



Neutral Citation Number: [2023] EWHC 1248 (Fam)

Case No: MA22P02300

IN THE HIGH COURT OF JUSTICE
PRESTON DISTRICT REGISTRY

Sessions House,
Lancaster Road,
Preston, PR1 2PD

Date of hearing: Thursday, 11 May 2023

Before:

THE HONOURABLE MR JUSTICE MACDONALD
(Sitting in Public)

Between:

MANCHESTER CITY COUNCIL

Applicant

- and -

(1) MARYAN YUSEF

Respondents

(2) FARAD ABDI

(3) THE CHILDREN

(via their Children's Guardian)

MS S MANN appeared for the **Applicant**

MS EDWARDS appeared for the **First Respondent**

THE SEDOND RESPONDENT did not appear and was not represented

MR WALKER appeared for the **Children's Guardian**

JUDGMENT

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE MACDONALD:

1. This matter again comes before the court on the application of the Local Authority to commit Mr Farad Abdi to prison for breach of orders made by this court, with which it is alleged that Mr Abdi has again failed to comply. That application is dated 13 April 2023. The substantive proceedings in this matter concern Mr Abdi's four children. The substantive application before the court is an application by Manchester City Council for wardship orders in respect of the children and an order for summary return to this jurisdiction from the jurisdiction of Somalia, issued on 13 October 2022. The children currently remain outside the jurisdiction, and their whereabouts are unknown, however they are believed to remain in Somalia. The anniversary of their removal from this jurisdiction passed on 18 March 2023.
2. Manchester City Council is represented by Ms Mann of counsel. The mother is represented by Ms Edwards of Counsel. The children are represented by Mr Walker of counsel. The father has not attended court today. This morning, upon enquiries being made by my Clerk, the court received an email from HMP Kirkham, where the father is currently detained serving a sentence for contempt, the details of which I shall come to. That email reads as follows:

"I am on duty at HMP Kirkham this morning as orderly officer. It has been brought to my attention that Mr Abdi, A2724DA, has been scheduled to attend a court hearing. I have been made aware that transport has been booked, which is yet to arrive, but prior to its arrival I have instructed staff to advise Mr Abdi of the move. Mr Abdi's response to this was that he is refusing to attend, and he has stated it is a civil matter, and so he believes he has a right to refuse."
3. That position reflects the position taken by the father at the last hearing of this application on 3 May 2023. On that occasion the prison informed the court that the father had refused to get onto the prison van. His stated grounds for refusing to attend court on that occasion were that these were civil proceedings, and therefore there was no obligation for him to be produced. The court has been informed that the father later told the prison officer that he required four weeks to prepare for the hearing. On 3 May 2023, I in any event adjourned the case for hearing today. My reason for doing so was that I was satisfied that the father had been given proper notice of this application, that notice having been given only one day before the Bank Holiday weekend, with the case listed for final hearing on the first court day after the Bank Holiday weekend.
4. The father was served with the notice of this adjourned hearing on 4 May 2023, at prison by a prison officer. The father refused to leave his cell to attend a prison appointment to effect personal service, but the prison officer served the father in his cell. The notice of adjourned hearing was accompanied by a letter explaining that the matter had been adjourned to today. The notice was also accompanied by a list of solicitors, directed by the court and who the father could seek to instruct.
5. In addition to his refusal to attend, the father is not represented at this hearing. The father has been given a number of opportunities to seek legal representation. Prior to this matter last coming before me in December of last year, on the Local Authority's first application to commit the father, the father was granted Legal Aid by the court.

On that occasion counsel representing the father however had to withdraw on the grounds that she was professionally embarrassed, which application the court granted. On 19 January 2023 HHJ Singleton KC adjourned a further application to commit the father, to enable him to secure representation by leading counsel. Further adjournments were granted by HJJ Singleton on 1 February 2023 and 2 February 2023, to again permit the father to secure legal representation. Following HHJ Singleton finding the father in contempt of court, she adjourned the sentencing hearing on 9 February 2023 to allow the father to be represented. The father at that point secured the services of counsel and a solicitor, but both were required to withdraw on 16 February 2023. On 3 May 2023 I reiterated the grant of Legal Aid to the father, and ensured that the father was again provided with a number of solicitors' names by both the Local Authority and the children's solicitor.

6. In the circumstances, this court must first decide as a preliminary issue whether to proceed with this final hearing of the committal application where the father has failed to attend the hearing, notwithstanding he has had proper notice of the same, and is not represented. The father was personally served with the committal application itself, and notice of the hearing on 3 May 2023, on 27 April 2023. In the circumstances I have described, and as I have noted, he was personally served with notice of this adjourned hearing on 4 May 2023. The production order requiring that the father be produced at court was made on 3 May 2023 and served on 4 May 2023. As I have noted, the prison has attempted to produce the father in accordance with the production order, but the father has failed to comply.
7. The relevant legal principles governing whether the court can proceed with a committal hearing in the absence of the respondent father were summarised by Cobb J in *Sanchez v Oboz* [2015] EWHC 235 (Fam) namely:
 - i) Whether a respondent has been served with the relevant documents, including the notice of the hearing.
 - ii) Whether the respondent has had sufficient notice to enable him to prepare for the hearing.
 - iii) Whether any reason has been advanced for the respondent's non-appearance.
 - iv) Whether by reference to the nature and circumstances of the respondent's behaviour they have waived their right to be present, i.e. is it reasonable to conclude that the respondent knew of or was indifferent to the consequences of the case proceeding in their absence.
 - v) Whether an adjournment would be likely to secure the attendance of the respondent or at least facilitate their representation.
 - vi) The extent of the disadvantage to the respondent in not being able to present his account of events.
 - vii) Whether undue prejudice would be caused to the applicant by any delay.
 - viii) Whether undue prejudice would be caused to the forensic process if the application were to proceed in the absence of the respondent.

- ix) The terms of the overriding objective to deal with cases justly, expeditiously and fairly.
8. In considering these factors, the court must bear in mind that committal proceedings are essentially criminal in nature, and that the court should proceed in the absence of the accused with great caution, that findings of fact are required before any penalty can be imposed, that the presumption of innocence applies to penalties of imprisonment for breach of order and that such penalty is one of the most significant powers of a judge exercising the civil or family jurisdiction. Finally, the court must have regard to the fact that Arts 6(1) and 6(3) of the European Convention on Human Rights are engaged, entitling the father to, *inter alia*, a fair public hearing, and to have adequate time and facilities for preparation of his defence.
9. Having given careful consideration to the factors articulated in *Sanchez v Oboz*, I am satisfied it is appropriate to proceed with the final hearing of the committal application in the absence of the father.
10. The father has, as I have noted, had proper notice of these proceedings, and has had proper notice of this adjourned hearing. Within that context, I am satisfied that the father has had sufficient notice to enable him to prepare for this final hearing. Indeed, the court adjourned the hearing on 3 May 2023 to today precisely to ensure that the father had adequate time to instruct his lawyers and to prepare for this hearing.
11. There is no credible reason being advanced for the father's failure to appear today. The father is currently incarcerated, and therefore had transport to this court made available to him from prison this morning pursuant to the production order issued by this court. Absent any explanation, for example a medical condition, the father's refusal to get on the prison transport to the hearing amounts in my judgment to a wilful refusal to attend the hearing. Further, in circumstances where the father has made a conscious choice not to attend a hearing, of which he has been given notice and is aware may result in his committal to prison, I am satisfied that the father's actions constitute a waiver of his right to be present. It is reasonable in the circumstances I have described for this court to conclude that the father knows of, or is indifferent to, the consequences of the case proceeding in his absence. Within that context, I have very little confidence that a further adjournment would be likely to secure the father's attendance in circumstances where his failure to attend today derives from the conscious decision on his part that I have described.
12. With respect to the extent of the disadvantage to the father in not being able to present his account of events, the breaches in this case that are alleged against the father are that he has failed to comply with an order requiring him to cause the children to return to this jurisdiction, and with an order that he provide to the local authority the PIN number for his mobile telephone. It is plain on the face of the papers before the court that neither of the steps ordered by the court have been taken by the father and the father has refused the opportunity to attend court to offer an explanation for that default. Further, I note at the last hearing before me and again at the hearing before HHJ Singleton, the father exercised his right to silence in respect of the contempts alleged. Within the context that I have described, any disadvantage to the father of not being able to give his account in respect of the alleged breaches is reduced to a level where I am satisfied that to proceed in his absence will not disadvantage the father's giving his account of events.

13. I am likewise satisfied that in these circumstances no undue prejudice is caused to the forensic process by the absence of the father. I have very properly been made aware by Ms Mann that at the hearing before HHJ Singleton KC the father made clear that he wished to cross-examine the mother in the context of the Local Authority's application, and it was anticipated that the father would make the same application were he to have attended today. I am further informed by counsel that, in particular, Mr Abdi sought to cross examine the mother on the question of whether he knows the whereabouts of the children in Somalia. This court has however, already made findings on that question of fact, determining that Mr Abdi does know the whereabouts of the children. In that context, the appropriate forum for challenging those findings is by way of an appeal of the findings made in December 2022, and not by way of cross-examination of the mother. No appeal has thus far been lodged, even though the father does not require permission in circumstances where he is entitled to appeal an order for committal as of right. More fundamentally, the Local Authority does not rely on the evidence of the mother to prove the breaches that are in issue at this hearing, and has not filed and served a statement from her in support of its current application. In the circumstances there is no evidence from the mother in support of the application to cross-examine. Finally, the chief facts that the court is engaged with are not facts on which the mother can give evidence, or whose evidence would assist the court. The question before the court is whether the father has caused the children to return or not, and whether he has provided his PIN number or not. To adopt the formulation used by the administrative court in *Her Majesty's Attorney General v Pelling* [2005] EWHC 414 (Admin) at [17], there are no relevant facts requiring further elucidation by cross-examination of the mother. In the foregoing context, I am satisfied it is neither necessary nor proportionate to require the mother to be cross-examined, and that the father is not unduly prejudiced in the forensic process by his absence.
14. With respect to the question of delay, it is undoubtedly the case that the longer the children's whereabouts remain unknown and they remain outside their parental care in another jurisdiction, that prejudice will be caused to the children. Further delaying this matter will further delay the court's decision on whether the father is in breach of orders designed to secure the return of the children to the jurisdiction and, if so, what sentence is appropriate to seek to persuade the father that he should now co-operate by notifying the court and the relevant authorities of the whereabouts of the children and providing the PIN number to his phone to aid the local authority's investigations in this regard. Further delay in this case would in my judgment have a seriously prejudicial effect.
15. In all the circumstances I have described, and having regard to the terms of the overriding objective to deal with cases justly, expeditiously and fairly, it would not be appropriate in my judgment, in the circumstances I have outlined, to further adjourn this final hearing by reason of the father's conscious and deliberate refusal to get on the prison transport in order to attend at and participate in this hearing.
16. Turning to the current committal application itself, I have had the benefit of the evidence provided in the affidavit of the social worker, and the social worker has confirmed the contents of that affidavit from the witness box. The detailed background of the matter is set out in my judgment of 5 December 2022, reported as *Manchester City Council v Yusef & Abdi (committal)* [2022] EWFC 160, which should be read with this judgment.

17. On 5 December 2022, I heard an application by Manchester City Council to commit both parents to prison for having breached a location order and an order under the inherent jurisdiction requiring the parents to return the children to this jurisdiction made by HHJ Singleton, sitting as a judge of the High Court, on 14 November 2022. On 5 December 2022, I found that the mother was in breach of the location order in that I was satisfied beyond reasonable doubt that the mother had failed in breach of that order to immediately hand over to the Tipstaff every passport relating to her and every identity card, ticket, travel warrant or other document which would enable her to leave England and Wales. However, for the reasons explained in my judgment, considered that that breach was properly classified as a minor one, and imposed no penalty on the mother.
18. With respect to the father, I was satisfied at the time the location order was executed the father knew the then current location of the children, and continued to know the location of the children at the date of the hearing. At paragraph [45] of the judgment I made the following findings:

"Turning to the father, having regard to the evidence before the court I am satisfied that at the time the location order was executed, the father knew the then current location of the children. Notwithstanding his continued denials, the voice note sent by the father to the mother, which the father did not deny or seek to dispute, proves beyond reasonable doubt that the father knows where the children are, as does the fact that he travelled to Somalia in May 2022, as I am satisfied beyond reasonable doubt that he did. I accept the submission that the voice-message is incriminating and clearly suggests that the father knows the children's whereabouts and had detailed knowledge of the mother's actions in Somalia attempting to locate them. In addition, I note that notwithstanding his purported worry concerning the children's whereabouts, unlike the mother he has never reported them missing to the authorities nor sought the assistance of the court to locate the children in one of the alternative locations he has mentioned, namely Turkey or the United States. I am satisfied that this is because he knows full well where the children are currently. When arrested and spoken to by police, I am satisfied beyond reasonable doubt that the father made no mention at all of the children being in Somalia, denying all knowledge of their whereabouts. The recording of the father's statement on 18 November 2022 makes no mention of the children being in Somalia, the only reference to another country being to Turkey."

19. In the circumstances, I was satisfied beyond reasonable doubt that on 18 November 2022 the father had failed to inform the Tipstaff immediately of the whereabouts of the children, and in any event to inform the Tipstaff of all matters within his knowledge or understanding, which might reasonably assist the Tipstaff in locating the children. I was further satisfied beyond reasonable doubt that at the time the father was arrested, he failed to provide his passport and any other document which would enable him to leave England and Wales, and satisfied beyond reasonable doubt that on 18 November 2022 the father failed immediately to hand over to the Tipstaff every passport relating to him, or other document which would enable him to leave England and Wales.

20. In light of those findings, I sentenced the father to three months immediate imprisonment to reflect the fact that the father had spent nearly three weeks on remand ahead of that hearing. In addition, on 5 December 2022 I made a further order under the inherent jurisdiction, requiring the father to facilitate the return of the children to the jurisdiction of England and Wales forthwith. I made clear to the father that it was open to him to apply to purge his contempt of court, and hence to secure his release from custody, if the children were returned to the jurisdiction of England and Wales pursuant to that return order. I further made clear that if the children were not returned to England and Wales in breach of the order, it was open to the Local Authority to make a further application to commit the father for breach of that order, at which time he would be liable to a further penalty, including a period of imprisonment, if he were once again to be found in contempt of court.
21. The father failed to comply with my order of 6 December 2022, and the Local Authority issued a further application to commit the father, albeit that the application was issued so late by the Local Authority that the father had been released from custody by the time that application came before the court, having been properly served on the father. On 9 February 2023, HHJ Singleton KC found the father to be in breach of my order of 6 December 2022. On 16 February 2023, HHJ Singleton KC sentenced the father to a further six months in custody, and made a further order requiring the father to ensure the children are returned to this jurisdiction. That order, which had a penal notice attached to it was in the following terms:
- "The second respondent father Farad Abdul Aziz Sheikh Osman Abdi shall ensure the children [names given] are returned to the jurisdiction of England and Wales forthwith, and by no later than 31 March 2023 at 23.59."
22. On 3 March 2023 HHJ Singleton KC made a further series of orders, including disclosure orders against the Home Office, HMP Preston, HMP Hewell and Lufthansa in an attempt to locate the children. HHJ Singleton KC also issued witness summonses against a number of individuals to attend court on 17 March 2023 to provide information to the court as to the whereabouts of the children. Some of those relatives attended on 17 March 2023. The remainder are subject to outstanding warrants to be executed by the Tipstaff. In addition, HHJ Singleton KC ordered the father to provide the PIN numbers and passwords for the mobile phones belonging to him, which are in the current possession of the Local Authority, to enable the examination of those phones to further see whether there is information that might assist in locating the whereabouts of the children, and securing their return to this jurisdiction. That order, which also had a penal notice attached to it, was in the following terms:
- "The second respondent father Farad Abdi shall inform the Local Authority by no later than 31 March 2023 at 20.59 the PIN number and passwords for the mobile phones belonging to him, in the current possession of the Local Authority, to enable examination of the said phones."
23. The order of HHJ Singleton KC dated 16 February 2023 was served on the father in prison on 1 March 2023. The order of HHJ Singleton dated 3 March 2023 was likewise served on the father in prison.

24. The Local Authority, by its application dated 13 April 2023, now alleges that the father is in breach of the orders made by HHJ Singleton KC on 16 February 2023 by failing to ensure the children were returned to this jurisdiction by 31 March 2023. The Local Authority further alleges that the father is in breach of the order of HHJ Singleton KC dated 3 March 2023 requiring him to provide the PIN numbers and passwords for the mobile phones belonging to him, in the current possession of the Local Authority, to enable examination of the said phones. The affidavit of the social worker Anna Owen dated 12 April 2023 makes clear that the Local Authority has made repeated efforts to engage the father regarding the return of the children, in particular, a virtual visit to the father was arranged on 28 February 2023. The father refused to attend, and indicated to prison staff that he did not wish to speak with Children's Services. A further visit was arranged on 3 April 2023. The father refused to attend, but did not indicate a reason for that refusal to prison staff.
25. The children remain outside the jurisdiction of England and Wales, and in the circumstances the Local Authority submits that this evidence is beyond reasonable doubt the breach of the order of HHJ Singleton KC dated 16 February 2023. The father has not provided his PIN number or passwords to Children's Services, to enable the interrogation of his telephones. Again, the Local Authority submits that this evidence is beyond reasonable doubt the breach of the order of HHJ Singleton KC dated 3 March 2023.
26. With respect to the law and procedure the court must apply, the process of committal for contempt is technical in nature, and of some complexity. It is important, in the circumstances where the liberty of a citizen is at stake, to recall the strict procedural requirements of a properly constituted committal hearing have to be complied with in respect of the Local Authority's application to commit the father for contempt and to be satisfied that they have been complied with. I have particularly today borne in mind the following requirements. In this case I am satisfied that each of these procedural imperatives has been met ahead and during this hearing:
 - i) The committal application must be dealt with at a discrete hearing, and not alongside any other applications.
 - ii) The alleged contempt must be set out clearly in a notice of application or document, the summons or notice identifying separately and numerically each alleged act of contempt.
 - iii) The application notice or document setting out separately each alleged contempt must be proved to have been served on the respondent in accordance with the rules.
 - iv) The respondent must be given the opportunity to secure legal representation as he or she is entitled to.
 - v) The committal hearing must be listed publicly in accordance with the Lord Chief Justice's Practice Direction Committal Contempt of Court Open Court of 26 March 2015, and as amended on 20 August 2020, and should ordinarily be held in open court.

- vi) Consideration must be given to whether the allocated judge should hear the committal or whether the committal application should be allocated to another judge.
 - vii) The burden of proving the alleged contempt lies on the person or authority alleging the contempt.
 - viii) The respondent is entitled, subject to the case management power of the court, to cross-examine any witnesses, to call evidence, and to make submissions of no case to answer.
 - ix) The alleged contempt must be proved to the criminal standard of proof i.e. beyond reasonable doubt.
 - x) The respondent must be advised of his or her right to remain silent, and informed that he or she is not obliged to give evidence in his or her own defence.
 - xi) Where a contempt is found proved on the criminal standard, the committal order must set out the findings made by the court that establish the contempt.
 - xii) Sentencing should proceed as a separate and discrete exercise with a break between a committal decision and the sentencing of the contemnor.
 - xiii) The contemnor must be allowed to address the court by way of mitigation, or to purge his or her contempt.
 - xiv) The court can order imprisonment, immediate or suspended, and/or a fine, or adjourn consideration of penalty for a fixed period, or enlarge the injunction.
 - xv) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval, and be designed to secure a compliance in the future.
 - xvi) Committal to prison is appropriate only where no reasonable alternative exists.
 - xvii) Where the sentence is suspended or adjourned, the period of suspension or adjournment and the precise terms for activation must be specified.
 - xviii) The court should briefly explain its reasons for the disposal it decides to impose if it finds the contempt proved.
27. The orders made by HHJ Singleton KC on 16 February 2023 and 3 March 2023 were clear in their terms. They were made in the presence of Mr Abdi, and they were served on Mr Abdi. Those orders required him (a) to cause the children to be returned from the jurisdiction of Somalia to the jurisdiction of England and Wales forthwith or by no later than 31 March 2023, and (b) to provide the Local Authority the PIN number and passwords for his mobile telephones. I am satisfied beyond reasonable doubt that the father has failed to comply with both of those orders.
28. Very properly Ms Mann made clear to the court that at the previous hearings the father has suggested that he is not able to comply with orders made by the court whilst he is in prison. Ms Mann further suggested that that may well have been, had the father

attended court, the position he advanced today. In those circumstances, it is proper for the court to address it on the assumption that that would have been the submission of the father by way of explanation for the prima facie failure to comply with the orders.

29. First, the contention of course does not address the second order made by HHJ Singleton on 3 March 2023. Compliance with that order, namely the provision of a PIN and passwords to a representative of the local authority attending the prison, is not conditional on the father being at liberty, particularly in circumstances where the Local Authority have organised repeated visits to the father to enable him to provide that information. I am satisfied that the father knows his own PIN code, that that information is in his possession and, had he wished to do so, he could have provided it. He has failed to do so.
30. I am likewise satisfied that the fact that the father is currently in custody does not prevent him from complying with an order to *ensure* the children to be returned from the jurisdiction of Somalia to the jurisdiction of England and Wales. As I have noted, the father has had multiple visits from social workers from Children's Services, to whom he could have given information confirming the whereabouts of the children, this court having found as a fact that he knows the whereabouts of the children in the jurisdiction of Somalia, in order that the local authority can arrange for their return. The father has likewise had repeated opportunities to instruct lawyers, whom he could also have given information concerning the children's whereabouts, to cause their return to this jurisdiction. It is likewise possible for the father to contact members of his family whilst he is incarcerated. Finally, the father could have attended court today to assist the court further with information he has in relation to the whereabouts of the children. Once again he has done none of those things. In the circumstances I am not satisfied that it is a legitimate explanation for a failure to comply with the orders made by HHJ Singleton KC that the father has been subject to a custodial sentence for the duration of those orders.
31. In the circumstances I am satisfied beyond reasonable doubt, and find as a fact, that the father is in breach of the order of 16 February 2023 in that he failed to ensure that the children were returned to the jurisdiction of England and Wales forthwith, and by no later than 31 March 2023 at 23.59 hours. I am further satisfied beyond reasonable doubt, and find as a fact, that the father is in breach of the order made by HHJ Singleton KC of 3 March 2023 in that the father failed to inform the Local Authority by no later than 31 March 2023 at 23.59 hours of the PIN number and passwords for the mobile phones belonging to him, and in the current possession of the Local Authority, in order to enable examination of those devices.
32. Having made my findings in respect of contempt of court, the question arises whether the court should now adjourn the question of sentence, to give the father a further opportunity to attend a hearing to mitigate. I am satisfied however that that would not be appropriate in the circumstances of this case. In *Alfa Bank v Reznik*, 3 August 2016 Unreported, Mr Justice Popplewell (as he then was) decided at [23] that it was appropriate to proceed to sentence the contemnor in his absence in circumstances where he was satisfied that the past behaviour of the contemnor indicated that he had no intention of engaging with the court, noting that the application had already been adjourned once to no avail. As I have noted, the father has refused to attend the hearing today, despite being given the opportunity to get on transport to the court, and indeed indicated to the relevant prison officer that he was refusing to attend. That refusal to

attend the hearing follows the father's refusal to attend the hearing on 3 May 2023, again in circumstances where he indicated that he was not prepared to attend the hearing, and made an active decision in that respect. Within that context, I have no confidence at all that were I to adjourn for sentence the father would agree to attend the sentencing hearing in order to offer mitigation on his own behalf, or by way of a lawyer. Further, it is difficult to divine what mitigation the father would offer beyond the contention that he has been unable to comply with the order from prison, which contention I have already dealt with during the course of the judgment. In all these circumstances, I am satisfied that it is appropriate now to proceed to sentence without further adjourning the matter.

33. The general legal principles applicable to sentencing of a contemnor are now well established, and can be summarised as follows:
- i) The court can order imprisonment, immediate or suspended, and/or a fine, or adjourn consideration of penalty for a fixed period, or can enlarge the injunctive orders.
 - ii) In sentencing the contemnor, the disposal must be proportionate to the seriousness of the contempt, reflect the court's disapproval, and be designed to secure compliance in the future.
 - iii) Committal to prison is appropriate only where no reasonable alternative exists.
 - iv) Where the sentence is suspended or adjourned, the period of suspension of adjournment and the precise terms for activation must be specified.
 - v) Imprisonment is not the starting point, and it is not the automatic response to a contempt of court. Equally, there is no principle that a sentence of imprisonment cannot be imposed on a contemnor who has not previously committed a contempt.
 - vi) The disposal chosen must be proportionate to the seriousness of the contempt. In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed, and the likelihood of any risk to the process of justice.
 - vii) In the circumstances where an immediate term of imprisonment is appropriate, it should be as short as possible, having regard to the gravity of the contempt, and must bear some reasonable relationship to the maximum sentence of two years' imprisonment that is available to the court.
 - viii) Where a term of imprisonment is the appropriate sentence, the length of a term should be determined without reference to whether the term is to be suspended or not. Having determined the length of the term of imprisonment the court should expressly ask itself whether a sentence of imprisonment might be suspended.
 - ix) The court should briefly explain its reasons for the disposal it decides to impose, if it finds the contempt proved.

34. As Marcus Smith J made clear in *Patel & Others*, the penalty of contempt has two primary functions. First, it upholds the authority of a court by marking the disapproval of a court, and deterring others from engaging in the conduct comprising the contempt. Secondly, it acts to ensure future compliance. In some cases therefore and in particular those cases where the contempt arises from the breach of a court order, a penalty will have the primary objective of ensuring future compliance with that order. Within this context, where the court is dealing with breaches in the context the contemnor having already received a sentence or sentences of imprisonment for breach of earlier orders in the same or similar terms, it is also important for the court to satisfy itself that its sentence continues to contain an element of ensuring future compliance, and has not become simply punitive in nature (see *Wilkinson v Anjum* [2011] EWCA Civ 1196).
35. In this case I have found as a fact in the circumstances and the terms I have described that the father is in breach of the order of HHJ Singleton of 16 February 2023, and found as a fact that he is in breach of the order of HHJ Singleton dated 3 March 2023. The aggravating factors in this case in respect of the father's breaches of the orders I have found are his continued, and I am satisfied contumelious, failure to comply with the terms of an order requiring the return of the children to this jurisdiction, or to provide details of their current whereabouts. Added to this is now his failure to comply with the order to provide the details of his PIN number and passwords, which order was made with the specific intention and aim of seeking to identify where the children currently are, in order that steps can be taken to secure the return of the children to the jurisdiction. A further aggravating feature is the father's persisting in this course notwithstanding that the court has found that he knows where the children are. That finding has not been the subject of appeal. Within that context, the father has made no further attempt to assist the court or the authorities in order that the steps can be taken to recover the children. In the circumstances four young children continue to be absent from the jurisdiction of their habitual residence, outside the care of their parents, and without oversight of the authorities who have a obligation to promote and safeguard their welfare. The father has persisted in taking that position notwithstanding a sentence of custody of three months, and a sentence of custody of six months' imprisonment, and continues to refuse to comply with the order of the court.
36. With respect to the mitigating factors, as I have already noted, it is not possible in this case to identify any mitigating factors, in part because the father has refused to attend this hearing to provide the court with any explanation for his breach of the orders. In any event, the father having failed in all respects to cooperate with the orders of the court, and I am satisfied that there is no reasonable explanation for that failure to comply in the circumstances I have already dealt with.
37. Having regard to the aggravating and mitigating factors in this case, I am satisfied that the starting point for the appropriate sentence for breach of the orders of HHJ Singleton KC of 16 February 2023 and 3 March 2023 must be one of custody. Having regard to the function of the sentence in first marking the disapproval of the court and deterring others from engaging in the conduct comprising the contempt, and second to ensure future compliance, I am further satisfied that a sentence of imprisonment passed by the court in the circumstances I have described will continue to contain an element of ensuring future compliance rather being simply punitive in nature. In my judgment, on the particular facts and circumstances of this case, the appropriate custodial sentence is one of twelve months' imprisonment. I have considered whether it would be

appropriate to suspend that sentence but, in the absence of any willingness on the part of the father to cooperate, in my judgment suspension would serve no purpose.

38. In addition, I will make a further order under the inherent jurisdiction requiring the father to cause the return of the children to the jurisdiction of England and Wales forthwith and, in any event, by 30 May 2023. I also intend to make a further order requiring the father to surrender his PIN number and passwords for the telephones that are currently in the Local Authority's possession, in order that the Local Authority can start, if possible, to make progress in locating the children.
39. It will of course be open to the father to apply to purge his contempt of court, and hence secure his release from custody. In circumstances where I have proceeded today to sentence the father in his absence without further adjourning for sentence, I intend to list this matter next week for a hearing at which the father will have an opportunity to purge his contempt in the face of the court.¹
40. If the children are not returned to England and Wales in breach of the order, it will once again be open to the Local Authority to make a further application to commit the father for breach of that order, at which time he will be liable to a further period of imprisonment if he is once again found to be in contempt.
41. I make no order as to costs.
42. That is my judgment.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

¹ In the event, the father refused to attend the remote hearing listed to provide him with an opportunity to purge his contempt.