a breach of a court order, and the rationale is subject to a long line of consistent authority, which more recently includes *JSC BTA Bank v Solodchenko* [2011] EWCA Civ 1241 numbers 2, 7, and 8. Per Gross LJ, Jackson LJ and Rix LJ, the approach in summary is; (1) a substantial breach of a court order merits condign punishment; (2) condign punishment normally means imprisonment; (3) failure to disclose information engages a longer sentence; (4) where the breach is continuing in fairness a court will identify the portion of the sentence that is punishment and the portion that is coercive, and thus require compliance with the court order, but; (5) the court does not consider the actual time in prison when fixing a sentence.
40. There is an increasing line of authority concerning contempt of court in respect of court orders. As to the approach to be taken in sentencing and imprisonment and consequent order which is illustrated more recently in *Johnson and Jones v Keir Argent* [2016] EWHC 298 per Nugee J at paragraph 9 said: 'The court cannot allow people to choose whether to comply with orders or not and it is essential as part of the administration of justice, that where a court makes an order the respondent to the order complies with it, and deliberate and repeated breaches of orders of this type will almost inevitably lead to a significant punishment'
41. Without attempting to create sentencing guidelines in a civil case and appreciating that each case turns on its particular facts, to get a sense of what is, 'significant punishment', reference can be made to *JSB v Solidev* (supra), referring to a to year sentence. His Honour Judge Simon Barker QC (sitting as judge at a High Court) in *The Official Receiver v Brown* [2017] EWHC 2762, considering eight months appropriate,

and *Universal Business Team PTY LTD & Ors v Moffitt* [2017] EWHC 3251, per Marcus Smith J, considered 14 months appropriate, on the basis that it was, ‘the most serious amongst the battery of contempts’. More recently Barling J in *Billington (supra)* passing a 12 month prison sentence. What is apparent from these cases, is that the context of, ‘significant’ depending on the facts, would not indicate a short sentence simply on coercive grounds.

42. On the particular facts of this case, I consider Mr Bailey has been in deliberate and contumacious breach of court orders. Over a long period of time he has refused to restore the money of the Company, to collect rents for the Joint Liquidators, and had done his best to avoid being brought to court and receive notice of orders which has directly led to two warrants for his arrest, and quite simply declined to provide any information in respect of the Company which is critical to the Joint Liquidators’ task. Further, there are very limited mitigating circumstances on record which I have set out above, which I have taken into account appropriately. The harm done to the Joint Liquidators is obvious. Despite their statutory duty to bring the Liquidation to an end, as a result of almost exclusive acts of Mr Bailey, very little has happened in the course of over two years, and time, effort and considerable sums of money have been expended in an attempt to recover money and information for the creditors of the Company.
43. Equally, I have no confidence on the evidence provided so far, that Mr Bailey has any intention of complying with the court orders. In cases of this sort it is usual that the central concern, in aid of execution of a Joint Liquidators duty, is that Mr Bailey does, in fact, comply with the order. Mr Bailey has been brought before the court on many occasions and invited and encourage to actively take part and comply with the Interim Order dated 11 August 2017, but has shown no inclination to comply, save for the limited matters I have set out under ‘Mitigation’ above, which were some considerable time ago.
44. Equally, and aligned to Mr Bailey’s inability to be coerced into complying with court orders, I am very doubtful as to whether anything can be done in respect of rehabilitation.
45. The review of all the documents available, including the absence of any cooperation with the Joint Liquidators prior to the Application dated 23 November 2017, which shows the answers he gave the Official Receiver previously on 13 June 2017 was a consistent record of failure to provide any information to allow anyone to ascertain the property and assets available to the creditors of the Company. With one limited exception I have noted above, this has been a contiguous approach.

Term of imprisonment

46. I have power, under Section 258(2) of the Criminal Justice Act 2003, which applies in relation to a person committed to prison for contempt of court under subsection (1) (and under subsection (2) which provides, ‘As soon as a person... has served half the term which has been committed, it is the duty of the Secretary of State to release him unconditionally...’. The Section was considered in *CJ v Flintshire Borough Council* [2010] EWCA 393, per Wilson LJ (as he then was), when reviewing the exercise of the court powers under Section 14(1) of the Contempt of Court Act 1981. One of the questions was the length of time that the condemner ought to serve a prison sentence in relation to; (1) the full term imposed on him; and (2) the term he would otherwise be required to serve prior to relief under Section 258(2). I consider that Mr Bailey should serve a five-month prison sentence before release from prison.

Conclusions

47. The view I have come to is that Mr Bailey must be sent to prison forthwith for a period of 10 months, for which five months is appropriate in terms of punishment, and the balance of five months is coercive and having regard to the mitigation of two months set out above.
48. I have considered whether I should invoke my powers under CPR 81(28)(6) which provide, 'Where a committal order is made in the absence of the respondent, the court may on its own initiative, fix a date and time when the respondent was brought before the court', or alternatively by powers under CPR 81.29(1) which provide, 'The court making the committal order may also order that the execution will be suspended for a period of; (1) for such terms and conditions that it may specify'. In doing so I have regard to the circumstances in which Mr Bailey has in fact failed to attend the Application of 23 November 2017, or the Interim Order dated 11 August 2017, or before Barling J when he was found in contempt of court and now before me for sentencing. It is by this route that Mr Bailey will be subject to a term of 10 months' imprisonment, however, on the basis of the particular facts and circumstances that I have set out above. There is a somewhat consistent approach taken by Mr Bailey and a litany of orders which he has generally not complied with, and the view I have formed is that I should, therefore, forthwith send him to prison. I note under CPR 81(31)(1) which provides, 'A person committed to prison for contempt of court may apply to the court for discharge'. This allows Mr Bailey the right, if he wishes to so exercise it, in the ordinary case to reconsider his position and the matter would usually come back before to court to consider this sentence.

End of Judgment

Transcript from a recording by Ubiquis
291-299 Borough High Street, London SE1 1JG
Tel: 020 7269 0370
legal@ubiquis.com

Ubiquis hereby certify that the above is an accurate and complete record of the proceedings
or part thereof

This transcript has been approved by the judge.