

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

7 Rolls Buildings  
Fetter Lane  
London EC4A 1NL

Wednesday, 26 July 2023

BEFORE:

**MR JUSTICE RICHARD SMITH**

BETWEEN:

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**MARTIN ARMSTRONG**

Applicant/Trustee

- and -

**NEILL MATTHEW CARTER**

Respondent

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**MR BROWN** (instructed by Charles Russell Speechlys) appeared on behalf of the  
Claimant

**MR CARTER** appeared in person

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**PROCEEDINGS**  
**(COMMITTAL APPLICATION - SENTENCE)**  
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**S E N T E N C E**

A MR JUSTICE RICHARD SMITH: Mr Carter, I have found proven, to the criminal  
standard, each of the 11 allegations or counts of contempt set out in the  
B application for your committal, representing 11 breaches of the undertakings that  
you gave to the Court on 15 June 2020. It now falls to me to consider the  
appropriate sentence for those breaches but, before I do so, I should say that I have  
C considered whether a short adjournment might be appropriate before I proceed to  
sentencing, but I have decided that it would not be.

The circumstances of your breaches of undertaking are as follows. Having been  
D declared bankrupt, you attended an examination before the Court, under section  
366(1) of the Insolvency Act 1986, and you did so pursuant to an order, I  
understand, dated 12 December 2019. That examination took place on 15 June  
2020. At the examination hearing, you gave a series of undertakings that you  
E would provide the 11 classes of documents relating to your assets. Those  
undertakings were embodied in an order of Deputy ICC Judge Schaffer, dated  
15 June 2020, that order being endorsed with a Penal Notice. Following the  
F hearing, correspondence ensued with the Trustee's solicitor, in which you  
intimated your intention to comply with the undertakings, albeit indicating some  
delay in doing so. Despite this, the documents you promised to the Court would  
be provided did not materialise on the due dates in June or July 2020, or indeed at  
G all, even to this day. The Trustee therefore brought a committal application dated  
30 July 2020. That was listed for December 2020. However, you did not attend  
this and despite some further limited correspondence then, you effectively, and  
perhaps putting it most charitably, went to ground.

H Despite a Bench Warrant being issued for your arrest, you were not detained until

24 May 2023 and then it was at Gatwick Airport. You were held at His Majesty's  
A Prison Pentonville but were released upon the production of your passport and on  
the basis of a residence condition and daily reporting to the police. In light of the  
rule changes since you went to ground, the Trustee had also prepared, and served,  
B a new contempt application dated 13 June 2023, in accordance with CPR Part 81,  
although that effectively replicates the original application.

Before drilling down further into the circumstances of, and the appropriate sentence for  
this particular case, I consider first, the general principles by which the courts are  
C guided in this distinct context. As to the underlying purpose of the sentencing  
exercise in the contempt context, this serves three purposes: firstly, as a deterrent;  
secondly, as a punishment for breach of orders or, as here, undertakings; and  
D thirdly, with a coercive purpose to encourage compliance in the case of continuing  
breaches. Cases are very fact specific and, as such, there is only so much I can  
glean from the sentences imposed in other cases, even those where the breaches  
are of a not dissimilar nature. Moreover, the Court in any case must always  
E consider whether committal to prison is necessary and, even if it is, the shortest  
custodial sentence that can be imposed in the circumstances. Nevertheless, the  
authorities, including some of those referred to at paragraph 26 of the applicant's  
F skeleton which I have considered before this hearing, indicate that in cases of a  
continuing failure to disclose documents, the imposition of a long custodial  
sentence (possibly even to the maximum of 2 years) may be appropriate,  
G particularly to encourage future compliance. Relevant matters include the extent  
of the failure to disclose, how long the non-disclosure lasted, how far it caused or  
might have caused harm, whether it was deliberate and the reasons for doing it. In  
all cases, relevant mitigation will include whether the contempt has been admitted;  
H whether remorse has been expressed; whether there has been belated compliance

A with the order or undertaking as well as the good character of the respondent and his or her antecedents. In approaching sentence, the questions for the Court to consider, mitigation apart, are culpability and harm, both matters going to the question of the seriousness of the breach concerned.

B Drilling down into the circumstances of this case further, I am sure that your breach is a very serious one, concerning, as it does, the longstanding and continuing breach of your undertakings to the Court, themselves proffered in the context of your statutory obligations under section 366 of the Insolvency Act.

C In the circumstances of you offering undertakings, not attending your original committal hearing and then effectively going to ground for nearly 3 years, only to be brought before the Court under an arrest warrant, I am sure that your breach was intended to interfere, not only with the proper administration of justice but also the proper conduct of your bankruptcy.

D I have considered what you have said today about the difficulties you have experienced given your work commitments, logistical issues in getting information and the difficult time for you in terms of your career and relationships at the time.

E However, even accepting what you say about those difficulties, we are now here 3 years later on from your original undertaking compliance dates and the Trustee still does not have the documents. That is the case even after your much more recent arrest and temporary incarceration. Moreover, in June 2020 and December 2020, your communications indicated your intended compliance then with the undertakings or an appreciation, at least, of the seriousness of the matter. I am sure that all these matters show overwhelmingly a deliberate and a calculated choice not to provide the information and to flout the undertakings.

G As to the harm or risk of harm created, you have clearly put the interests of your creditors in jeopardy and, on a more general level, the actions you have taken and

have not taken do have the effect of subverting the proper administration of justice and conduct of your bankruptcy.

In terms of mitigation, I accept, for sentencing purposes, what you said to me this morning about your previous good character. I also take account of the fact that you have today admitted your breaches. You have also apologised to the Court again today but, given again the long history of this matter and the fact that the undertakings are still outstanding, that carries little weight. I have also taken into account the other personal mitigation advanced on your behalf today, including, as I already mentioned, your past relationship and career difficulties after your divorce, and work issues, relatedly that you are now trying to get back on your feet, as it were, both in terms of your personal life and work, as well as the serious impact on those efforts were I now to impose a custodial sentence. I have also had regard to your compliance with your bail conditions recently imposed upon you. Finally, I have taken into account what is known as “the totality principle”; that means that I recognise that there have been multiple breaches of undertaking, but I have also stood back to ensure that the sentence I impose is proportionate to your breaches overall.

Taking all of those matters into account, I am sure that a custodial sentence is unavoidable in this case, and that the shortest sentence that I can impose, commensurate with the seriousness of the breaches I have found, is a custodial sentence of 18 months' imprisonment. I should add that I have given careful consideration to whether I should suspend your sentence but, I have declined to do so, your personal mitigation not being sufficiently compelling. Nor am I satisfied that it would be an appropriate course with a view to securing your compliance. However, as has been said this morning, it will be open to you to apply to the Court to discharge or purge your contempt and to invite the Court then to consider

A the effect on your sentence of any steps that you might take in the future. You  
will spend half that period of 18 months in custody before you are released. The  
amount of time you have already spent in custody following your arrest in May  
2023 will also be deducted from the further time you will spend in custody. I  
B would ask that before the order and warrant is finalised, that period of time should  
be calculated and reflected as necessary in both.

C I must inform you that you have a right to appeal against my decisions today and that  
such appeal lies, as of right, to the Court of Appeal. Any such appeal must be  
made within 21 days of today. I will also ensure that a summary of this decision is  
posted shortly on the judicial website. That concludes my sentencing remarks.

Is there anything that either party wishes to raise?

D MR BROWN: My Lord, I can draw up an order; as your Lordship is aware there are  
various formal requirements of the order, some of which your Lordship has  
already mentioned. I am just going to list them lest I have missed anything. At  
E the top, I ought to also to say at, as your Lordship is doubtless aware, when a  
Committal Order is made, a warrant or committal must also be produced. I have a  
template here, doubtless you already have one, I can see.

MR JUSTICE RICHARD SMITH: The Associate may well.

F MR BROWN: The Associate indicated to me that he had one with him, and I am  
grateful to him.

G The only other matter I need to raise before we get to the ingredients of the order is the  
question of costs. Relying solely on your findings, I apply for the Trustee's costs  
of this application, on the indemnity basis, to be assessed if not agreed and, if not  
paid, for those costs to be provided for us as expenses of the bankruptcy estate. I  
am not asking for a payment on account; there is no schedule before the Court.

H MR JUSTICE RICHARD SMITH: Right. Okay.

A MR BROWN: Do you want me to go through the ingredients of the order before you hear from Mr Carter, if he has anything to say?

B MR JUSTICE RICHARD SMITH: Let us deal with costs first. Mr Carter, as you have heard, an application on this committal application has been made that you should pay costs on what is known as the “indemnity basis”. The indemnity basis, you may or may not know but I will explain it, is where the conduct or the C circumstances of a case are so, what is described as “out of the norm”, that an award of costs on a more favourable indemnity basis should be awarded. That means that there is no issue, no one is entitled to question the proportionality of the costs incurred by the Trustee and, if there are any doubts as to the D reasonableness of those costs, they will be resolved in favour of the Trustee. Do you have anything to say in relation to that application before I make a decision in relation to it?

THE RESPONDENT IN PERSON: No.

E MR JUSTICE RICHARD SMITH: All right then. I will so grant that. It seems to me appropriate, in the circumstances of this application, that it should be made on the basis indicated.

F MR BROWN: I am grateful, my Lord. What the order will do (i) it will recite the application, its nature by reference to its date; it will recite who you have heard G from, namely myself and Mr Carter in person. It will also indicate the evidence that you have considered, namely Mr Tilling's affidavit. It will record your finding of contempt and then that the requirements of rule 81.4(2), that is the necessary parts of the application were fulfilled. It will then declare in the long H list form the contempt, that is the breaches of the undertaking. There is then the operative part of the order, which will be expressed to be made under the power in rule 81.9(2) which is your power to commit someone for contempt. And that part

A of the order will include the sentence for 18 months less -- and I will check the  
number of days -- six days that Mr Carter, through no fault of his own, has spent  
in detention already. Fourthly, it will record that Mr Carter has permission to  
B apply, under rule 81.10 to discharge the Committal Order. Fifth, it will record, as  
you have in your sentencing remarks, my Lord, the right to appeal, indicated that  
the proper forum for that appeal is the Court of Appeal (Civil Division) and it will  
record, as it must, any deadline for any appeal being 21 days from the date of this  
order.

C MR JUSTICE RICHARD SMITH: Yes.

MR BROWN: As you have already alluded to my Lord, the judgment is required to be  
transcribed and published.

D MR JUSTICE RICHARD SMITH: Is it still required to be transcribed?

MR BROWN: I believe so. If you have the White Book, my Lord, it is rule 81.8(2).

MR JUSTICE RICHARD SMITH: The answer is that I do not, but I can look it up.

E MR BROWN: I will be corrected if I am wrong, but I believe that is the case. I note  
your Lordship said “summary”, but I think what we actually require is an actual  
transcript.

MR JUSTICE RICHARD SMITH: An actual transcript at public expense.

F MR BROWN: Rule 81.8(2). **(Pause)**

MR JUSTICE RICHARD SMITH: Sorry, is that the right reference? 81.8(8).

MR BROWN: Forgive me, 81.8(8).

G MR JUSTICE RICHARD SMITH: Okay, it needs to be transcribed and published.

Fine. I have not, so I will make an order that there should be a transcript obtained  
at public expense.

H MR BROWN: The order will then disapply rule 81.9(3), unless you tell me otherwise,  
that is the rule requiring personal service of a warrant for committal. It is



redundant here because, quite properly, Mr Carter is here.

A MR JUSTICE RICHARD SMITH: Yes.

MR BROWN: Then, again, unless your Lordship tells me otherwise, there will be provision of service of the order by the email method ordered by Bacon J on 26 May 2023, and also by way of the governor of His Majesty's Prison, I believe it will be Pentonville.

MR JUSTICE RICHARD SMITH: That may be...

C MR BROWN: The Associate is nodding, my Lord. I am grateful. That is all. I will add in the costs provision as well. I can do that immediately when I get back to chambers.

D MR JUSTICE RICHARD SMITH: Thank you very much. Is there anything that the Associate needs from me before I rise?

**(The Bench conferred with the Associate)**

E MR BROWN: The wording that I have, if it assists, is to the governor which says: “required to receive and keep [Mr Carter] safely in prison, under arrest under this warrant, for a period 18 months less 6 days or until lawful discharge, if sooner”, because that provides for any application in the meantime.

MR JUSTICE RICHARD SMITH: Yes. Thank you.

F MR BROWN: I should say that the order itself will specify the exact calculation as directed, my Lord.

MR JUSTICE RICHARD SMITH: Quite. Thank you.

G Can I thank the Court staff. Is there anything else that needs to be discussed. Yes?

H THE RESPONDENT IN PERSON: Can I ask one question? One of my issues I had, which made me fear for me in Pentonville, was very difficult in terms of me sort of doing time there, purely because I got singled out for being living in Kensington, I got singled out for being a banker and the actual guards actually told

A me to be careful myself, in terms of me being pushed into cells and being forced to do running around. I don't know what the process is to ask or whether it is in your power to actually understand there is a different, you know, establishment I can go to, or whether I need to get some advice on that. It was quite bad.

B Medicines -- I brought it up in the previous thing. I didn't get my blood pressure or anything. It was quite difficult.

MR JUSTICE RICHARD SMITH: I know conditions in prison are very, very difficult.

C I am afraid there is nothing that I can do, as a judge, to influence that. All I can suggest you do is, yes, by all means take advice and speak to those staff within the system as appropriate, in the prison system for the staff and the officers in there.

All right?

D THE RESPONDENT IN PERSON: Fine.

MR JUSTICE RICHARD SMITH: Thank you very much, everyone, for being here and for your submissions today.

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**A**

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