Case No: **CL-2009-000709**

Neutral Citation Number: **[2022] EWHC 2057 (Comm)**

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

Royal Courts of Justice, Rolls Building

Fetter Lane, London, EC4A 1NL

Date: **15 July 2022**

Before :

Mrs Justice Moulder

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Between :

Deutsche Bank AG	**Claimant**
- and -	
(1) Sebastian Holdings, Inc. &	**Defendant**
(2) Mr Alexander Vik (Defendant for Costs Purposes Only)	

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Sonia Tolaney QC and Matthew Hoyle (instructed by **Freshfields Bruckhaus Deringer**) for the **Claimant**

Duncan Matthews QC and Rupert Hamilton (instructed by **Brecher LLP**) for the **Defendant**

Hearing dates: **15th July 2022**

- -

Mrs Justice Moulder **Friday, 15 July 2022**

(**14:05** pm)

Judgment by **MRS JUSTICE MOULDER**

1. This is the sentencing hearing following the judgment and order of this court of 24 June 2022, which found Mr Vik guilty of contempt in that he, firstly, deliberately failed to provide information at a means hearing in December 2015 (the "XX Hearing") and, secondly, deliberately failed to produce documents which had been ordered to be produced by 14 October 2015.

2. The Claimant ("DBAG") now seeks an order that, for his contempt, Mr Vik be committed to prison for a period of two years and that the committal be suspended for a period of six months on condition that Mr Vik complies with certain conditions, that six-month period to run from the latest date by which any notice of appeal must be lodged or six months from the final determination of any appeal.

3. The background is set out in the judgment of the Court handed down on 24 June 2022.

4. In November 2013, following a trial, DBAG obtained a judgment against Sebastian Holdings Inc ("SHI") for some $250 million (the "Judgment Debt").

5. In July 2015, Mr Vik was ordered to attend court to provide information as to the means of SHI, which were needed to enforce the Judgment Debt, and to produce documents relating to SHI's means of paying the Judgment Debt.

6. The contempts which the Court found to have been established are set out in the order of 24 June 2022. As referred to above, in summary, the Court found that at the XX Hearing Mr Vik had deliberately failed to provide information and the particulars of that contempt related separately to his knowledge of the funds and assets of Beatrice and the Trust, SHI's interest in Devon Park, and the alleged sale of SHI's interest in IFA (all as defined in the order).

7. The second contempt, the failure to produce documents, was in respect of, firstly, electronic documents and, secondly, documents held by third parties, including third party banks and Mr Johansson. I note that in relation to the third party documents, the court did not find the allegation,

so far as it concerned documents held by Zimmerman & Gauch, to be established (paragraph 450 of the judgment).

8. The relevant law is set out in CPR 81.9:

"(1) If the court finds the defendant in contempt of court, the court may impose a period of imprisonment, an order of committal, a fine, confiscation of asset or other punishment permitted under the law.

(2) …An order of committal and a warrant of committal have immediate effect unless and to the extent that the court decides to suspend execution of the order or warrant."

9. As regards the relevant legal principles, I have been referred to a number of authorities on the approach of the Court to sentencing. It is convenient to refer to the decision of the Court of Appeal in *McKendrick v the Financial Conduct Authority* [2019] EWCA Civ 524 at 39-41. In particular I note:

"[39]…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*…

[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*... 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... 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.

[41] … it may sometimes be necessary for the sentence for this form of contempt of court to include an element intended to encourage belated compliance with the court's order..."

10. The court was referred to *Crystal Mews v Metterick* [2006] EWHC 3087 (Ch) at [8]:

"In contempt cases the object of the penalty is both to punish conduct in defiance of the court's order as well as serving a coercive function by holding out the threat of future punishment as a means of securing the protection which the injunction is primarily there to do…"

11. I was also referred to paragraph 13 of the judgment in *Crystal Mews* which was dealt with by Popplewell J (as he then was) in *Asia Islamic Trade Finance* [2015] EWHC 3784 Comm.

"[7] …The factors which may make the contempt more or less serious include those identified by Lawrence Collins J, as he then, was at paragraph 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 cooperated;

to which I would add:

(h), whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

12. In its skeleton, counsel for Mr Vik raises various matters by reference to the considerations identified in *Crystal Mews.* In my view, as set out in *McKendrick*, the Court should first consider the degree of harm and culpability. It should then consider any aggravating features and the issues raised by way of mitigation. The Court will then determine the appropriate sentence having regard to all the circumstances.

13. In relation to the issue of harm, I note the observations of the Court of Appeal in *McKendrick* referred to above:

"Breach of a court order is always serious because it undermines the administration of justice…"

14. Mr Vik has been found by the Court to have deliberately failed to provide information needed to enforce the judgment order and deliberately not provided documents that were required to be produced.

15. I am told that, as of 27 May 2022, some $346 million remains outstanding in respect of the Judgment Debt (after credit for recoveries from the Confirmit shares of some $60 million). It is against that background that the Court considers the submission that there has been no prejudice to DBAG by virtue of the contempt.

16. It was submitted for Mr Vik (paragraph 17 of its skeleton), that there is no evidence of prejudice to DBAG by the deficiencies in his compliance and that DBAG has been able to obtain substantial information from other parties. Mr Vik says, (paragraph 44 of his second affidavit), that the landscape has changed significantly since the Part 71 order and DBAG has already obtained sufficient information to potentially recover sums in respect of the Judgment Debt. He notes that the Devon Park fund in particular has now been wound up and states that further documents will not assist.

17. In my view, the fact that DBAG has been able to obtain documents independently of Mr Vik since the XX Hearing provides no mitigation in terms of his culpability for breaching the court order. In my view, these submissions merely serve to highlight a lack of understanding by Mr Vik of the significance of his failure to comply with the court order and his lack of understanding of the seriousness with which such a breach is regarded by the Court, given its effect on the administration of justice.

18. Mr Vik was found to have lied to the Court at the XX Hearing in several respects. He was found to have deliberately failed to provide documents, not a few documents but a wholesale failure to provide any electronic documents, and to obtain documents from third parties, including and perhaps most notably Mr Johansson. He has therefore been found to have acted in breach of the Court's order in a number of instances. In my view, the multiple nature of the breaches increases the culpability of Mr Vik.

19. Further, although Mr Vik submits that DBAG has now obtained documents by other means, DBAG has far from a complete picture of the assets which may be available to discharge the Judgment Debt

which continues to accrue interest and which remains outstanding (in large part). In this regard, I note the evidence of Mr Robinson for DBAG in his third affidavit, in particular:

- in respect of the Reiten interest, where DBAG still seek information and documents;

-in respect of the Devon Park Interest, the US proceedings have been opposed by Universal, and DBAG continues to seek information about the circumstances in which the Devon Park interest was transferred out of SHI; and

- in respect of Beatrice and the Trust, that the information which is sought from Mr Vik is likely to assist DBAG in the New York enforcement proceedings.

20. As to whether the prejudice can be remedied, as discussed below, Mr Vik's failure to provide information and documents when required in 2015 may well mean that documents cannot now be produced, both for the reasons identified by Mr Vik, such as Devon Park being wound up, as well as the impact of deletion, emails apparently having been deleted such that they may well not be recoverable, and in respect of documents held by third party banks, the usual period for document retention having passed.

21. In conclusion on harm, DBAG has been kept out of its money since 2013 and whilst the debt is that of SHI, the actions of Mr Vik have, in my view, played a significant contributory factor. His actions, in my view, are very likely to have been designed to keep DBAG out of its money. His breach of the court orders are of themselves significant and in addition have caused significant harm.

22. As to culpability, it is acknowledged for Mr Vik (paragraph 19 of Mr Vik's skeleton) that the sentencing hearing must proceed on the basis that the Court has found deliberate non-compliance. However, counsel for Mr Vik submitted (paragraph 21 of his skeleton), that given the scope for the contempt to be remedied and his readiness to cooperate, his culpability should be regarded "*towards the lower end of the scale*".

23. In my view, this submission, insofar as it refers to the scope for the contempt to be remedied, conflates harm and culpability. The ability to remedy has already been referred to above.

24. As to whether the contemnor has cooperated, it was submitted for Mr Vik (paragraph 15 of Mr Vik's skeleton), that he cooperated "*to a significant extent*", that he produced a significant number of

documents answering to the Part 71 order, and he attended for cross-examination before the Court. In my view, that is a complete mischaracterisation of what has occurred and ignores the findings of the judgment.

25. In relation to electronic documents, I note the findings of the court as follows:

Paragraph 458:

"*Mr Vik deliberately did not produce electronic documents in SHI's control which related to the means of paying the judgment debt…*"

Paragraph 390:

"*the overriding point which emerges from the Bank's submissions… is the absence of disclosure of electronic documents in response to the Part 71 order...*"

Paragraph 398:

"*… even if there was informality in the operation of SHI, it is clear from the Devon Park documents which have now been disclosed that (unsurprisingly in the modern world) SHI used email to communicate with third parties, and that informality does not therefore explain the total absence of electronic communications."*

Paragraph 411:

"…given that on Mr Vik's evidence some emails were preserved, the stark overriding point is that there were no emails disclosed which were responsive to the Part 71 order."

26. In relation to the hard copy documents that Mr Vik did produce, it appears in relation to the Carlyle deeds that documents he had produced had been deliberately altered and, as found by the Court, this was a deliberate attempt by Mr Vik to mislead by his disclosure (see paragraphs 415 to 417 of the judgment).

27. In relation to the documents held by Mr Johansson, the Court found (at paragraph 459) that:

"… Mr Vik deliberately chose not to produce documents held by Mr Johansson which… were required to be produced by the Part 71 order."

28. The overall finding of the Court, whilst noting that he did attend for cross-examination, was that he lied:

"*204. I find that Mr Vik's evidence was deliberately false in that at the date of the XX Hearing, Mr Vik did know: (i) what assets Beatrice had at the date of the XX Hearing; (ii) what funds of SHI were held by Beatrice at the date of the XX Hearing; (iii) what assets Beatrice had in August 2015; and (iv) what assets the Trust had in August 2015 and at the date of the XX Hearing."*

29. At 134 of the judgment, I referred to the "*clear motive which explains why Mr Vik would (and did) lie to the Court at the XX Hearing about the assets of Beatrice and the Trust."*

30. Similar findings of giving false evidence to the Court were made in respect of Devon Park at 341 and in respect of the IFA shares at 379.

31. At 103 of its judgment, the Court found that Mr Vik lied to this Court when giving evidence.

32. It is correct that, as stated in paragraph 34 of Mr Vik's second affidavit, Mr Vik did provide bank statements in October 2015. However, in my view, the provision of bank statements is but a very small part of the whole and Mr Vik's overall culpability is high.

33. I turn then to consider the mitigation advanced for Mr Vik. I have considered carefully the mitigation advanced both by leading counsel on his behalf and by Mr Vik in his affidavit dated 8 July 2022.

34. Counsel for Mr Vik advances a number of matters by way of mitigation. It is submitted for Mr Vik (paragraph 20 of his skeleton), that Mr Vik believed that he did the best he could in the circumstances and, to the extent he failed to comply, this was not intentional. Mr Vik intends to appeal the findings of the Court and, in those circumstances, there is no apology.

35. Mr Vik advances by way of mitigation the impact on him caused by the Court's findings. He describes the findings (paragraph 14 of his second affidavit), as "*severely harmful to my character, my life and business relationships*" in that they "*accuse*" him of providing deliberately false evidence to the court and/or that he deliberately failed to produce certain documents.

36. I note in passing that, insofar as Mr Vik in his affidavit suggests that the Court has "*accused"* him of lying, the Court in its judgment does not accuse him, but has made findings that he has deliberately failed to provide evidence and failed to produce documents.

37. Counsel for Mr Vik refer to the authority of *Liverpool Victoria Insurance* for factors that may amount to mitigation and submitted that relevant considerations may include ill health, positive good character, and that the defendant has brought professional ruin upon himself. Counsel submitted (paragraph 23 of his skeleton), that Mr Vik's reputation was likely to be irreparably damaged. He further submitted, (paragraph 24), that the committal application had placed an enormous strain on Mr Vik and (paragraph 25), that the costs associated with the committal application and the costs of remedy will be a heavy financial cost.

38. It was also submitted (paragraph 28), that, given his age, 67, a prison sentence would have a particularly severe impact on Mr Vik and (paragraph 29), that it would prejudice Mr Vik's ability to give effective instructions and to attend hearings in the defence of other court proceedings in New York, Norway and Connecticut.

39. Finally, it was submitted for Mr Vik (paragraph 30), that he has no prior convictions and "*apart from the findings made against him in the legal proceedings against DBAG, he is of good character"*.

40. I note that 65 of the judgment in *Liverpool Victoria*, the Court of Appeal stated that:

    "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... Serious ill health may be a factor properly taken into account. Previous positive good character, an unblemished professional record, and the fact that an expert witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor's favour."

41. I start by noting that there has, in my view, been no acceptance of responsibility by Mr Vik. Although there is an apology in paragraph 9 of Mr Vik's second affidavit, it follows the statement in paragraph 8 that Mr Vik does not agree with the findings that have been made and it is his intention to file an appeal "*to clear his name*". Whilst the absence of an admission or apology does not

aggravate the sentence, there is no mitigation to be derived from any remorse which is clearly absent. His stated willingness to cooperate now is discussed below.

42. In my view, the consequences for Mr Vik, both in personal and commercial terms, are entirely of his own making and, in the circumstances, are not such as to amount to significant mitigation.

43. As to the issue of delay, I note that Cockerill J rejected this in her judgment at [160] and found that Mr Vik was the primary cause of any delay. I see no reason to disagree with that conclusion.

44. Mr Vik states (paragraph 19 of his second affidavit) that he is 67 years old and the application hearing was emotionally and physically debilitating and unhealthy. I note that the reference in *Liverpool Victoria*, in the context of mitigation, was to "*serious ill health*" and there is no evidence before the Court that Mr Vik is suffering from serious ill health. All defendants to a committal application are likely to find a trial emotionally and physically debilitating. In any event, my own impression, having seen Mr Vik give evidence over several days, is that he appeared to be unfazed (see paragraph 101 of the judgment).

45. The age of Mr Vik at 67 does not preclude a custodial sentence. The prisons are accustomed to dealing with prisoners of many more advanced years.

46. Mr Vik says that the costs are heavy and of relevant consideration. In my view, this is the price of losing contempt proceedings; it does not amount to mitigation.

47. I take into account that Mr Vik has no previous convictions. However, I do not think it is appropriate to disregard the previous findings of the Court and, in the light of the findings both of this Court and of Cooke J, referred to at [327] and [328] of the judgment, it is difficult to see that in the circumstances Mr Vik can or should be treated as of effective good character such as to provide mitigation.

48. It was submitted for Mr Vik that his behaviour should be viewed as limited to these proceedings. I see no reason why one should compartmentalise his behaviour in forming a view as to his overall character.

49. Mr Vik also seeks mitigation in relation to proceedings in other jurisdictions on the basis that a custodial sentence would make it difficult for him to defend himself, to provide instructions, and to participate in the proceedings. In my view, it is not unknown for defendants, including defendants

in the Commercial Court, who have been committed to prison for contempt, to carry on proceedings, to have access to papers and to provide instructions to lawyers. Whilst I do not doubt that it will make it more difficult for Mr Vik, it does not, in my view, amount to a mitigating factor which, when weighed against the seriousness of the contempts, can attract any significant weight.

50. As to future cooperation, it was submitted for Mr Vik, (paragraph 16 of his skeleton), that Mr Vik has indicated his willingness to cooperate further by taking steps to remedy "*any shortcomings*" so as to purge his contempt. Mr Vik states (paragraph 25 of the second affidavit), that he is willing to carry out further reasonable steps to seek the information and documentation sought by the applicant.

51. Mr Vik sets out (at paragraph 28 and following) the steps that have been taken following the hand-down of the judgment. In summary, they are that his solicitors have written to enquire concerning the recovery of emails which were deleted from Mr Vik's email account, to SHI's US lawyers to see whether they can provide copies of documents relating to IFA, Devon Park and the partnership interest, and letters to be sent to the banks in relation to documents which may be retained by them. There is also a pro forma letter to be sent to Mr Johansson. Finally, it is said that Mr Vik's solicitors will go to Monaco to search his email account.

52. Mr Vik states (at paragraph 32 of his affidavit) that these steps are to demonstrate that he is taking the matter very seriously and doing all that he can to assist.

53. The question for the Court must be whether this is in fact a genuine willingness to cooperate and seek to purge his contempt.

54. Mr Vik, in my view, rightly anticipates (at paragraph 27 of his affidavit) that:

"*The applicant will treat what I say with scepticism and also that the steps that have been taken are disingenuous*."

55. He also seeks to pray in aid:

"the very limited time that there has been between the judgment and the consequentials hearing and the limited availability of my legal team due to prior commitments and annual leave".

56. The starting point as to whether Mr Vik is making genuine attempts to purge his contempt must be the findings in the judgment as to Mr Vik's overall reliability and credibility:

"[99] My impression of Mr Vik, gained from his oral evidence, read against the contemporaneous documents, is of a man who, on his own case, has demonstrated a readiness not to tell the truth in his business dealings..."

57. I note that Mr Vik states (paragraph 8 of his second affidavit) that he intends to appeal and it would appear, therefore, that he only intends to carry out further searches if the appeal is not upheld.

58. Although I accept that Mr Vik has the right to appeal the findings of the Court, the basis of his appeal appears to be that he takes issue with the finding that his actions were deliberate. At paragraph 9 of his second affidavit he states:

"I honestly believed, and still do, that I had done everything I could in the time allowed to comply with the Part 71 order. It was certainly not my intention not to do so, especially given the potential serious sanctions that can be imposed against me for any failure to comply."

59. Mr Vik does not therefore appear to take issue with the fact that he failed to provide documents but says that he believed he was doing what was necessary in the time allowed. However, if Mr Vik genuinely believed that to be the case and was now willing to cooperate and provide the documents, which he says he could not do in the time allowed, the issue of the appeal could appear to have little or no relevance to the issue of whether he will now cooperate and provide documents.

60. It was submitted for Mr Vik that it took time to digest the judgment prior to sending out the letters on 8 July. In my view, it is striking that if he was doing his best in the time available in 2015, he has not used the intervening years to engage with DBAG. Had he done so, then the steps that he has now apparently belatedly started would have been taken many months ago.

61. For all these reasons, I have strong doubts as to whether or not this is a genuine willingness which is now expressed on the part of Mr Vik to cooperate.

62. In this case, Mr Vik's conduct in contempt of court is plainly so serious that the custody threshold has been passed and I acknowledge that counsel for Mr Vik did not seek to demur from that.

63. Although DBAG originally sought a six-month committal, it now submits that a longer period is appropriate, given Mr Vik's conduct at the committal application and the findings of the Court.

64. The appropriate sentence is a matter for the Court. I bear in mind the statutory maximum which this Court can impose in respect of the contempts now before the Court is two years.

65. I have considered some of the authorities to see if they provide any helpful guidance as to the appropriate sentence in this case, including *Farrer v Meyer* [2022] EWCA Civ 706, *Hassan Khan v Al-Rawas* [2021] EWHC 3229 (QB), *Billington v Davies* [2017] EWHC 3725 (Ch), *Chernyakov* [2017] EWHC 2564 (Comm), *and Pugachev* [2016] EWHC 258 (Ch). What the authorities demonstrate is that they are all different in the nature and number of breaches and the seriousness, such that the ultimate sentence imposed in any particular case is fact dependent. I therefore respectfully adopt the observations of the Court of Appeal in *Thursfield* [2013] EWCA Civ 840 at [33], that:

"*Each case, particularly of committal, depends on its own facts, and a comparison with the facts of other cases, unless they are so closely related as to be in effect the same case, seems to me to be altogether unhelpful*"

66. In my view, Mr Vik has committed serious breaches of the court order which he committed deliberately with the intent to frustrate the location of assets of SHI to satisfy the judgment obtained in 2013.

67. It was submitted for Mr Vik that it was a breach of a single order on a single occasion. In my view, the contempts of failure to provide information and to produce documents should be regarded as separate contempts meriting separate sentences. However, whether one views this as a single breach or two, the totality of the offending must be considered and, within those two contempts, there are multiple breaches as set out in the judgment and referred to above.

68. In my view, in all the circumstances, the harm and culpability of the contempt placed the offending towards the top of the range, bearing in mind the two-year maximum. As stated in *McKendrick* [2019] 4 WLR 65 (CA) at [40]:

"*Because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt that 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."

69. There is little or no mitigation which would result in a significant reduction in the starting point.

70. Taking the contempt of failing to give information as the lead contempt, which is thus aggravated by the failure to produce documents, in my view, the shortest term that can be passed commensurate with the seriousness of the contempts is that Mr Vik should be committed to prison for 20 months for failing to give information at the cross-examination hearing and 10 months, concurrent, for failing to produce documents.

71. The deliberate failure to give information at the cross-examination hearing was shown to have taken place in multiple respects and Mr Vik continued his pattern of failing to tell the true position at the committal hearing. Although the judgment was against SHI, Mr Vik for his part continues to do what he can to thwart the DBAG's entitlement to enforce the Judgment Debt obtained so many years ago. The sentence for failing to produce documents acknowledges the principle of totality.

72. I indicate that of the total sentence of 20 months, I regard 10 months as the punitive element for the historic contempt and 10 months as the coercive element to encourage future co-operation. As indicated at the outset this morning, I now propose to consider whether the sentence should be suspended, having regard to the conditions which are proposed as a condition of the suspension.

73. I now rule on the question of whether the sentence imposed should be suspended.

74. As I have indicated in the course of the hearing this afternoon, I think the balance is a difficult one to resolve in this particular case. DBAG originally sought the imposition of a suspended sentence but has now submitted that the Court needs to be satisfied on the authorities that there is a realistic prospect of compliance with any conditions which the Court is minded to impose before it should consider it appropriate to suspend the sentence and I have been referred to the authorities of *GML* [2020] EWHC 2667 (QB) at [71] and to *Wildin v Forest of Dean* [2021] EWCA Civ 1610 at [49] and [97].

75. It has been submitted for Mr Vik that it is the appropriate approach where the goal is to get the defendant to comply with the order that has been breached. It was submitted that the conditions mirror those that would be available on an application under CPR 71.8, in which context any sentence would necessarily be suspended.

76. The authorities, in my view, indicate that there is both an element of punishment but an even more important element of coercion: *Allason v Random House UK Limited* [2002] EWHC 1030 (Ch).

77. I also take into account the observations in *Hale v Tanner* [2000] 1 WLR 2377 (CA)*:*

> "(6) Suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to ensure compliance with the court's order.
>
> (7) The length of the suspension requires separate consideration although it is often appropriate for it to be linked to continued compliance with the order underlying the committal."

The difficulty in this case is weighing up whether or not the conditions which are proposed, and conflicting versions have been proposed for each side, would have the result of limiting Mr Vik's "*room for manoeuvre*", as it is put in *Wildin*, and was likely to achieve anything in reality.

78. There are concerns in that in Mr Vik's affidavit he suggests, or appears to suggest, that he had done everything that he needs to do, that he has produced all documents that are within his power to produce, and therefore nothing more will be forthcoming.

79. Mr Matthews QC, however, submits for Mr Vik, that letters have been written by his solicitors seeking documents, that this is the beginning of the process, that the process will be ongoing and the Court should give Mr Vik an opportunity to pursue that process and so far as documents do turn out to exist which respond to the order they will be produced.

80. As I say, I have hesitated long and hard as to whether or not to suspend this sentence. On balance, I have decided that I should give Mr Vik the opportunity to comply with the order in the sense that he should comply with the conditions which are to be imposed. The draft conditions which are before me are now largely agreed, although there may be some small matters of grammar.

81. Dealing with those matters which I believe are the substantive differences between the parties, Mr Matthews was resisting the formulation *"make all reasonable efforts*". In my view, the language may or may not make a significant difference but it must be clear to Mr Vik that he is to do his utmost to comply and therefore I prefer the formulation "*all reasonable efforts*".

82. There is a dispute between the parties as to whether or not the words *"in the control of SHI*" should be included or whether, as Mr Matthews suggests, it would be preferable and more constructive to use the words "*within Mr Vik's control*". On balance I am minded to keep the wording which is proposed by DBAG. However, I take the point in relation to the entities specified in 7.3, I do not think that VBI and Universal should be included. However, I believe that Mr Johansson, Beatrice and the Trust should remain and no doubt Mr Vik, in the witness statement which is contemplated in this order, will explain if and to the extent that he is unable to provide documents from these particular entities or individuals.

83. In relation to Zimmerman & Gauch, I note that in the judgment I was not persuaded of its continued existence and therefore I accept the submission that there seems little purpose in including a reference to Zimmerman & Gauch in the conditions with which Mr Vik has to comply.

84. Beyond that, I think I would hope that typographical, grammatical changes can be agreed between the parties. There has been some progress in the last 24 hours or so. As I say, I express no great confidence as to whether or not these conditions will lead to progress. I very much hope that it will and it seems to me that the authorities would urge me and encourage me to suspend the sentence and therefore that is what I order.