Neutral Citation Number: [2024] EWHC 2364 (Ch)

Case No: PT-2023-MAN-000038

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
PROPERTY TRUSTS AND PROPATE LIST (ChD)

IN THE ESTATE OF BETTY EUGENIE ENSHAW (DECEASED)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 0DJ

Date: 20 August 2024

Before:
HIS HONOUR JUDGE CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

JANE ELIZABETH WALDROP
(By her son and Litigation Friend Ross William Scholz)

Claimant

-and-
MATTHEW ROBERT SEARSON
(As Personal Representative of Betty Eugenie Enshaw (Deceased))

Defendant

- -

Ian Cooper (instructed by **JMW Solicitors LLP**) for the **Claimant**

Graham Sellers (instructed by **Slater Heelis Ltd**) for the **Defendant**

- -

Approved Judgment

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HIS HONOUR JUDGE CAWSON KC:

Introduction

1. This case comes back before me today in order to determine the punishment that it is appropriate to impose on the Defendant, Matthew Robert Searson in consequence of my finding against him on 4 July 2024 of contempt of court. I shall first consider the background and history to the finding of contempt and the present proceedings before considering the relevant principles to apply in considering the appropriate punishment or sentence, before then determining what that appropriate punishment or sentence is.

Background

2. The late Betty Eugene Bradshaw ("**the Deceased**"), died on 5 April 2008, leaving a will dated 3 December 1991 ("**the Will**") that appointed a firm of solicitors as executors and trustees and left her residuary estate to her daughters, the Claimant, Jane Elizabeth Waldrop, and the late, Francesca Dorothy Searson ("**Francesca**"), with a gift over to their children in the event that they should pre-decease the Deceased.

3. In the event, Francesca pre-deceased her mother, leaving a son, the Defendant. Consequently, the Claimant and the Defendant each became entitled to one-half of the Deceased's estate. The principal, if not the only asset in the Deceased's estate was the property, 5 Mill Green Close, Bampton, Oxfordshire ("**the Property**").

4. The Claimant has at all relevant times lived in the United States of America, where she has for some years suffered from severe dementia and appears in the present proceedings by her son and litigation friend, Ross William Scholtz ("**Mr Scholtz**"). It is unclear why a grant of probate was not taken out by the firm of solicitors named in the Will. However, in the event, the Defendant obtained a grant of letters of administration to the deceased's estate with will annexed in his sole name on 7 January 2009.

5. On 22 June 2011, the Defendant sold the property for £269,000. He did not account and has not accounted to the Claimant for any part of the proceeds of sale or otherwise accounted to her in respect of any other assets that might have been in the Deceased's estate. In an email dated 6 September 2019, the Defendant wrote to the Claimant's solicitors, JMW Solicitors, informing them that the net proceeds of sale after the costs of sale and various expenses incurred to enable the sale to proceed were £258,524.24, the Claimant's 50 per cent of which was £129,263.12.

6. In that correspondence, the Defendant said that if he was provided with bank details, then he would arrange for the monies to be paid over to the benefit of the Claimant. The monies were not paid and after some chasing, the Claimant by Mr Scholtz as litigation friend, commenced the present proceedings by CPR Part 8 Claim Form, seeking an order under CPR 64.2(a) for the Defendant to: (a) provide an account dealing with his administration of the estate of the Deceased; and (b) make an interim payment of £100,000 to the Claimant against her 50 per cent share in the estate. The Defendant did not respond to the proceedings apart from seeking an adjournment of the first hearing, albeit ultimately not pressing an application to vacate that hearing when the suggestion of an adjournment was rejected on behalf of the Claimant.

7. At the first hearing on 26 July 2023, in the absence of the Defendant, DDJ A Williams ordered the Defendant to: (a) file and serve a witness statement by 6 September 2023, providing an account of his administration of the estate, the witness statement in question being required to include the completion statement for the sale of the property as well as receipts and invoices evidencing all transactions made by the estate and (b) make an interim payment to the Claimant of £100,000 by 6 September 2023, the payment to made against the Claimant's share of the estate. In addition, the Defendant was ordered to pay costs summarily assessed at £10,418.

8. The order was sealed on 2 August 2023. The following day, the order was posted to the Defendant's property at Bell House, High Street, Henham, Bishop's Stortford, CM22 6AR ("**Bell House**"). The Defendant did not comply with the deputy district judge's order. He did not provide the witness statement that he was ordered to provide or make the payment of £100,000 by 6 September 2023, and he did not pay the costs that he was ordered to pay by 9 August 2023.

9. On 20 December 2023, the Claimant applied to vary DDJ A Williams' order so that the order included a penal notice, which had not been included on the order dated 26 July 2023.

10. On 22 December 2023, DJ Banks, dealing with the matter on the papers, ordered that the order dated 26 July 2023 be varied to include a penal notice. DJ Banks also granted the Defendant a further 21 days to file the required witness statement and make the payment of £100,000, that 21-day period to run from the date on which the order was served on the Defendant. DJ Banks' order was sealed on 27 January 2024. On 2 April 2024, the order was personally served on the Defendant at Bell House. The Defendant therefore had until 23 April 2024 to provide the required witness statement and make the payment of £100,000 under threat of the penal notice. He did not comply with the order dated 22 December 2023 in any way.

11. In the light thereof, the Claimant proceeded to make the present application to commit the Defendant for contempt of court, the application being dated 14 May 2024. That application was duly personally served on the Defendant by way of personal service, together with the supporting evidence, initially the witness statement of Ian William Johnston ("**Mr Johnston**"), dated 14 May 2024, but further, in order to correct a procedural deficiency, an affidavit made by Mr Johnston dated 2 July 2024, confirming the contents of the witness statement. This documentation was all served personally on the Defendant at a location in London that he had provided for service. The Defendant, apart from engaging to agree a location for personal service and accepting service of the documents in this way, did not respond to the contempt application in any way.

12. The matter came on for hearing before me on 4 July 2024. The Defendant did not attend. I was satisfied that he had been personally served with the application and supporting evidence and was well aware of the application, and that it was to be inferred that he had taken a deliberate decision not to attend the hearing. In those circumstances, I proceeded to hear the application in his absence and found him to be in contempt of court by breaching the relevant orders, and in particular the order of DJ Banks dated 22 December 2023 that had been endorsed with a penal notice. The Defendant does not seek to challenge this finding.

13. I decided that it was not appropriate to proceed with sentencing on 4 July 2024 in the absence of the Defendant and I adjourned the matter to be dealt with on 6 August 2024.

14. It is to be noted that against the background of the contempt application, on 15 May 2024, the claimant also served a statutory demand on the Defendant, demanding the sum of £110,418 due pursuant to the orders that had been made. No application was made to set aside that

demand nor any offer made in respect of the petition debt. In those circumstances, the Claimant presented a bankruptcy petition against the Defendant in the Chelmsford County Court on 18 June 2024.

15. In my order of 4 July 2024, adjourning the question of punishment and sentence to a hearing on 6 August 2024, I included within the order a specific order that the Defendant should personally attend the subsequent hearing. In addition to that, I issued a bench warrant for the Defendant's arrest with a view to securing his attendance at the hearing on 6 August 2024.

16. At 00.56 am on 6 August 2024, the Defendant was arrested at Stansted Airport on re-entering the country from a family holiday. As I understand it, he was arrested either on the plane or getting off it in the presence of his wife, two children and a family friend. With impressive efficiency on the part of those concerned, he was produced in court in Manchester at a hearing that took place before me in Manchester Magistrates' Court at 12.30pm the same day.

17. On being produced to the court, the Defendant explained that he was in a state of shock following his arrest. He referred to having buried his head in the sand with regard to the committal application and the question of compliance with the orders and he asked for an adjournment to seek legal advice. Despite opposition from Counsel for the Claimant, Mr Ian Cooper, I acceded to the request for an adjournment and adjourned the matter to today. I discharged the bench warrant, having warned the Defendant of the serious consequences if he had failed to attend today. This is reflected in the final recital to the order which I made on 6 August 2024. Further, I directed that if the Defendant wished to rely upon any written evidence in support of his case on the punishment to be imposed, such evidence should be filed and served no less than three clear days before the hearing.

18. In the event, the Defendant sensibly sought legal advice and did so from Slater Heelis Solicitors, who came on the record as acting for the Defendant on 12 August 2024, the first day on which they were able to see him after 6 August 2024, although he had been in contact with them during the previous week. At 4.16 last Friday, 16 August 2024, Slater Heelis CE-filed an affidavit from the Defendant, sworn on 16 August 2024 and also an affidavit from the Defendant's wife, Hannah Louise Searson ("**Mrs Searson**"), dated 16 August 2024.

19. The Defendant is present today and is represented by Mr Graham Sellers of counsel. The Defendant relied today upon the affidavits that I have referred to. Realistically, no objection was taken by Mr Cooper on behalf of the Claimant to the reliance on those affidavits notwithstanding that they had been filed out of time. In the reliance placed of these witness statements, the Defendant went into the witness box and answered a couple of supplementary questions put to him by Mr Sellars relating to his previous good character and also explained, in his own words, the circumstances in which he had failed to comply with his obligations as a personal representative, and the orders made against him, offering profuse apologies for his actions.

20. The essence of the Defendant's position is perhaps best summarised in paragraphs 5 to 7 of his affidavit. In paragraph 5, he refers to the terms of the earlier orders and the requirement to make a witness statement and pay the £100,000 ordered to be paid. In paragraph 6, he goes on to say that, *"I fully admit that I have done neither, but with the assistance and guidance of my solicitors, I will make strenuous efforts to put right my defaults."* In paragraph 7, he says, *"I do not seek to excuse my behaviour, which I accept has been extremely poor and is deserving of punishment. I offer my sincere and unreserved apologies to the court and to the Claimant. I am deeply ashamed by my behaviour and wish to offer a full and candid account."* I should

observe that on being instructed, Slater Heelis wrote very promptly to JMW Solicitors, acting for the Claimant, making it very clear in that initial correspondence that the Defendant acknowledged his poor conduct and wished to put matters right.

21. In his affidavit, the Defendant went on to explain that the Deceased herself had suffered from dementia for many years and had been in a care home. He explained that his own parents, both of whom pre-deceased the Deceased, sold their own house and moved into the Property, using some of the proceeds of sale from their own property to meet the Deceased's care needs in the care home. Because the Deceased had moved into a care home, the Defendant explained that it is his belief that by the time that she had died, the Deceased had disposed of substantially all of her personal assets. He says that following the sale of the Property, he paid the proceeds of sale into his own bank account, accepting that he should have opened a separate account as personal representative. He says that he tried to contact the Claimant at that stage to resolve matters but got no replies and that, over the years, he has spent the money in the account, essentially living beyond his means. He says that he always intended to pay the money to the Claimant but got to the point where, as he put it, he got stuck in a hole and was not able to do so. He explained that his wife has consistently earned more than him and he felt a need to contribute more than he might otherwise have been able to do to the household budget and in respect of family expenditure.

22. The Defendant went on in his affidavit to say that until he was arrested on 6 August 2024, he had been too ashamed to admit the full extent of his behaviour to his wife or anyone else and that having spent the proceeds of sale from the property, he had been unable to afford to replenish funds that he had misappropriated whilst at the same time continuing to contribute to family finances at previous levels. As he put it, *"I have simply buried my head in the sand."* He explained that, as a result of his arrest, his wife is now fully aware of the extent of the problems that he has caused and the trouble in which he finds himself as a result of his own weakness and vanity. He says that he did not comply with paragraph 2 of the order because he did not have the money, and in order to raise it, he would have had to admit the extent of the problems to his wife. I understand that this is because in order to raise the £100,000 he would have had to borrow on the security of Bell House.

23. He went on to explain that he is now trying to raise the funds required as a matter of urgency. He explains that he and his wife jointly own the Bell House, which was purchased in January 2023 for £1,295,000. He says that he has consulted a local estate agent, who states that he considers that Bell House is probably conservatively worth £1.4 million. He explained that it is subject to mortgages, securing a total of approximately £935,000, in consequence of which, he and his wife have equity of over £450,000, of which half is his. He exhibits to his affidavit a letter from an estate agent and recent mortgage statements from the Coventry Building Society and UK Mortgage Lending in support.

24. It is fair to say that the letter from the estate agent is not a full and detailed valuation, but I do bear in mind that the figure of £1.4 million is not inconsistent with the purchase price paid for the property in January 2022. So far as the mortgage statements are concerned, it is to be noted and it does the Defendant no credit that the second mortgage in favour of UK Mortgage Lending was taken out as late as June of this year in order to cover various household expenses, including paying some debts of the Defendant's wife, as well as covering the cost of some works carried out to Bell House. Those are monies which could have been applied towards complying with the orders in question.

25. The Defendant went on to explain that he is currently trying to raise the funds required to comply with paragraph 1 of the order dated 26 July 2023 by way of a remortgage of Bell

House. He says that he and his wife are willing to grant the Claimant a legal mortgage over Bell House to secure the amount that he is liable to pay, together with interest and costs. He refers to his wife filing her own statement and, as I have mentioned, she has made her own affidavit. He exhibits a draft mortgage deed, which he says that he and his wife would in principle be prepared to grant, which would secure all liabilities of himself, the Defendant, to the Claimant, secured upon Bell House.

26. The Defendant went on in his affidavit on to explain that his ability to raise funds so as to purge his contempt is complicated by the fact of the presentation of the bankruptcy petition against him on 18 June 2024. He referred to the petition being listed for a first hearing on 18 August 2024 and to the petition debt being the sum that he was ordered to pay by the order dated 26 July 2023. He said he hoped that by the time of the present hearing the mortgage that he had referred to will have been executed and the bankruptcy petition dismissed by consent.

27. I pause there to say that the actual position is that whilst there has been dialogue between the Defendant's Solicitors and the Claimant's Solicitors as to the terms of a charge, that has not been agreed and so far as the bankruptcy hearing is concerned, all that has happened so far as the petition is concerned is that at the first hearing on 18 August 2024, in the light of the indication by the Defendant of an intention to defend the petition on the basis that he was willing to secure the debt by the grant of a mortgage, the petition was, as required by the relevant paragraph of the Insolvency Practice Direction, adjourned to be heard in the Central London County Court at a date later in the year. Further, the terms of the mortgage have not been agreed as matters stand with the Claimant's solicitors.

28. The Defendant goes on in his affidavit to explain that his wife has raised £5,000 as a payment on account to the Claimant and that he has raised a further £5,000 from a friend, both of which sums of monies are presently lodged with the Defendant's Solicitors, who have authority to pay the same to the Claimant immediately. It is possible that the immediate payment of those sums is complicated by the existence of the bankruptcy petition, although I observe that it could potentially be said that the monies were paid over to the Defendant's Solicitors for a specific purpose, in which case they may be subject to a *Quistclose* trust.

29. So far as paragraph 1 of the order made on 26 July 2023 is concerned, the Defendant explains that he has searched for documents relating to his administration of the estate but cannot find them. He says that he recalls keeping them in a yellow folder but that he cannot find it, despite conducting a thorough search of Bell House and anywhere else he can think of. He says that he suspects the folder was lost when the family moved house in 2021, but he cannot be sure. He says that searching for these documents is one of the things that has delayed his making the required affidavit. In the event, he says that the best he can do at this stage, as an interim measure, is to make a statement based on the information that he gave in his emails to the Claimant's solicitors on 6 and 30 September 2019. He says that he will continue to make every effort to enquire of his previous Solicitors, the Deceased's bank and the Inland Revenue to obtain the information necessary to verify or amend his statement of account as necessary. He has exhibited a witness statement that he has made dealing with matters, he says, as best he can at present, but as indicated, it is in limited terms.

30. The Defendant went on in his affidavit to say that he is aged 49, he is married to Hannah, and he has two children, a son aged 17, and a daughter aged 11. He describes both of them as being in fulltime education at school where they are weekly boarders. He mentions that next year, one of them will sit A-levels and the other, GCSEs. So, he says the present time is very important to their prospects, that he suggests are liable to be harmed by any disruption to their lives.

31. The Defendant, in his affidavit, said that he has no previous convictions and has never behaved as badly as this before. In giving oral evidence today in relation to good character, the Defendant has explained how he has sought to help the community by acting on a voluntary basis as a coach for the local rugby club, as well as, through work, assisting with fundraising for the benefit of the Ormond Street Hospital.

32. In his affidavit, the Defendant said that he is in fulltime employment, employed as a sales manager by an employer for whom he has worked for two years. He describes that he is responsible for a team that produces global sales outside the United States of America, totalling over £10 million, of which he personally produces over £6 million. He says that in 2023, he earned approximately £150,000, including basic salary of £95,000 plus bonus. He says that he has informed the chief executive officer of his employer of his situation, who has told him that if he is imprisoned, it will be considered by the board but that it is likely that he will lose his job.

33. The Defendant had exhibited a statement of assets and liabilities to the effect that he has no significant debts, other than his liability to the Claimant and the secured lenders on Bell House and that his only real or tangible asset is his interest in Bell House. He says that he is doing what he can to purge his contempt. He refers to having instructed Dominic Wolf of L&C Mortgages, a mortgage broker, to assist in the process of seeking offers for remortgaging Bell House to raise funds necessary to pay the sums due pursuant to the order made on 26 July 2023. He says that this will enable him to pay the Claimant all that has been ordered far quicker than if he were to be imprisoned and made bankrupt.

34. The Defendant refers in his affidavit to the correspondence in September 2019 by which he had provided basic information about the administration of the estate. He says that he recognises the deficiency of the information provided and says that he sincerely apologises for his failure to obey the orders that have been made and says that he is trying to make amends. So far as his wife, Mrs Searson, is concerned, he refers to her being willing to stand by him, but explains that she works for one of the major banks and that her job requires her to work abroad several times a year, when she will be away for up to a week at a time. He explains that if he is imprisoned, he fears what will become of his children and the effect on his wife's job.

35. So far as Mrs Searson is concerned, as I have said, she has also made an affidavit dated 16 August 2024. She confirms in her affidavit her willingness to stand by the Defendant in the granting of an all-monies charge over Bell House in relation to all the liabilities that may be due to the Claimant. She says that the effect of an immediate custodial sentence would be devastating on the children at a critical time in their education. She refers to her own employment as a psychologist, a job that requires her to go abroad several times a year. She says that if the Defendant were to be imprisoned, it would severely impact on her ability to perform her job fully with a consequence that she might have to find different, less well renumerated job, which could in turn impact on the ability to raise funds with which to pay the Claimant everything that is owed to her.

Relevant legal principles concerning punishment for contempt

36. I turn now to consider the legal principles that apply to punishment or sentence in the case of committal. The penalties available when sanctioning for contempt of court are firstly, an immediate custodial sentence for a maximum term of two years. Secondly, a suspended sentence, i.e., the imposition of a custodial sentence but where the committal warrant is

suspended upon terms or otherwise. Thirdly, a fine, which can be unlimited in amount and/or confiscation of assets.

37. There is a complication in the present case in relation to the order for the payment of £100,000. The Debtors Act 1869 ("**the 1869 Act**") abolished, generally speaking, the ability to commit to prison for the non-payment of sums of money. However, the 1869 Act provided a number of exceptions within section 4 thereof, one of which is: *"Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control."*

38. There are two requirements to be satisfied so far as the relevant provision of section 4 of 1869 Act is concerned, namely that the defendant must be acting in a fiduciary capacity and secondly, the defendant must have had money in his possession or under his control. *Lewin on Trusts, 20th Edition* explains at paragraph 41.158 that:

> "A trustee who has once had trust funds in his possession is treated by a court of equity as still having them in his possession until he has properly discharged himself and it is not necessary to bring a trustee within the exception that he should have the trust funds in his actual possession or under his control at the time when the order is made."

39. *Marris v Ingram* [1879] 13 Ch D 338 is authority that a *"court of equity"* for the purposes of section 4 of the 1869 Act should be read as referring to the High Court of Justice.

40. It is not in dispute that, in the circumstances of the present case, the requirements of section 4 of the Debtors Act 1869 are satisfied. I am certainly satisfied on the evidence that such has been proved to the requisite criminal standard, and it is not sought to be suggested by Mr Sellers on behalf of the Defendant to the contrary. The Defendant was acting in a fiduciary capacity in acting as administrator of the Deceased's estate and he is to be treated as having money in his possession or under his control because, as explained in the passage from *Lewin* at paragraph 41.158 that I have referred to, it is sufficient that he did once have the monies in his possession.

41. The question arises as to the proper approach of the court to section 4 of the 1869 Act, and how this approach should tie in with the treatment by the court of more general allegations of contempt of court not involving a requirement to pay money. The term of imprisonment that can be imposed under section 4 is limited to a one year. However, in the course of submissions, Mr Cooper, on behalf of the Claimant took me to section 1 of the Debtors Act 1878 ("**the 1878 Act**") and to a number of authorities relating thereto. Section 1 1878 Act confers on the court a discretion as to whether or not to commit to prison in the event of breach of an order concerning the payment of a sum of money that falls within one of the exceptions to section 4 of the 1869 Act. Section 1 itself provides that:

> "The court may enquire into the case and may grant or refuse, either absolutely or upon terms any application for a writ of attachment or any process or order of arrest or imprisonment and any application to stay the operation of any such writ, process or order or for discharging from arrest or imprisonment thereunder."

42. Mr Cooper took me to a further passage in *Lewin on Trusts* at paragraph 41.164, which is said to provide some guidance as to how the court ought to exercise its discretion under section 1 of the 1878 Act. What this paragraph says is:

> "On an application under section 4 of the 1869 Act, the court may refuse to commit a defaulting trustee where it appears that he is unable to pay and that no good purpose can be served by sending him to prison. But the Debtors Act 1869, while abolishing the penalty of imprisonment for debt in the case of an honest debtor was intended for punishment of a fraudulent or dishonest debtor and it was not intended by the Act of 1878 to get rid of the penal clauses of the 1869 Act, but only to give the judges a discretion to deal with exceptional cases. Therefore, it has been said that the court ought, in the case of a dishonest debtor to send him to prison unless it is satisfied that he has no means of satisfying the debt."

43. It is suggested by Mr Cooper that this may limit the discretion of the court in dealing with sentence for contempt in relation to non-payment of a sum of money that falls within section 4 of the Act in a way which would not apply to breach of some other order of the court in requiring something of an exceptional case before not sending someone to prison, and possibly limiting the circumstances for not doing so to where the debtor can be shown to be unable to pay and where there is no good purpose in sending the person to prison. The justification for this would be that a trustee or fiduciary who has had the money for which he is liable to account, but who longer has it, is to be taken to be dishonest for these purposes.

44. I note that the footnote against the proposition in the first sentence of *Lewin on Trusts* at paragraph 41.164 refers to two cases in support of the relevant proposition: *Street v Hope* [1878] 10 Ch D 286N and *Barrett v Hammond* [1879] 10 Ch D 285. However, there is noted in parentheses against those cases: *"the purpose of the Act is not vindictive but to produce payment of the money."*

45. The case that is relied upon for the final sentence in *Lewin on Trusts* at paragraph 41.164, namely the proposition that it has been said that the court ought in the case of a dishonest debtor to send him to prison unless it is satisfied he has no means of satisfying the debt, is the case of *Marris v Ingram (1878) 13 ChD 338*, which I have already referred to and which I was specifically taken to by Mr Cooper. In that case at page 342, the Master of the Rolls, Lord Jessel said this in respect of a trustee or other person falling within section 4 of the 1869 Act acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control:

> "Why such a person as the last excepted [by section 4 of the 1869 Act]? Simply because he is a dishonest man. He need not perhaps be called a thief in so many words, but he is a man who takes or keeps money belonging to other people and he is to be punished as such."

46. I note what is said there, but I also note that that was a case where, as recorded on page 344, the Master of the Rolls also said this:

> "This shows the sort of rogue I am dealing with. As to merits, he has none whatsoever and he ought to be sent to prison, unless he has no means, as to which I am not satisfied, because he does not tell us what he has done with the £1153, 15 shillings and eight pence."

47. That was clearly a case where there was a positive finding that the court was dealing with *"a rogue who had no merits whatsoever."* The present case is, in my judgment, somewhat more nuanced than that where, on the Defendant's case, there was no premeditated intention to permanently deprive the Claimant of the monies in question, but the Defendant allowed circumstances to arise in which he used the monies and then found himself unable to account for them.

48. The wording of the discretion provided for by section 1 of the 1878 is in wide terms. I consider that I must be careful about attaching too much weight to the 19th century authorities dealing with the position when a different attitude was taken to the non-payment of monies, although there is clearly scope and good reason for taking a robust approach in the case of non-payment by a fiduciary of sums which he has received. Nevertheless, I do not consider that the authorities can be taken as going so far as to establish a precedent which I should apply to the effect that unless it can be shown that the defaulting trustee or fiduciary in question was in no position to pay the debt, then they should go to prison.

49. I consider that there is a wider discretion than that and that, in the circumstances of the present case at least, the discretion is no less wide than it is in considering what the appropriate punishment for contempt is in relation to the other aspect of the finding of contempt in respect of the failure to make a witness statement dealing with the assets in the estate. Consequently, I propose to deal with the matter on the basis that the 1869 Act does not mean that I should adopt any different approach so far as the two heads of breach are concerned, save to take note of the fact that the punishment provided in the case of the non-payment of the £100,000 must be limited to a term of imprisonment of one year.

50. I turn then to consider the more general principles to apply.

51. Breach of a court order is a serious matter. In *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65 at [40], the Court of Appeal, Hamblen and Holroyde LLJ, said this:

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

52. The *White Book 2024*, in the notes to CPR 81.9 at 81.9.1, refers to *Liverpool Victoria Insurance Company Ltd v Zafar* [2019] EWCA Civ 392 as the leading modern restatement of sentencing principles in contempt cases. In *Attorney General v Crosland* [2021] 4 WLR 103, the Supreme Court referred to the case at [57] to [71] as providing general guidance as to the approach to take in contempt cases. In their judgment at paragraph [44], Lords Lloyd-Jones,

Hamblen and Stephens JJSC said that the recommended approach might be summarised as follows:

> "1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.
>
> 2. In the light of its determination of seriousness, a court must first consider whether a fine would be a sufficient penalty.
>
> 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
>
> 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
>
> 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children and vulnerable adults in their care.
>
> 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on reduction in sentence for a guilty plea.
>
> 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually, the court will already have taken into account mitigating factors when setting the appropriate term, such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care may justify suspension."

53. Mr Cooper on behalf of the claimant also referred to the decision of Nicklin J in *Oliver v Shaikh* [2020] EWHC 2658 (QB) at [16] and [17]. At [16], Nicklin J said this:

> "The decision on sanction is entirely for the court, *Attorney General v Hislop* [1999] 1 WLR 514, 522. Similar to the role of the prosecution in a criminal court where the Court is considering sentence, the party seeking punishment of the contemnor does not urge the imposition of any particular penalty on the contemnor. The role is limited to making submissions as to the circumstances and the consequences of the breach and ensuring that the court's attention is drawn to all relevant authorities."

54. I consider that these observations of Nicklin J require some qualification. In *Business Mortgage Finance 4 PLC v Hussain* [2023] 1WLR 396 at [131], Arnold LJ said this:

> "Mr Hussain's second ground of appeal was that the issuers, who were the party pursuing the committal application, should not have suggested to the judge that the maximum term of imprisonment of 24 months should be imposed and that the judge had been wrongly influenced by this."

He then referred to the decision of Nicklin J in *Oliver v Shaikh* at [16] and said:

> "Since then, however, this court has held that applicants for committal are not under a duty to act wholly impartially but on the contrary, have a legitimate private interest in the outcome of the application: see *Navigator Equities v Deripaska* [2022] 1WLR 3656, paras 132 to 138 (Carr LJ). Further applicants may appeal on the ground that the sentence imposed was unduly lenient, see *AAA v CCC* [2022] EWCA Civ 479. It follows, in my judgment, that there was nothing improper on the issue of suggesting to the judge the maximum sentence to be imposed."

55. At [17] in *Oliver v Shaikh*, Nicklin J said this:

> "The following principles can be derived from *Crystal Mews Limited v Metterick* [2006] EWHC 3087:
>
> i) The object of sanction imposed by the court is two-fold: (1) to punish the historic breach of the court's order by the contemnor; and, (2) to secure future compliance with the order. In my judgment, if those objects in any way conflict in terms of sanction, then the primary objective is to secure compliance.
>
> ii) The sanctions available to the Court range from making no order, imposing an unlimited fine or the imposition of a sentence of imprisonment of up to two years. The Court has the power to suspend any warrant for committal.
>
> iii) As with any sentence of imprisonment, that sanction should only be imposed where the Court is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate. It is a measure of last resort. A suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. A sentence of imprisonment must not be imposed because the circumstances of the contemnor mean that he will be unable to pay a fine. A sentence of imprisonment may well be appropriate where there has been a serious and deliberate flouting of the Court's order.
>
> iv) The Court's task when determining the appropriate sanction to assess is to assess culpability and harm. The Court will consider all the circumstances, but typical considerations when assessing the seriousness of the contemnor's breach are:
>
> a) the harm caused to the person in respect of whose interests the injunction order was designed to protect by the breach;
>
> b) whether the contemnor has acted under pressure from another;
>
> c) whether the breach of the order was deliberate or unintentional; and
>
> d) the degree of culpability of the contemnor.
>
> v) Mitigation may come from:

a) an admission of breach - for example, admitting the breach immediately and not requiring the other party to go to the expense and trouble of proving a breach;

b) an admission or appreciation of the seriousness of the breach;

c) any cooperation by the contemnor to mitigate the consequences of the breach; and

d) genuine expression of remorse or a sincere apology to the court for his behaviour."

56. So far as the importance of securing compliance with a court order is concerned, in *Solicitors Regulation Authority v Khan* [2022] EWCA Civ 287, Arnold LJ said this at [44]:

> "I do not accept there can be any uniform approach when it comes to civil committal applications. Unlike criminal sentencing, sentencing in cases of civil contempt is not subject to any statutory provisions save as to the limit on the sentence that can be applied and as to the degree of remission that is to be applied. There are no guidelines from the Sentencing Council. Moreover, the case law shows that the correct sentence to be imposed is highly fact specific. Yet further, as I have already discussed, a key factor in this jurisdiction is that of attempting to secure compliance, even if belatedly, with the court's orders. That is not a feature of criminal sentencing in most cases." [My emphasis]

The parties' respective positions regarding punishment or sentence

57. So far as the respective positions of the parties are concerned in relation to the question of sentence, Mr Cooper, on behalf of the Claimant, helpfully took me through the relevant authorities and submitted that the circumstances well justified the imposition of an immediate custodial sentence. However, he did recognise that there were alternatives available. In paragraph 43 of his Skeleton Argument, Mr Cooper said this:

> "However, it is recognised that the court may well wish to suspend the sentence to give D one final opportunity to purge his contempt. Given that D has himself proposed a repayment date of 19 November 2024, this may be an appropriate period of suspension to allow him to purge his contempt."

58. I did seek to press Mr Cooper in relation to what was said in paragraph 43 of his skeleton argument with regard to the Claimant's position in respect of a suspended sentence, but he was careful to say that he did not wish to recognise in any way that this was not a case where the imposition of an immediate custodial sentence was not appropriate, although recognising that there were alternatives available to the court.

59. So far as the Defendant is concerned, Mr Sellers, whilst advancing the various points to which I will return so far as mitigation are concerned, recognised the seriousness of the case but sought to submit that this was a case where it would be appropriate for the court to impose a fine, rather than any form of custodial sentence. In the alternative, to the extent that the court thought it appropriate to impose a custodial sentence, it was his submission that it should be a

suspended sentence. So far as conditions are concerned, he accepted that it might be subject to conditions, such as payment of the relevant sum of money by 19 November 2024, and also the grant of a legal charge over Bell House, providing security for all the liabilities of the Defendant to the claimant. This is a matter to which, I shall return.

Determination of punishment or sentence

60. It is appropriate that I should seek to apply the principles endorsed by the Supreme Court in *Attorney General v Crosland* (supra) at [44]. This requires me firstly to assess the seriousness of the Defendant's conduct by reference to his culpability and the harm caused, intended or likely to be caused, adopting an approach analogous to that taken in criminal cases where the Sentencing Council's Guidelines apply.

61. I must, I consider, bear in mind that I am punishing the Defendant for breach of the relevant orders, and specifically the order dated 22 December 2023 endorsed with a penal notice, and not for his underlying conduct in relation to the administration of the Deceased's estate as such, for which other remedies may lie. Having said that, I consider that I am entitled to take into account this conduct to the extent that it might go to show that the breaches that occurred were all the more serious by reason thereof.

62. There can be no escaping the fact of the breaches of the relevant orders in the present case, and specifically the order of 22 December 2023 endorsed with a penal notice, are a serious matter, not least given the inherent seriousness identified in *Financial Conduct Authority v McKendrick* at [40] of a breach of an order of the court. Had the Defendant not attended today and had I proceeded in his absence without the explanations and mitigation that he has now provided, I would have looked at imposing an immediate custodial sentence of somewhere between 12 and 18 months at least, limiting the sentence for the failure to pay the £100,000 to 12 months, and imposing a term of between 12 and 18 months in respect of the failure to provide a witness statement, the terms running consecutively.

63. Good authority for such approach is provided by a case referred to by Mr Cooper, *JSC BTA Bank v Solodchenko No 3*, Court of Appeal [2012] 1WLR 360, that was referred to in *FCA v McKendrick* at [40]. This case related to the non-provision of information pursuant to an order and a term of imprisonment of 18 months was imposed. I note also the case of *Howard Field v Giovanni Del Vecchio* [2022] EWHC 1920 (Ch), where a term of imprisonment of 15 months was imposed on a failure to deliver up assets belonging to an estate. And further, the case of *AAA v CCC* (supra), a decision of the Court of Appeal, where it was indicated in relation to the breach in question, that a sentence of between 12 and 15 months was appropriate for a number of breaches of a court order.

64. As matters stand, despite the explanations provided, there remains a high degree of culpability, in my judgment. On the making of the orders in question and in particular, the order of 22 December 2023 and the service of that order upon him, the Defendant could and should have come clean and said that he could now only provide a limited account in respect of the Deceased's estate in view of the loss of documentation and made an effort to seek to trace documents from third party sources much earlier than he is now, belatedly, saying that he will do. Further, he plainly should have come clean and said that whilst he might not have been able to raise the money immediately, he would be in a position to do so over a period of time in the ways that he is now seeking to do so. That would have been the appropriate response to the orders that had been made, even accepting his own position so far as the performance of those orders are concerned.

65. Although this provides no excuse and the Defendant's conduct remains, in my judgment, utterly disgraceful, it is fair to say that this is perhaps not a case of a party wilfully disobeying an order that he was readily able to comply with. It is the case of a defendant who, for wholly improper and unjustifiable reasons, has got himself into a hole and has then puts his head in the sand in the hope that it would all go away and became so concerned and so ashamed of his actions that he felt unable to reveal what he had done to his wife, who would have to cooperate in any attempt to meet the liabilities in question.

66. So far as harm to the Claimant is concerned, there is no suggestion that the Claimant is in specific need of money to attend to her care needs. However, the point has been made that she has been deprived of a significant sum of money for a significant period of time, where no doubt, that money could have been extremely useful to her and for her support. Further, she was entitled to the money in question and was entitled to an explanation from the Defendant that the Defendant has failed to provide, notwithstanding being required to provide it. Her continued deprivation therefore of both a proper explanation and the money in question is a serious matter, despite belated attempts by the Defendant to purge his contempt.

67. So, having considered the seriousness of the case, and I regard it as a serious case, notwithstanding the circumstances relied upon by the Defendant, I turn to consider whether a fine would be a sufficient penalty. In considering whether a fine is a sufficient penalty, it is not relevant to consider whether or not the Defendant would be in a position to afford to pay a fine, but rather whether the seriousness of the contempt is such that a fine would be an appropriate response to it, or whether the circumstances are so serious that only a custodial term is appropriate.

68. I am of the firm view that a fine in the present circumstances would not reflect the seriousness of the breach that has occurred. I am then required to consider what is the shortest period of imprisonment which properly reflects the seriousness of the contempt. I am then required to take into account questions of mitigation and other factors. Adopting the approach identified in *Liverpool Victoria v Khan* and *Attorney General v Crosland*, I consider that it is incumbent upon me to express a view as to the shortest period of imprisonment which properly reflects the seriousness of the case, but before taking into account mitigation.

69. Having regard to the seriousness of the case in the light of the explanations provided by the Defendant, but subject to mitigation, it is my judgment that the shortest period of imprisonment that it would be appropriate to impose would be towards the lower end of the range of 12 to 18 months overall that I have earlier in this judgment indicated would be appropriate had the Defendant not attended today and explained his position.

70. I then turn to consider the effect of mitigation thereon, having regard to the fact that stages 4, 5 and 6 identified in *Attorney General v Crosland* at [44] require me to: (a) firstly, give due weight to matters of mitigation, such as genuine remorse, previous positive character and similar matters; (b) consider the impact of committal to prison on persons other than the Defendant; and (c) consider whether any reduction is appropriate in the light of any early admission consistent with the Sentencing Council's guidelines in that respect.

71. I deal firstly with mitigating factors. The first mitigating factor is the Defendant's previous good character. There is no suggestion of any misconduct on his part, apart from the conduct on his part that is complained of in the present case and that has formed the basis of his committed. As I have said, he has explained that he is someone who assists voluntarily with various activities, which is something that goes to his credit and which I take into account.

72. I referred earlier to the judgment of Nicklin J in *Oliver v Shaikh* at [17]. As I have already explained, at [17(5)], Nicklin J set out various potential mitigation points, namely:

> "a) an admission of breach - for example, admitting the breach immediately and not requiring the other party to go to the expense and trouble of proving a breach;
>
> b) an admission or appreciation of the seriousness of the breach;
>
> c) any cooperation by the contemnor to mitigate the consequences of the breach; and
>
> d) genuine expression of remorse or a sincere apology to the court for his behaviour."

73. So far as admission of breach is concerned, the position is that under the Sentencing Council's Guidelines, whilst a fairly generous discount may be appropriate in the case of an early admission, this reduces to 10 per cent or so if the admission is only made at the hearing of the application for contempt. Of course, in the circumstances of the present case, the admission did not even come at that stage and indeed, was not forthcoming until the Defendant was arrested and brought before the court.

74. In *AAA v CCC* (supra), the defendant in question fought the committal application and after he had been found to be in contempt of court, and only at that stage offered a profuse apology to the court. The first instance decision was a decision of my own and the Court of Appeal held that I had been wrong to give any significant weight to this very, very late apology to the court. However, I do consider that there is a difference in the circumstances of the present case up to a degree. The Defendant did not fight the committal application, but rather simply put his head into the sand. He did not, as in *AAA v CCC*, seek based on false evidence to protest his innocence, albeit that it took the Defendant's arrest in order for him to make any admission. Nevertheless, despite these potentially distinguishing circumstances, I do not consider that this is a case where very significant discount is appropriate on the basis of the Defendant's very late admission, but rather that only some very limited discount indeed is appropriate to be given.

75. On the other hand, I do consider that there are other factors, identified in particular by Nicklin J in *Oliver v Shaikh* at [17(5)] that are of some relevance.

76. Having taken his head out of the sand, the Defendant does now clearly recognise the seriousness of the situation and the seriousness of the situation that he finds himself in. I do believe that he is expressing genuine remorse as reflected in his shame for the position that he has placed himself and his family in and that he has offered a sincere apology to the court. Further, it is in my judgment, clear that the Defendant is now cooperating in an attempt to mitigate the consequences of his actions and behaviour. I do consider that these are cogent mitigating factors, although I recognise that the force of them is significantly blunted by the fact that it took the Defendant's arrest in order to get him to take his head out of the sand and respond to the complaints that were made against him.

77. I turn then to the next consideration, namely the effect of any order for committal on others. I have little doubt that the *Liverpool Victoria v Khan* and *Attorney General v Crosland* concern was with the sort of situation where there was a risk of somebody being sent to prison who was, perhaps, sole carer for a child or for an elderly adult relative, where one can see that the effect of the order on others might provide powerful mitigation. The scope for mitigation

for the effect of committal on members of the family in circumstances such as the present is, I consider, more limited, but is not something that I should ignore. In particular, I have regard to the obvious shock that Mrs Searson had on discovering the true position when her husband was arrested on arrival home at Stanstead Airport from a family holiday, and I can see that there may, potentially at least, be a real threat to her job were the Defendant to receive a significant immediate custodial term of imprisonment. Likewise, so far as the children are concerned, one can see that they are at a delicate stage of their education, where their lives could well be disrupted and upset by their father being imprisoned and their mother potentially losing her job, with the effect that all this might have upon them.

78. I do not consider that any significant weight ought to be attached to the position of the Defendant's employer. As Mr Cooper points out, it would be very easy in virtually every case where the party found to have been in contempt was employed to seek to mitigate on the basis that that imprisonment would have a detrimental effect on the contemnor's employer. It does not seem to me that save in somewhat exceptional circumstances that significant mitigation can attach to the potential effect of committal on an employer. Nevertheless, I do give some weight to the effect that a term of imprisonment might have on the family, who had no responsibility for the matters that have led to where we are now.

79. Having regard to these considerations by way of mitigation, the minimum term of imprisonment that I consider is appropriate to reflect the seriousness of the contempt, but taking into account the points of mitigation that have been advanced is a term of imprisonment of nine months in respect of each of the breaches (£100,000 payment and witness statement), the terms to run consecutively, i.e., nine months overall.

80. The final question that I turn to consider is whether the term of imprisonment should be suspended, and if so on what terms. As was pointed out in *Liverpool Victoria v Khan* and *Attorney General v Crosland*, the court will already have taken into account mitigating factors in setting the appropriate term. Nevertheless, in the former case, at [69], it was recognised that notwithstanding having taken such factors into account in considering the length of sentence, this did not preclude the court from taking the relevant factors into account in considering whether suspension was appropriate in the circumstances.

81. So far as the two cases that I have referred to are concerned, *Liverpool Victoria v Khan* and *Attorney General v Crosland*, it is relevant to note that neither of them related to contempt of court for breach of a court order. The first of the cases was concerned with contempt in making a false witness statement and the second was concerned with the breaking of an embargo on a judgment of the Supreme Court prior to hand down. As I have said, an important factor so far as contempt in for breach of a court order is concerned is seeking to ensure compliance with the court order, a consideration that was not relevant in either case .

82. As was explained by Arnold LJ in *SRA v Khan* (supra) at [44], this distinguishes the position from sentencing in a criminal context. On this basis, I consider that securing compliance with a court order is a factor that the court must be entitled to take into account in considering whether it is appropriate to suspend the sentence that it would otherwise impose, either in whole or in part. This recognises that the process of punishment for contempt in respect of breach of a court order potentially involves both coercion and actual punishment (prison, fine etc.).

83. In view of the mitigation advanced in the present case and in particular, given the Defendant's evident concern now to right the wrong and, more importantly, to secure compliance with the orders that the court made, I am persuaded, on balance and it is only on

balance, that it is appropriate to suspend the whole of the term of imprisonment that I will impose.

84. The key considerations are, as I see it, the following.

85. The imposition of an immediate custodial sentence, either of the full term of nine months or of a significant part of that period of nine months with the other part thereof being suspended, apart from its effect on the Defendant's family members, is liable, as I see it, to significantly reduce the prospects of the Defendant raising the £100,000 and any other monies owed to the Claimant in respect of the Deceased's estate and the costs of the committal application and otherwise ordered to be paid by the Defendant in the present proceedings. On the evidence before me, I consider there to be at least a reasonable prospect that the Defendant will be in a position to raise the £100,000 by the date that he has suggested of 19 November 2024, which will go some significant way to remedying the breach of the earlier order. The concern if the Defendant were to receive an immediate custodial sentence is, as I see it, that it is likely to significantly increase the prospects of him being made both redundant and bankrupt, which it does not seem to me would assist anybody in that it is liable to frustrate attempts to raise money on the security of Bell House. Further, it puts at risk Mrs Searson's current employment, which again, apart from the effect on the family, is liable to frustrate attempts to raise money on the security of Bell House.

86. If the Defendant were to be imprisoned and were he to become bankrupt, then it would be necessary for a trustee in bankruptcy to be appointed and to realise his interest in the matrimonial home, Bell House, in order to meet his liabilities. This is likely to be a costly and a lengthy process with an uncertain outcome when contrasted with what ought to be capable of being achieved if I were to make an order for committal to prison but suspended on terms.

87. So far as the conditions or terms of any suspension are concerned, the Defendant was content to accept two conditions. The first was the payment of the £110,418 by 11 November 2024. I say content to accept in the sense that they were conditions or terms that I floated during the course of submissions. The second condition or term that the Defendant indicated that he was prepared to accept was the grant of a legal mortgage over the property by himself and his wife, substantially in the terms of the draft *"all monies"* legal mortgage that he has exhibited to his affidavit.

88. Although the Defendant would be prepared to offer the latter term or condition, on behalf of the Claimant, it was submitted that the more appropriate course in relation to the legal mortgage would be for that to be pursued essentially through the bankruptcy proceedings, where the Defendant is offering to provide security in order to stave off the bankruptcy petition. Consequently, the Claimant does not press for the inclusion of any term or condition along these lines, mere one for the payment of the £110,418 by 11 November 2024.

89. So far as suspended sentence is concerned, a number of the authorities suggest that a suspended sentence is a no lesser punishment than an immediate custodial term. I have certain reservations about this as a general proposition, but certainly the imposition of a suspended sentence is a very serious matter indeed and a serious punishment, particularly where it is subject to a condition such as the present, where if the condition is not met, then the term of imprisonment will have to be duly served.

90. In all the circumstances, and having regard to the mitigation advanced, I am satisfied that the seriousness of the contempt in the circumstances of the present case is best and most

appropriately addressed by the imposition of a term of imprisonment of nine months, but suspended upon terms that the Defendant pays the £110,418 by 19 November 2024.

91. There is one further matter relevant to my decision to suspend the sentence of imprisonment that I have imposed. The powers of the court in dealing with a committal application can go beyond punishment and can include the imposition or re-imposition of injunctive relief that has previously been granted but not complied with. My suspension of the term of imprisonment is on the basis that the court will grant further injunctive relief designed to ensure that, apart from complying with the orders that have already been made, the Defendant further complies with his obligations as the administrator of the Deceased's estate.

92. In the course of submissions, Mr Cooper, on behalf of the Claimant, put forward what was in essence, a shopping list so far as further injunctive relief is concerned. In essence, what is said is that within a period of time to be decided, the Defendant should be obliged to enquire of the solicitor, if any, who dealt with the sale of the Deceased's property as to the existence of the completion statement and other documentation relating to the sale, and he should also be required to make enquiries of the Solicitors, if any, who acted in obtaining the grant of letters of administration (with will annexed), in relation to figures or information provided that led to the gross value of £300,000 being set out on the face of the grant of letters of administration. I am satisfied that an order to that effect should be included within the order that I make today, but I will leave it to counsel to seek agree the precise terms of that order.

93. In addition to that, Mr Cooper sought an order that the Defendant should instruct a tracing agent to make worldwide enquiries with regard to the missing assets within the estate of the Deceased. I am not presently persuaded that it would be appropriate for the court to make an order to that effect. I say that for this reason. It is the Defendant's case as he has set out in his affidavit that he does not believe that there were or are any other significant assets within the Deceased's estate. The exercise of instructing tracing agents is likely to be an expensive exercise in relation to an estate that is not a large estate. I consider that this is a matter which should be revisited once the Defendant has made the enquiries that are to be made by him and after he has made an affidavit of the kind that I am going to go on to mention should be made. It may be that what is before the court at that stage discloses that it is appropriate for there to be a tracing exercise, but I consider such an exercise to be premature as matters stand.

94. The other matter that the order should provide for is, in my judgment, for the Defendant to provide an affidavit by 19 November 2024, setting out the steps that he has taken in order to reconstruct the estate account, including but not limited to the enquiries of the solicitors acting in relation to the sale and on the obtaining of the grant, exhibiting documents that he has been able to locate, including the completion statement in respect of the sale of the Property (if obtained). If unable to produce documents, then he should in such affidavit, explain why he is unable to do so to the best of his ability, and provide an updated account so far as the estate is concerned. Again, in principle, I consider that the order should so provide, and I will leave it to Counsel in order to agree the terms of the relevant order. Should there be any dispute in relation to thereto, then that is a matter that I will determine.

95. So, Mr Searson, can you please stand up?

96. Mr Searson, you were found guilty of contempt of court on 4 July of this year. I have been concerned today with what is the appropriate punishment to impose on you as a result of that contempt of court. Having heard the submissions ably put forward on your behalf, I have decided that it is appropriate to impose a term of imprisonment for nine months, but to suspend that term of imprisonment upon terms that you pay the sum of £110,418 by 19 November 2024.

97. You should be under no illusion that if you do not pay those monies, then the committal order will cease to be suspended and you will have to serve this term of imprisonment, subject to making some form of application to the court for an extension of time, which may or may not be granted and which the court may or may not be able to grant.

98. Should it be necessary for you to serve that term of imprisonment, you would serve one-half of that term, and you would be automatically released after you have served one-half thereof. That is the way that the system works. You have a right to appeal to the Court of Appeal in respect of the sentence that I impose today. Any such application should be made to the Court of Appeal, Civil Division, and you have 21 days in which to make that application.
