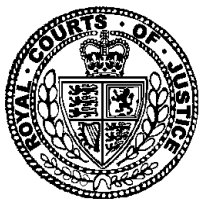

Neutral Citation Number: [2022] EWFC 5

Case No: ZC16D00176

**IN THE FAMILY COURT**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 4 February 2022

**Before** :

**MR JUSTICE PEEL**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**MARIE-THERESE ELISABETH HELENE HOHENBERG BAILEY** **Appl**

**- and -**

**(1) ANTHONY JOHN BAILEY**

**(2) CYRIL WOODS** **Respon**

**(3) FARLEY RENTSCHLER**

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**Georgina Howitt** (instructed by Ribet Myles LLP) for the Applicant

**Chris Barnes and Harry Langford (**instructed by Bindmans LLP) for the First Respondent

The Second and Third Respondents did not attend and were not represented

Hearing dates: 31 January and 1 February 2022

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

**Mr Justice Peel :**

1.
Before me are two committal applications brought by Marie-Therese Hohenberg Bailey (“W”) against Anthony Bailey OBE (“H”) for alleged breaches of (i) a financial remedy order made by HHJ Gibbons on 23 April 2021, and (ii) two separate passport orders made by Cobb J on 25 May 2021, referred to

by all as “the first passport order” and “the second passport order”. In the event, W did not proceed with her application arising out of the second passport order and I will say no more about it.

2.
Additionally, W brings committal applications against, separately, the second respondent, Cyril Woods, and the third respondent, Farley Rentschler, for alleged breaches of the financial remedy order. I should say at the outset that they were, respectively, the third and fourth respondents at the hearing before HHJ Gibbons, but for these committal applications stand as the second and third respondents.

**Attendance and representation**

3.
W is represented by counsel who is acting pro bono, as are her solicitors. She attended the hearing before me.

4.
H is represented by counsel. He is publicly funded, as is his statutory entitlement. He did not attend the hearing before me, despite an order made by Sir Jonathan Cohen expressly requiring him to do so. Counsel told me that he is understood to be in Portugal. No application for an adjournment was made to enable him to attend in person. The question of whether he should be permitted to attend remotely, notwithstanding previous court orders mandating attendance in person rather than by video link, was properly raised by counsel for W, although not advocated for by her. Counsel for H did not apply for him to be entitled to attend remotely. H’s legal team were, however, during the hearing able to make telephone contact with him.

5.
The second and third respondents, who live overseas, have not attended, and are not represented.

6.
I gave careful thought as to whether I should proceed with the contempt applications against the second and third respondents in their absence. I had in mind that:

i)
Both were parties to the substantive financial remedy proceedings, but did not attend or participate. They have not engaged with the proceedings in this country.

ii)
The committal applications against them, dated 7 June 2021, were served on each of them by email on 12 July 2021 pursuant to the order of Mostyn J on 9 June 2021. Service in this manner is permissible in the light of **Wilmot v Maughan** **[2017] EWCA Civ 1668**, applied by Lieven J in **Emoni v Atabo [2020] EWHC 3322**. They have similarly been served with notice of hearing dates. They are, I am quite sure, well aware of the committal applications against them, and the hearing before me. They have chosen not to participate.

7.
Cobb J was faced with a similar situation in **Sanchez v Pawell Oboz and Jolant Oboz****[2015] EWHC 235 (Fam)**. At paragraph 4 he said this:

"It will be an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent. This is so because:

i) Committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see Benham v United Kingdom(1996) 22 EHRR 293 at [56], Ravnsborg v. Sweden (1994), Series A no. 283-B); in a criminal context, proceeding with a trial in the absence of the accused is a course which will be followed only with great caution, and with close regard to the fairness of the proceedings (see R v Jones (Anthony)[2003] 1 AC 1, approving the checklist provided in R v Jones; R v Purvis[2001] QB 862);

ii) Findings of fact are required before any penalty can be considered in committal proceedings; the presumption of innocence applies (Article 6(2) ECHR). The tribunal of fact is generally likely to be at a disadvantage in determining the relevant facts in the absence of a party;

iii) The penalty of imprisonment for a proven breach of an order is one of the most significant powers of a judge exercising the civil/family jurisdiction; the respondent faces the real prospect of a deprivation of liberty;

iv) By virtue of the quasi-criminal nature of committal process, Article 6(1) and Article 6(3) ECHR are actively engaged (see Re K (Contact: Committal Order) [2002] EWCA Civ 1559, [2003] 1 FLR 277 and Begum v Anam[2004] EWCA Civ 578); Article 6(1) entitles the respondent to a "a fair and public hearing"; that hearing is to be "within a reasonable time";

v) Article 6(3) specifically provides for someone in the position of an alleged contemnor "to defend himself in person or through legal assistance of his own choosing", though this is not an absolute right in the sense of "entitling someone necessarily to indefinite offers of legal assistance if they behave so unreasonably as to make it impossible for the funders to continue sensibly to provide legal assistance" (per Mance LJ (as he then was) in Re K (Contact: Committal Order) (reference above)). The respondent is also entitled to "have adequate time and the facilities for the preparation of his defence" (Article 6(3)(b))."

8.
At paragraph 5 he added:

"As neither respondent has attended this hearing, and in view of Mr. Gration's application to proceed in their absence, I have paid careful attention to the factors identified in [4] above, and, adapting the guidance from R v Jones; R v Purvis, have considered with care the following specific issues:

i) Whether the respondents have been served with the relevant documents, including the notice of this hearing;

ii) Whether the respondents have had sufficient notice to enable them to prepare for the hearing;

iii) Whether any reason has been advanced for their non-appearance;

iv) Whether by reference to the nature and circumstances of the respondents' behaviour, they have waived their right to be present (i.e., is it reasonable to conclude that the respondents knew of, or were indifferent to, the consequences of the case proceeding in their absence);

v) Whether an adjournment for would be likely to secure the attendance of the respondents, or at least facilitate their representation;

vi) The extent of the disadvantage to the respondents in not being able to present their 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 was to proceed in the absence of the respondents;

ix) The terms of the 'overriding objective' (rule 1.1 FPR 2010), including the obligation on the court to deal with the case 'justly', including doing so "expeditiously and fairly" (r.1.1(2)), and taking "any … step or make any… order for the purposes of … furthering the overriding objective" (r.4.1(3)(o)).

9.
I am satisfied that the second and third respondents have been properly served and are fully aware of these proceedings. They have simply declined to engage with the court process, as was also the case with the substantive financial remedy proceedings. They have had ample notice. They have not (separately or together) applied for an adjournment to enable them to secure legal representation. They have given no reason for their non-attendance. It seems to me that they are largely indifferent to the outcome. I weigh in the balance the gravity of the applications brought against them. However, I am comfortably satisfied that in the circumstances it is fair and just to proceed in their absence.

**Admissibility of the substantive judgment.**

10.
On behalf of H, it was submitted that the substantive judgment of HHJ Gibbons, which was given effect to by the order of 23 April 2021, is not admissible. It is argued that it falls foul of the rule in **Hollington v Hewthorn [1943] KB 587**. The skeleton argument on behalf of H states that “the judgment is not admissible”, and that the rule establishes “that findings of fact by earlier tribunals are inadmissible in subsequent civil proceedings because they constitute opinion evidence”. The essence of the submission is that findings made to the civil standard in the financial remedy proceedings cannot carry any probative value when determining a contempt application to the criminal standard, and therefore should be excluded.

11.
As it happened, I received the bundle, and read the judgment, before I was aware of this issue, flagged up as it was for the first time in Counsels’ Note. It rather fell away during the hearing. Nevertheless, it seems to me to be appropriate to make some comments about this far-reaching submission.

12.
The rule was reviewed by the Court of Appeal in **Hoyle v Rogers [2014] EWCA 257**, per Christopher Clarke LJ:

“The rule in Hollington v Hewthorn

1.
In this case the Court of Appeal held that the conviction of the defendant in the magistrates' court for careless driving was inadmissible in a subsequent action in which the plaintiff and his son (who had since died) claimed damages on the ground of the defendant's negligent driving. The rule extends so as to render factual findings made by judges in civil cases inadmissible in subsequent proceedings

(unless the party against whom the finding is sought to be deployed is bound by it by reason of an estoppel per rem judicatam).

2.
This doctrine is not new. It is to be found in the Duchess of Kingston's case (1776) 2 Sm L.C., 13th edn, 644, where Sir William Grey, Lord Chief Justice of the Common Pleas, said:

"What has been said at the bar is certainly true, as a general principle, that a transaction between two parties, in judicial proceedings, ought not to be binding upon a third; for it would be unjust to bind any person who could not be admitted to make a defence, or to examine witnesses, or to appeal from a judgment he might think erroneous; and therefore the depositions of witnesses in another cause in proof of a fact, the verdict of a jury finding the fact, and the judgment of the court upon facts found, although evidence against the parties, and all claiming under them, are not, in general, to be used to the prejudice of strangers. There are some exceptions to this general rule, founded upon particular reasons, but, not being applicable to the present subject, it is unnecessary to state them."

3.
The rule also applies to the findings of facts of arbitrators: Land Securities Plc v Westminster City Council[1993] 1 WLR 286; of coroners or coroners' juries: Bird v Keep [1918] 2 KB 692; of persons conducting a Wreck Inquiry: Waddle v Wallsend Shipping Co [1952] 2 Lloyd's Rep 105, where Devlin J suggested that the law should be changed; and The European Gateway where Steyn J repeated the suggestion [1987] QB 206; and to the findings of individuals, of however great distinction, conducting extra statutory inquiries such as Lord Bingham's Report into the Supervision of BCCI: Three Rivers District Council v Bank of England (No 3)[2003] 2 AC 1. The judge treated the rule as applicable to judicial findings, being, for this purpose, "an opinion of a court or other tribunal whose responsibility it is to reach conclusions based solely on the evidence before it". If that definition was intended to exclude a tribunal whose remit is to carry out its own investigation it is too narrow.

4.
The rule, at any rate so far as it applies to criminal convictions, has been controversial for years. In Hunter v Chief Constable of the West Midlands [1980] QB 283, 319 Lord Denning MR, who had been counsel for the appellant in Hollington v Hewthorn described it as "beyond doubt …wrongly decided". In the House of Lords in the same case Lord Diplock said that that was generally considered to be so. In Arthur JS Hall v Simons [2002] 1 AC 615, 702 Lord Hoffmann said that the Court of Appeal in that case was "generally thought to have taken the technicalities of the matter too far".

5.
Insofar as the rule precludes reliance on criminal convictions in subsequent civil proceedings it has been abrogated by statute: the Civil Evidence Act 1968. But it still applies in relation to findings of fact in civil proceedings: Land Securities Plc v Westminster City Council[1993] 1 WLR 286, 288E-F per Hoffmann J; Secretary of State for Business Enterprise and Regulatory Reform v Aaron & Ors [2008] EWCACiv 1146; [20- 29], where Thomas LJ dealt with the rule and the exception to it in respect of Companies Act investigations where the investigators' findings of fact are admissible in disqualification proceedings; Calyon v Michailaidis[2009] UKPC 34.

6.
One of the reasons given by Lord Goddard for the rule was that the court should require the "best evidence". This, as Lord Hoffman observed in Land Securities Plc v Westminster City Council [1993] 1 WLR 286, was a disguised reference to the rule against hearsay, now abrogated by the Civil Evidence Act 1995. In Masquerade Music Ltd v Springsteen[2001] EWCACiv 563 at [85] Jonathan Parker LJ

declared that the time had come when it could be said with confidence that the "best evidence rule, long on its deathbed, has finally expired".

7.
The reasoning that has survived is that set out in the following passage of Lord Goddard's judgment (at 595):

"It frequently happens that a bystander has a complete and full view of an accident. It is beyond question that, while he may inform the court of everything that he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide, but, in truth, it is because his opinion is not relevant. Any fact that he can prove is relevant, but his opinion is not. The well recognized exception in the case of scientific or expert witnesses depends on considerations which, for present purposes, are immaterial. So, on the trial of the issue in the civil court, the opinion of the criminal court is equally irrelevant."

8.
As the judge rightly recognised the foundation on which the rule must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge"), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard.

9.
In essence, as the judge rightly said, the foundation of the rule must now be the preservation of the fairness of a trial in which the decision is entrusted to the trial judge alone."

13.
In **JSC BTA Bank v Ablyazov [2017] EWHC 2906** Sir Ross Cranston (sitting as a Deputy High Court Judge) said this:

1.
"The admissibility of findings from some of the earlier proceedings was challenged by Mr Sheehan on behalf of Mr Shalabayev. The issue arose in particular as regards the source of funding for the purchase of Alberts Court, through Sunstone and FM Company, and Teare J's findings as to Mr Ablyazov's ownership of these companies. Mr Sheehan based his objection to the admissibility of these findings on the long established rule in Hollington v F Hewthorn & Co[1943] KB 587, that findings made in earlier court decisions are inadmissible since they represent no more than the opinion of the judge in the earlier case.

2.
There can be no objection to reliance on the evidence referred to in earlier judgments, such as the contents of documents or the evidence of witnesses. In fact in this case the witness statements and affidavits, hearing transcripts and underlying documents from previous trials were available, so that

recourse to the previous judgments for this purpose was largely unnecessary. Nor can there be objection in my view to a second category of case, where the court takes into account, in a like manner as it would any other factual evidence, statements of fact in earlier judgments, giving them such weight as it thinks fit.”

3.
Both possibilities were recognised in Rogers v Hoyle[2015] QB 265, which concerned the admissibility in a negligence action of a report on the accident by the Department of Transport's Air Accident Investigation Branch. At first instance, after a careful consideration of the rule in Hollington v F Hewthorn & Co, Leggatt J held that the report was admissible. In the course of his judgment, he observed:

"[105] It does not follow that there would be no advantage in a rule which treats findings of an earlier civil court as admissible in later proceedings. The problem of deciding how much weight should be given to such a finding only arises if evidence is adduced at the trial of the later proceedings to contradict it."

On appeal, Christopher Clarke LJ (with whom Arden and Treacy LJJ agreed) upheld Leggatt J on the admissibility of the report. He held:

"[39] As the judge rightly recognised the foundation on which the rule [in Hollington v F Hewthorn & Co] must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ("the trial judge"), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard…

[40] In essence, as the judge rightly said, the foundation of the rule must now be the preservation of the fairness of a trial in which the decision is entrusted to the trial judge alone…

[48]…The [air accident] report is not a bare finding such as one of carelessness or ownership of a painting. The statements of fact contained in the report, eg as to the position of the wreckage or the reported observations of the eye witnesses, are evidence which the trial judge can take into account in like manner as he would any other factual evidence, giving to it such weight as he thinks fit."

1.
“Where Mr Sheehan for Mr Shalabayev drew the line was a third category, if the Bank sought to rely on findings of fact in the previous judgments in proceedings to which Mr Shalabayev was not a party, as evidence of the facts found. That was in direct conflict with what Christopher Clarke LJ had said in Rogers v Hoyle, who had based the rule on fairness. In his submission Eder J would have gone too far in accepting counsel's argument to that effect in Otkritie International v Gersamia[2015] EWHC 821 (Comm), [23] - that if a judge in a later case concludes that the matters of primary fact recorded in an earlier judgment justify the conclusions reached in that judgment, he or she was entitled to reach the same conclusion – if 'matters of primary fact' were taken to mean findings of fact. The phrase had to be interpreted to mean the factual evidence recorded in the previous case, to which reference could be made.

2.

The rule in Hollington v F Hewthorn & Co turns on fairness. That accords with the Overriding Objective of the CPR of dealing with cases justly and at proportionate cost. In relation to the earlier findings about the ownership of Sunstone and FM Company, there is no unfairness to Mr Shalabayev in my accepting them in this case, even if they fall into the third category of case above. The findings were made after hearing the evidence of Mr Ablyazov and Syrym, which I did not hear, and submissions on the issue. That evidence was that these companies were Syrym's. In this case, certainly as to Syrym, he could have been called to give evidence. He was available during the hearing but was not called. Instead findings on the matter were left to me to be made on the basis of the available documents, the very limited evidence of Mr Shalabayev (who accepted that he had nothing to do with the companies), Mr Hardman's statement and Mr Sheehan's rather short, written critique of it. In these circumstances there is no unfairness to Mr Shalabayev in my giving considerable weight to Teare J's findings on the ownership of Sunstone and FM Company. I return to the issue below".

14.
I was referred to **JTR v HNL [2015] EWHC 2298 (QB)**, and brief dicta by Warby J (as he then was) at paragraph 35(3):

"It is questionable whether the findings in the Other Proceedings would be admissible at all in the light of Hollington v F Hewthorn & Co Ltd [1943] KB 587. If they were, there would be rich potential for debate about their impact. The nature of the inquiry was different. I think Mr Crystal was right to accept that the findings in the Other Proceedings would not be conclusive, even if admissible, against his client. For one thing the standard of proof is higher in contempt"

The facts of that case were rather different, and, in any event, the rule does not appear to have played any significant part in the decision not to allow an application for committal on the basis of an alleged false statement of truth. Moreover, Warby J appears to have considered, as submitted by counsel, that the findings in the previous proceedings were admissible, but not conclusive. If anything, therefore, these dicta support the admissibility of the judgment of HHJ Gibbons.

15.
**Phipson on Evidence** at 43-77 describes the overarching principle thus: "At common law a judgment in personam (whether delivered in civil or criminal proceedings) is no evidence of the truth either of the decision or of its grounds between strangers, or a party and a stranger…" before reviewing the **Hollington v Hewthorn** rule in some detail.

16.
In **Crypto Open Patent Alliance v Craig Steven Wright [2021] EWHC 3440 Ch**, HHJ Paul Matthews sitting as a High Court Judge described the rule as "about the admissibility in English proceedings of findings and decisions of courts and tribunals (whether in this jurisdiction or elsewhere) in proceedings between different parties".

17.
In my judgment, the submission on behalf of H that the judgment in the financial remedy proceedings is not admissible in the subsequent committal proceedings before me is not well founded:

i)
It is, it has to be said, a startling notion that the very judgment which gives rise to the order from which springs a committal application cannot be admitted in evidence. How else is a court to make sense of the order which has been made?

ii)
Logically, on H's case, no judgment in a final hearing conducted according to the civil standard of proof can ever be referred to within subsequent committal proceedings. Thus, in a family context, a judge hearing a contempt application would not be permitted to take account of, or refer to, or in any way rely upon, findings made at a substantive trial of financial remedy, or public law, or private law proceedings, or indeed any other part of the family jurisdiction. Further, H's submission that "findings of fact by earlier tribunals are inadmissible in subsequent civil proceedings because they constitute opinion evidence" means that it would never be open to the court to be referred to the prior judgment upon a subsequent enforcement application of whatever nature. Moreover, following the logic through, a substantive judgment including findings as to, for example, periodical payments, could not be before the court upon a variation application under s31 of the Matrimonial Causes Act 1973 (as amended). All of this seems to me to be extremely doubtful.

iii)
Counsel for H were not able to point me to a single authority where a substantive judgment was ruled inadmissible in a subsequent committal application made in respect of the order springing from that very same judgment, whether in family proceedings or elsewhere in the civil jurisdiction. My personal experience (and I believe reflected in published judgments on committal in the Family Court or Family Division) is entirely to the contrary. The closest they came was brief obiter dicta by Sir James Munby P (who appears to have received no submissions by counsel on the point) in **Re L (A child) [2016] EWCA Civ 173** where he said at paragraph 68:

"I referred in paragraph 50 above, to what McFarlane LJ had said in Re K about the circumstances in which a judge who had conducted the kind of hearing which took place in the present case before Keehan J on 8 October 2015 ought not to conduct subsequent committal proceedings. That issue, which was at the heart of the appeal in Re K, is not one which, in the event, arose for determination here, so I say no more about it. The point to which I draw attention, is simply this. Quite apart from the Comet principle, which, as we have seen, would prevent the use in subsequent committal proceedings of the evidence given by someone in Mr Oddin's position at a hearing such as that which took place on 8 October 2015, it is possible that the rule in Hollington v F Hewthorn and Company Limited and another [1943] KB 587[15] might in certain circumstances prevent the use in subsequent proceedings of any findings made by the judge at the first hearing. That is a complicated matter which may require careful examination on some future occasion; so, beyond identifying the point, I say no more about it

I do not read those short sentences as authority for the proposition advanced on behalf of H.

iv)
The rule can be encapsulated in one sentence. Goddard LJ said at 596-597 of **Hollington v Hewthorn** that "A judgment obtained by A against B ought not to be evidence against C". It concerns different parties to different proceedings. As HHJ Matthews said in **Crypto** (supra) it concerns admissibility "between different parties"**.** And **Phipson** (supra) describes the rule as applicable to issues between strangers, or between a party and a stranger.

v)
So far as I can tell, and consistent with these propositions, the rule in **Hollington v Hewthorn** has been applied to exclude previous judgments only in cases of separate, distinct proceedings and/or involving different parties. Even then, as both **Hoyle v Rogers** and **JSC BTA Bank v Ablyazov** demonstrate, the earlier decision may be admitted (or, perhaps more accurately, not excluded) if

fairness so requires. The decision in **Hollington v Hewthorn** itself prevented a criminal conviction for careless driving being admitted in civil proceedings brought by those injured in the collision. These were two, separate sets of proceedings, with different parties since.

vi)
By contrast, the committal applications before me are part of the same set of proceedings, namely enforcement referable to the financial remedy claims, and they are between the same parties.

vii)
I conclude that **Hollington v Hewthorn** is not authority for the proposition that the judgment in earlier proceedings between the same parties cannot be admitted in evidence for the purpose of a contempt application arising out of the earlier judgment, and order made thereon.

viii)
The foundation of the rule is the fairness of the subsequent trial.

ix)
Evidence presented in the earlier proceedings, and the contents of the judgment from the earlier proceedings, are, in my judgment, admissible in subsequent committal proceedings flowing from the earlier proceedings, and between the same parties.

x)
The weight to be attached to the earlier proceedings, and judgment, will be a matter for the judge conducting the committal proceedings.

xi)
None of the above derogates from long established principle that the applicant must prove the alleged contempt of court to the criminal standard.

18.
I therefore propose to take into account the judgment of HHJ Gibbons to the extent that fairness requires, whilst at all times bearing in mind, at the risk of repetition, that the onus of proof lies on W, and the criminal standard of proof is applicable.

**The written narrative evidence**

19.
In support of her contempt applications, W has properly provided sworn statements. She confirmed those statements orally, and was asked a handful of questions in cross examination.

20.
H has furnished a witness statement dated 8 September 2021, as he describes it, “in defence of” the committal applications. He was under no obligation to do so. At the hearing before me, he elected, as was his right, not to give oral evidence. Consequently, he could not be cross examined on the contents of that witness statement, or any other matters. It seems to me that declining to give oral evidence, which is absolutely within his rights and a perfectly proper course of action, nevertheless must inevitably have a knock on effect on his written evidence, and how much weight should be attached to it.

**Service of the first passport order**

21.

On the evening of 25 May 2021, at about 7.30pm to 8pm, PC Harrison and PC Fuller attended at H's address to serve the first passport order. They liaised by telephone with the Tipstaff, Mr Cheesley MBE. PC Harrison prepared a witness statement confirming service of the passport order. She could not attend court either in person or remotely, and could not therefore be cross examined on the contents of her statement. PC Fuller also prepared a statement, in which he confirmed PC Harrison's account in her statement. PC Fuller attended court to be cross examined. I also heard from the Tipstaff who gave oral evidence.

22.
Having heard PC Fuller and the Tipstaff, I am wholly satisfied that H was served with the first passport order. Mr Cheesley MBE was absolutely clear that he explained every step of the process to PC Harrison and PC Fuller. PC Fuller was similarly clear that, particularly as they had not previously served a passport order, they took extra care to read all the paperwork, speak to Mr Cheesley MBE and follow his instructions. In accordance with the order, H handed over certain travel documents. A confirmation of service document was drawn up. PC Fuller said he was "extremely confident" that the passport order was served upon H. In his written evidence, H contends that he received not the passport order but a separate document being a Direction to the Tipstaff which it is intended should be retained by the servers of the document. It may be that he was given, inadvertently, that document, but I accept to the requisite high standard that he also received the passport order itself. H did not attend court to be cross examined about this issue. I am entitled to, and do, draw adverse inferences from his silence. In my judgment, he did not give evidence because he well knows that he did indeed receive the passport order. I am quite sure that service of the passport order, followed by service of the first committal application the next morning, led him to leave the UK forthwith. I accept the evidence of PC Fuller and the Tipstaff unreservedly. The first passport order was, I find, properly served.

**Procedure: general matters**

23.
Having disposed of these preliminary matters specifically raised, I remind myself of the essential procedural safeguards applicable to the issue and conduct of a committal application. Rules 37.3 and 37.4 of the Family Procedure Rules, which took effect on 16 July 2020, codify the safeguards set out in a number of cases such as **Re L [2016] EWCA Civ 173** (particularly para 78 thereof). I am satisfied that W has complied fully with the necessary obligations in respect of the various committal applications (the second passport order application having been withdrawn).

**Open court and right to remain silent**

24.
I have sat in public throughout. Although H was not present, I stated in front of his legal team that he had the right to remain silent and there was no obligation on him to give evidence, although adverse inferences might be drawn from his silence: **Khawaja v Popat and Popat [2016] EWCA Civ 362.** I was told that this was relayed to him over the telephone. The right to remain silent had also bene recited on the court order of Mostyn J dated 9 June 2021, at a hearing attended remotely by H.

**Contempt applications: general principles**

25.

In terms of legal principles, committal proceedings are essentially criminal in nature, even if not classified in our national law as such (see **Benham v United Kingdom (1996) 22 EHRR 293 at [56], Ravnsborg v. Sweden (1994), Series A no. 283-B).**

26.
The burden of proof lies at all times on the applicant. The presumption of innocence applies (Article 6(2) of the ECHR). There is no burden on the defendant.

27.
Contempt of court must be proved to the criminal standard: that is to say, so that the judge is sure (see **Cambra v Jones [2014] EWHC 2264 per Munby P**).

28.
Contempt of court involves a contumelious that is to say a deliberate, disobedience to the order. The accused must (i) have known of the terms of the order i.e precisely what s/he is required to do and (ii) have acted (or failed to act) in a manner which involved a breach of the order and (iii) have known of the facts which made his/her conduct a breach (see **Masri v Consolidated Contractors Ltd [2011] EWHC 1024 (Comm).**

29.
If it be the case that applicant cannot prove that the defendant was able to comply with the order, then s/he is not in contempt of court. It is not enough to suspect recalcitrance. It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his/her power to do it. That burden remains on the applicant throughout, but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the defendant provided the applicant can satisfy the judge so that s/he is sure that compliance was possible. The judge must determine whether s/he is sure that the defendant has not done what s/he was required to do and, if s/he has not, whether it was within his/her power to do it. Could s/he do it? Was s/he able to do it? These are questions of fact. That said, breach may occur where compliance is difficult or inconvenient but not impossible; see **Perkier Foods Ltd. v Halo Foods Ltd. [2019] EWHC 3462 (QB).**

30.
If committed, the contemnor can apply to purge his/her contempt.

**The background**

31.
I turn finally to the factual background. Since separation in 2016, the parties have been embroiled in almost interminable legal proceedings. HHJ Gibbons heard contested financial remedy proceedings over 14 days in 2020.

32.
Judgment was formally handed down on 7 April 2021. A number of highly critical findings were made against H in terms of non-disclosure, fraud, credibility, or lack thereof, and dishonesty. The judge said that “The steps [H] has taken to mislead the court and the Wife, while expressing such affront at the suggestion that he has been dishonest, have been frankly extraordinary”. She concluded that he had deliberately sought to delay and derail the proceedings, falsified documents including bank statements and a Covid test, and lied about from where he was attended the hearing remotely. For the purposes of this hearing before me, I bear in mind the **Lucas** direction (just because a person is

dishonest in one respect, it does not follow that they are being dishonest in other respects), and in any event I am considering the contempt applications to the criminal standard rather than the civil standard which prevailed at the financial remedy hearing.

33.
The order giving effect to the judgment was perfected on 23 April 2021. It contained the following provisions (so far as relevant to the matters before me):

i)
A previous final order made by consent by HHJ O'Dwyer on 23 March 2018 was set aside, pursuant to W's application on the basis of material non-disclosure.

ii)
Various promissory notes relied upon by H were held to be sham documents, and the alleged debts were not owed by H to the second and third respondents to these applications (the third and fourth respondents to the financial proceedings), nor had they ever existed (paragraph 34).

iii)
A Portuguese property is beneficially owned by H, contrary to his case (Schedule, 1 para 3).

iv)
There was no valid Cypriot trust, or, alternatively, if it is valid then H as settlor had wide-ranging powers (Schedule 1, paras 2 and 3).

v)
Third party mortgages over the Portuguese property were executed by H in favour of the second and third respondents (the third and fourth respondents to the financial remedy proceedings) in order to defeat W's claim, the court finding that the reduced equity was false because the third and fourth respondents to the financial remedy proceedings never intended to enforce the mortgages (para 35).

vi)
The promissory notes and mortgages were "fraudulent, void, of no effect and unenforceable as between the first, third and fourth respondents" (the latter being the second and third respondents to these applications) (paragraph 36).

vii)
The execution of the mortgages was set aside. H and the second and third respondents (third and fourth respondents to the financial remedy proceedings) were ordered, within 7 days of the date of the order, to take all necessary steps to remove the third party mortgages against the property from the Portuguese Land Register (para 42).

viii)
Two lump sum orders in favour of W totalling for £2,059,236 was made (to include payment of W's legal costs), payable on the first to sell of the marital home in Twickenham or the Portuguese property .

ix)
H was ordered to execute, by 14 days after the date of the order, a written instrument referable to his Cypriot trust powers to enable the Portuguese property to be sold (para 48).

x)

H was ordered to execute all other documents as may be required to carry into effect his instructions to the trust (paragraph 49).

xi)
H was ordered to send an executed copy of the written instruction to W's solicitors within 24 hours of signature (paragraph 50).

xii)
H was ordered to provide, within 14 days of the date of the order, Cypriot trust accounts since inception, a list of all bank accounts held by the trust, statements for each bank account since opening, a management and rental contract, and an account in respect of the rental of the Portuguese property from 1 January 2016 onwards (paragraph 55).

34.
The Portuguese property referred to in the order, Vila Aurore, is held by a 2017 Cypriot trust known as the AJ Bailey Family Trust, of which H was the settlor. The judge recorded relevant terms and provisions of the trust deed which include:

i)
The settlor has the power by clause 8.3 to change the proper law of the trust.

ii)
By clause 12.3 the settlor has powers to annul or amend any terms of the trust, to distribute or assign any trust property to a beneficiary, to direct the trustee in binding terms as to trust property, to appoint or remove a trustee, to terminate the trust, and (combined with clause 18.3) to add or remove any beneficiary. I note that the settlor is not barred from being a beneficiary or trustee.

35.
Accordingly, H has complete control over the trust in the sense that he has the power to direct it as he pleases, including exclusively for his own benefit, as if the trust property is his own.

36.
The financial remedy order was validly served on all the parties on 5 May 2021. It contains a penal notice.

37.
Since then, the fundamental part of the order, namely payment of just over £2m, has largely not been complied with by H. I understand that the Twickenham property has now been sold, and the proceeds have been expended on mortgage, W's legal fees, and other liabilities. Just over £1m is owing. W and the parties' child are now living in rented accommodation. The Portuguese property remains to be sold; it was found by HHJ Gibbons to be worth over 4m euros

38.
On 21 May 2021, W issued a committal application for alleged breaches of paragraphs 42, 48, 49, 50, and 55 of the order.

39.
Believing that H might exit the jurisdiction, W sought and obtained two without notice passport orders made by Cobb J on 25 May 2021. The committal application in respect of the second passport order is not pursued, and I propose to dismiss it.

40.

As to the first passport order, it provides as follows (so far as material):

“8. The respondent ANTHONY JOHN JAMES BAILEY and any other person served with this order must each hand over to the Tipstaff (for safe-keeping until the court makes a further order) as many of the following documents as are in his possession or control: - (a) every passport relating to the respondent and every identity card, ticket, travel warrant or other document which would enable the respondent to leave England and Wales.

11. The respondent ANTHONY JOHN JAMES BAILEY and any person served with this order must not (a) make any application for, (b) obtain, seek to obtain, or (c) knowingly cause, permit, encourage or support any steps being taken to apply for, or obtain any passport, identity card, ticket, travel warrant or other document which would enable either (a) the children, or (b) the respondent to leave England and Wales.”

It is to be noted that the first passport order did not expressly prohibit H from leaving the jurisdiction. This appears to be due to some confusion in drawing it up at the time.

41.
That evening (i.e on 25 May 2021), police attended at the property where H was staying in London and, as I have found, served H with the first passport order.

42.
At 07.40am the next day, on 26 May 2021, H was personally served by a process server with W’s committal application arising out of alleged breaches of the financial remedy order. Plainly, he would have been aware of the risk of punishment by committal if the alleged contempt be proved. He was also well aware of the terms of the passport order served on him the previous evening.

43.
Later that morning, according to H in his written evidence (but not attested to by oral evidence) he received a telephone call from a medical specialist requiring him to return immediately to Portugal. He has provided no evidence of such a phone call, or the request for him to return immediately. He has supplied a copy letter from a medical foundation dated 26 May 2021 which invited him to attend an appointment with the specialist on 28 May 2021, but nothing contained in that letter refers to the degree of urgency or necessity asserted by H.

44.
After he was served with the committal application at 07.40am, that same day H left this jurisdiction. It is obvious that he hurriedly departed to avoid W’s enforcement proceedings.

45.
On 28 May 2021, at a hearing before Mostyn J which H attended remotely, at recital 2 of the order it was recorded that H said he had travelled from the UK to the Republic of Ireland (for which he did not need a passport), and from there to Portugal with his Portuguese residence certificate.

46.
On 7 June 2021, W issued further committal applications:

i)
Against H for alleged breach of the passport orders.

ii)

Against the second and third respondents for alleged breach of paragraph 42 of the financial remedy order (which imposed upon them a requirement to remove the third party mortgages against the Portuguese property from the Portuguese Land Register).

47.
On 28 September 2021, the committals came before Holman J. W attended in person and was represented. H attended remotely (despite having been ordered to attend in person) and was represented. The second and third respondents did not attend and were not represented. H had taken out a summons shortly before the hearing seeking attendance remotely, on the grounds that that he was unable to travel to England as he was undergoing medical treatment. His statement in support said that travelling to England would be “unsafe” and he had been advised not to travel by his doctors. He produced a very limited number of supporting documents. It is now known that on 24 and 25 September 2021, just before the committal hearing, he had in fact travelled to Rome for rest and relaxation. Had Holman J been aware of that fact, it is doubtful that he would have taken the course of adjourning the hearing to, as it turns out, this date in front of me. H was directed by Holman J to file and serve a medical report, exhibiting all tests, scans, and records, so as to corroborate his application. He has not complied with that order.

48.
A hearing took place before Sir Jonathan Cohen on 20 January 2022, set up in accordance with the order of Holman J to determine, as a preliminary issue, the state of H’s health and whether he should be required to attend the final hearing before me in person. W attended in person, represented by counsel. H attended remotely, albeit intermittently, attended by counsel. The judgment given ex tempore by Sir Jonathan is compellingly clear:

i)
He found that H is physically and mentally well enough to attend this hearing personally.

ii)
He found that H was physically and mentally well enough to have attended the intended final hearing before Holman J in September 2021.

iii)
At the hearing before Sir Jonathan Cohen, H was in the United States and not, as he claimed over the video link and through his counsel, in Portugal. That was definitively established when the judge ordered Videoconferencing Bureau Ltd (responsible for the video link arrangements) to confirm his location, which was subsequently found to be in Florida. When W had initially requested the order (rightly, as it transpires, suspecting that H was in the USA and not Portugal), H immediately left the link, which Sir Jonathan concluded was to try and frustrate the tracing exercise.

iv)
During the hearing, H refused to comply with the judge’s requests to identify his address, or rotate his camera around the room from where he was joining the hearing.

v)
By his own acknowledgment in a written statement, H made 7 trips to Spain, Germany, Rome and the USA between 23 June 2021 and 2 January 2022. According to H, all such trips were for leisure except for the visit to the USA which he said was for the purpose of investigating potential medical treatment, an assertion which Sir Jonathan did not accept.

vi)
H was ordered to attend this final hearing in person. He has not done so.

vii)
H was ordered to disclose exactly where he was during that hearing. He has not done so.

viii)
H was ordered to attend the offices of W's Portuguese lawyers and present a copy of his passport, flight tickets to the USA and ESTA. He did not do so.

49.
W submits that H is in breach of various orders made by Mostyn J, Holman J and Sir Jonathan Cohen, namely:

i)
Failure to attend before Holman J in person.

ii)
Failure to produce medical evidence.

iii)
Failure to disclose where he was during the hearing before Sir Jonathan Cohen.

iv)
Failure to attend at W's Portuguese solicitors' offices and produce certain documents.

There are no committal applications before me in respect of these matters, and I take them no further, although W is clearly flagging up the possibility of making further such applications.

**My findings on the alleged breaches against H**

The order HHJ Gibbons dated 23 April 2021

50.
I am satisfied to the criminal standard that H breached paragraph 42 of the said order. It is an in personam order. He has not taken all necessary steps to remove the third party mortgages as ordered, and has taken, I am satisfied, no proper steps even to attempt to do so (which might include writing to the Land Register himself or issuing proceedings against the second and third respondents in Portugal). W has produced evidence that the third party mortgages in respect of the Portuguese property remain on the Portuguese land register. I cannot, it seems to me, ignore the fact that the third party mortgages were, as found by HHJ Gibbons, orchestrated by H for fraudulent purposes. That is a finding which was not made to the criminal standard but in my judgment, I am entitled to take it into account as background material, whilst bearing in mind that for the contempt application I must be satisfied to the criminal standard. Insofar as H in his written evidence says that he has approached the third parties in writing to remove the mortgages from the register, he has provided no evidence beyond his mere say so, and has not taken the witness stand to be cross examined on this assertion. I am entirely satisfied that H has, and at all material times has had, the power and ability to procure the release, whether himself or by instructing others who will do as he bids.

51.
I am satisfied to the criminal standard that H has breached paragraph 48 of the order. He has not executed the written instrument as ordered, which requires no more than a signature. The written

instrument contains provisions altering the terms of the trust and giving specific directions in ways which are permitted to H under his powers as settlor. The written instrument, if executed by H, would enable the Portuguese property to be sold and the proceeds applied to satisfy the outstanding debt in W's favour. I am wholly satisfied that H has the power to sign the document, and has deliberately chosen not to. It is said on his behalf that, according to the Cypriot trustee, the English court has no jurisdiction over the trust. In my view, even if correct, that is irrelevant. The order is against H in personam, mandating him to exercise powers which are reserved to him under the trust deed. Further, it is in his gift to alter the proper law to England such that giving effect to the alterations contained in the written instrument would be lawful. Thus, not only does he have the power to execute the document in accordance with the order, but he also has the power to render the whole process lawful by changing the proper law, should that be necessary.

52.
I am satisfied to the criminal standard that H has breached paragraph 49 of the said order. Far from executing the necessary documents to enable the trust to sell the Portuguese property, I am entirely satisfied that he taken no steps at all to do so. At all times it has been within his power to comply. I refer again to the very wide-ranging powers available to him as settlor which enable him to direct the trust as he pleases. He has, for reasons which are all too obvious, deliberately chosen not to comply.

53.
I am not satisfied that H has breached paragraph 50 of the said order which requires him to have sent the document executed under paragraph 48 to W's solicitors. Since he has not yet complied with paragraph 48, it is an impossibility for him to comply with paragraph 50. W perfectly reasonably says that one flows from the other, but it does not seem to me to be appropriate to commit for a breach of an order which is not yet capable of fulfilment. Rather than dismiss the allegation, I will give W permission to withdraw it so that it can be remade at a later date if necessary.

54.
I am satisfied to the criminal standard that H has breached paragraph 55 of the order. He has not produced the documents as ordered. To the extent that it is said the Trustee will not provide the documents to him, he has, as I have already commented, wide-ranging powers enabling him to direct the trust as he thinks fit, including removing the trustee and amending the terms to enable documents to be released to him. Indeed, there is nothing under the terms of the trust precluding him from appointing himself as trustee. I am quite sure that as the controller of the trust, it has at all times been within his power to comply; he has simply chosen not to.

First passport order

55.
The court having found that H was properly served with the first passport order, it is acknowledged on his behalf by counsel that H has breached paragraph 11 of the said order. Regardless of that concession, I have independently considered whether breaches occurred, and I am satisfied to the criminal standard that H has indeed breached paragraph 11, but not paragraph 8:

i)
I cannot be sure that H breached paragraph 8. In particular, I cannot be sure that he failed to deliver up all travel documents which would have enabled him to leave the UK. It is clear that he retained his Portuguese residency certificate, but that was necessary for onward travel from Ireland to Portugal rather than for travel from the UK to Ireland. There is no solid evidence (although some suspicion) that H did not comply.

ii)
Contrary to paragraph 11, he obtained a plane ticket enabling him to travel from this jurisdiction to the Republic of Ireland.

**My findings on the alleged breaches by the second and third respondents**

56.
I am satisfied to the criminal standard that each of the second and third respondents have breached paragraph 42 of the order of HHJ Gibbons in that neither of them has taken all necessary steps to remove, or indeed taken any steps to remove, the third party mortgages from the Portuguese Land Register. I am entitled, it seems to me, to take into account that they have not engaged in these proceedings or presented any sworn evidence. The mortgages are still registered, and they have, quite simply, not complied.

57.
That concludes my judgment on the breaches.

**Later**

58.
I have found to the requisite standard that H, and the second and third respondents, are in breach of a number of court orders. Having done so, I adjourned for H and his lawyers to have time to consider mitigation, which has subsequently been submitted to me.

59.
I have wide powers of sanction **(FPR r.37.4 & r.37.9(1) FPR 2010**) in circumstances in which I find that a respondent has disobeyed an order; the precise form of sanction is within the discretion of the court. I may impose a sentence of up to two years imprisonment **(Contempt of Court Act 1981, s. 14(1))**, or a fine of an unlimited amount. If I impose a sentence of imprisonment, it is open to me to order that execution of the committal order can be suspended for such period or on such terms as I consider appropriate **(FPR 37.28 FPR 2010).**

60.
In considering the powers, and approach to be taken on sentencing, I have reminded myself of **Hale v Tanner [2000] EWCA Civ 5570** in which Hale LJ considered the principles to apply when sentencing for committal in a family law case:

“25. In making those points I would wish to emphasise that I do so only in the context of family cases. Family cases, it has long been recognised, raise different considerations from those elsewhere in the civil law. The two most obvious are the heightened emotional tensions that arise between family members and often the need for those family members to continue to be in contact with one another because they have children together or the like. Those two factors make the task of the court, in dealing with these issues, quite different from the task when dealing with commercial disputes or other types of case in which sometimes, in fact rarely, sanctions have to be imposed for contempt of court.

26. Having said that, firstly, these cases have to come before the court on an application to commit. That is the only procedure which is available. Not surprisingly, therefore, the court is directing its mind to whether or not committal to prison is the appropriate order. But it does not follow from that that imprisonment is to be regarded as the automatic consequence of the breach of an order. Clearly

it is not. There is, however, no principle that imprisonment is not to be imposed at the first occasion: see Thorpe v Thorpe[1998] 2 FLR 127, a decision of this court. Nevertheless, it is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course on the first occasion.

27. Secondly, there is the difficulty, as Mr Brett has pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn, and in a case where the alleged contemnor has not attended court, that may be an appropriate course to take, although I would not say so in every case. It depends on the reasons that may be thought to lie behind the non-attendance. There is a power to fine. There is a power of requisition of assets and there are mental health orders. All of those may, in an appropriate case, need consideration, particularly in a case where the court has not found any actual violence proved.

28. Thirdly, if imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension.

29. Fourthly, the length of the committal has to depend upon the court's objectives. There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.

30. Fifthly, the length of the committal has to bear some reasonable relationship to the maximum of two years which is available.

31. Sixthly, suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order.

32. Seventhly, the length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order underlying the committal.

33. Eighthly, of course, the court has to bear in mind the context. This may be aggravating or mitigating. The context is often the break-up of an intimate relationship in which emotions run high and people behave in silly ways. The context of having children together, if that be the case, cannot be ignored. Sometimes that means that there is an aggravation of what has taken place, because of the greater fear that is engendered from the circumstances. Sometimes it may be mitigating, because there is reason to suppose that once the immediate emotions have calmed down, the molestation and threats will not continue.

34. Ninthly, in many cases, the court will have to bear in mind that there are concurrent proceedings in another court based on either the same facts or some of the same facts, which are before the court

on the contempt proceedings. The court cannot ignore those parallel proceedings. It may have to take into account their outcome in considering what the practical effect is upon the contempt proceedings. They do have different purposes and often the overlap is not exact, but nevertheless the court will not want, in effect, the contender to suffer punishment twice for the same events.

35. Tenthly, it will usually be desirable for the court to explain very briefly why it has made the choices that it has made in the particular case before it. One understands all the constraints in a busy county court, dealing with large numbers of these cases these days, and one would not wish to impose too great a burden on the judiciary in this respect. Nevertheless, it would be appropriate in most cases for the contemnor to know why he or she was being sentenced to a period of imprisonment; why it was the length that it was; if it was suspended, why the suspension was as it was, but only very briefly."

61.
I have also re-read the helpful guidance given by Nicklin J in **Oliver v Shaikh [2020] EWHC 2658 (QB)** (at [14]-[21]), wherein he referred to the objects of the sanction being: (1) to punish the historic breach of the court's order by the contemnor; and (2) to secure future compliance with the order. He added at [17](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".

And later at [18]:

"If a contemnor, even belatedly, demonstrates a genuine insight into the seriousness of his prior conduct and its unlawfulness, then the Court may well be able to conclude that the contemnor has 'learned his lesson' and the risk of future breach is thereby diminished."

62.
In mitigation, H submits that these are the first committal applications against him i.e there are no previous breaches found by the court. It is said that the breach of the passport order by obtaining a travel ticket was less flagrant, or more technical, than a breach of an order preventing H from leaving the jurisdiction. I am reminded that H has accepted that he breached the order by obtaining the travel ticket. I am also asked to bear in mind the welfare of the parties' child who would see his father punished by the court. Finally, it is submitted that, should I determine that a sentence of imprisonment is appropriate, it should be suspended. I also bear in mind that approximately half of the £2m has in fact been received by W.

63.
On the other hand, stripped to its bare essentials, H's behaviour has been designed to disobey an order for him to pay W £2 million, and deprive her of a sum to which she is entitled, and which she plainly needs not just for herself but their child. That in my judgment evinces a disregard by H for the welfare of the child of the family which I consider to be an aggravating factor. So, too, has been his behaviour in obstructing the court at almost every possible opportunity, deploying numerous tactical and forensic ploys to attempt to delay the process, and divert attention from his grossly culpable

conduct. He expresses no remorse; on the contrary, his written statements continue to present himself as the aggrieved party in this. He has disputed evidence which I have found to be true. He has refused to attend court, including at this hearing, when ordered to do so, and ignored other court orders, for example to supply medical evidence. He has, so it appears, continued to enjoy a very comfortable lifestyle in sharp contrast with W. His departure from this country was clearly done so as to avoid the consequences of W's enforcement applications and put himself beyond the reach of this court. H's behaviour displays dishonesty, wilful obstruction, and barefaced contempt for the court process, all to avoid paying that which is owed to his former wife. It is a shameful spectacle, deserving of considerable opprobrium.

64.
In my judgment, a custodial sentence is justified. Further, in my view, it would not be appropriate to suspend the sentence although H can of course, apply to purge his contempt and, should he make good his breaches, I would be likely to look very favourably on any such application.

65.
I propose to impose the following sanctions for breach of the relevant orders:

i)
Paragraph 42 of the order of 23 April 2021: 4 months imprisonments

This sentence shall run consecutively to ii) and iii) below.

ii)
Paragraph 48 of the order of 23 April 2021: 4 months

Paragraph 49 of the order of 23 April 2021: 4 months

Paragraph 55 of the order of 23 April 2021: 4 months

These three sentences shall run concurrent with each other but consecutive to the breaches at i) above and iii) below.

iii)
Paragraph 11 of the order of 25 May 2021: 4 months

This sentence shall consecutively to i) and ii) above.

66.
That is, in consecutive terms, a total of 12 months imprisonment, subject, as I say, to any application by H to purge his contempt.

67.
I have also found that the second and third respondents have breached paragraph 42 of the order of HHJ Gibbons dated 23 April 2021. They were not present nor represented, and no mitigation was advanced on their behalf. The fact that they have simply ignored the court proceedings throughout is indicative of the disdain in which they hold the courts of this jurisdiction, and I strongly suspect, their complicity with H. I consider that a sentence of imprisonment is warranted but that, in their case, a suspension of the term of imprisonment is appropriate to permit them an opportunity to remedy their breaches.

68.
I shall:

i)
Sentence the second respondent to 4 months imprisonment, suspended for 28 days from today on condition that he takes all necessary steps to remove the Third Party Mortgages from the Portuguese Land Register.

ii)
Sentence the third respondent to 4 months imprisonment, suspended for 28 days from today on condition that she takes all necessary steps to remove the Third Party Mortgages from the Portuguese Land Register.