Neutral Citation Number: [2022] EWHC 1594 (QB)

Case No: QB-2021-001481

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/06/2022

Before :

THE HONOURABLE MR JUSTICE HENSHAW

- -

Between :

COVERIS FLEXIBLES UK LIMITED	**Claimant**
- and -	
(1) MR SIMON BREARS **(2) GLOBE IMPORTS AND SOURCING LIMITED** **(3) MR DAVID JACK HARBINSON** **(4) H&H PRINT SOLUTIONS LIMITED**	**Defendants**

- -
- -

Stuart Benzie (instructed by **Gateley LLP**) for the **Claimant**
Peter Gilmour (instructed by **Clifford Johnston & Co**) for the **First Defendant**
The Second to Fourth Defendants did not appear and were not represented

Hearing date: 20 June 2022

- -

Approved Judgment

Mr Justice Henshaw:

(A) INTRODUCTION 2
(B) FACTS 2
(C) THE CONTEMPTS OF COURT 6
(D) PRINCIPLES 7
(E) APPLICATION 11
(F) COSTS 19
(G) CONCLUSIONS 22

(A) INTRODUCTION

1. This judgment arises from the application by the Claimant ("***Coveris***") to commit the First Defendant ("***Mr Brears***") for 13 contempts of court, some including more than one instance of contempt. Mr Brears has in substance admitted the alleged contempts of court, and the hearing before me was essentially concerned with submissions as to sentence. The hearing included some oral evidence from Mr Brears, whose counsel called him to deal with certain matters arising from evidence recently served on both sides.

2. For the reasons which follow, I have concluded after careful consideration that the minimum sentence commensurate with the seriousness of these contempts of court is an immediate custodial term of 14 months overall.

(B) FACTS

3. The underlying substantive claims against Mr Brears arise from his activities while employed by Coveris in a senior capacity, and in the months following his resignation.

4. Mr Brears began working for Coveris in September 2015. While still employed by Coveris, on 30 April 2020 Mr Brears incorporated a company, the Second Defendant ("***Globe***"), with the intention of competing with Coveris. Mr Brears now admits that he acted in concert with another agent of Coveris, referred to as "Nicole", based in China; and a third party, Mr David Harbinson, who is the Third Defendant and who became a director of Globe in September 2020. The Fourth Defendant, H&H Print Solutions Limited, is a company in which Mr Harbinson has an interest. Coveris alleges that Mr Brears, together with his co-conspirators, dishonestly took steps to divert business from Coveris's customers to Globe, and did so at times using Coveris's suppliers and Coveris's facilities: for instance, Mr Brears instructed Coveris's design team to design the logo for Globe.

5. Coveris's claims against Mr Brears are for breach of contract, breach of confidence, breach of fiduciary duty, unlawful means conspiracy (with the alleged unlawful acts including theft and breaches of the Fraud Act 2006), unlawful interference and conversion (this claim relating to stock belonging to Coveris which Mr Brears allegedly stole and which was then supplied by Globe to a third party).

6. Mr Brears has confirmed that he no longer intends to defend the substantive claim, and accepts that judgment against him in that claim is inevitable. It is pertinent to record, though, that the evidence before me indicates that the Claimant's allegations are supported by a significant volume of contemporaneous documentation, particularly emails sent by the alleged conspirators. These include 40 emails which Mr Brears now admits he deleted after being served with Search Order granted by Martin Spencer J on 22 April 2021 ("***the Search Order***"), but which the Claimant was subsequently able to recover with the help of forensic IT experts. The evidence indicates that the conspiracy commenced around 30 April 2020, when Globe was incorporated with Mr Brears as the sole director. Over the 7½ months from then until the termination of his employment with Coveris on 18 December 2020, Mr Brears actively carried on a competing business, along with Mr Harbinson and with the assistance of Coveris's representative in China, Nicole. That activity continued even after Mr Brears had been signed off work on 15 September 2020 and shortly afterwards provided a doctor's certificate stating that he was unable to work due to depression.

7. Further, when Coveris and Mr Brears agreed the termination of his employment, Mr Brears having served notice of resignation on 18 November 2020, a Settlement Agreement was entered into on 18 December 2020. In that Agreement Mr Brears made representations to the effect that (a) he had not breached any duty that he owed to Coveris, (b) he had not committed any repudiatory breach of his contract of employment, and (c) he was not employed or self-employed in other capacity. The Settlement Agreement was signed on Friday 18th December 2020. On the same day, Mr Brears attended a meeting with T Quality Limited ("***TQL***"), one of Coveris's most important established customers, and sought to divert their business to Globe.

8. Mr Brears now admits that his dealings with TQL were in concert with Globe (he does not mention his co-director Mr Harbinson) and had the intention of diverting business away from Coveris. Mr Brears also admits that over a period of months he encouraged Nicole to take steps in China with the intention of sabotaging Coveris's ability to produce products for TQL, and to allow Globe to replace Coveris as TQL's supplier.

9. An example of these activities was the engagement of Nicole to negotiate with a supplier in China for the provision of packaging products for the fast-food chain Taco Bell. Coveris had instructed its employee to negotiate a 5% price reduction in favour of Coveris; however, Mr Brears, instructed Nicole instead to negotiate a 5% rebate to be paid to Globe, thus in effect diverting the benefit from Coveris to Globe. This arrangement was referred to in an email dated 9 September 2020 from Mr Brears to Nicole (copied to Mr Harbinson), which included the following passage (with Mr Harbinson's interpolated response the same day shown in bold): "*All noted with Taco Bell, understand Coveris has that work so just need ensure Globe have 5% of all Coveris sales on Taco pots……..****Love this mate, cash for free……...up there for thinking down there for dancing*** ☺ *from Mingle then Globe will go for the work directly with Taco Bell at a later date*".

10. Coveris commenced proceedings against Mr Brears on 21 April 2021 and the Search Order was granted the following day. The order included injunctions restraining Mr Brears from, among other things, (a) directly or indirectly informing anyone about the proceedings or the Search Order save the purpose of obtaining legal advice, (b) destroying or tampering with any of a list of items, which included any documents evidencing his or Globe's dealings with Coveris's customers, potential customers or

suppliers, or (c) endeavouring to solicit orders from Coveris's customers or to influence in any way the relationship between Coveris and any of its suppliers or employees (I refer to this latter restraint as the "***prohibitory injunction***").

11. The Search Order was served at Mr Brears' home address on 23 April 2021 but no search took place as Mr Brears said he had Covid-19 and refused access.

12. Solicitors for Mr Brears contacted Mr Warner of Coveris's solicitors the same day and sought to arrange an appointment for the execution of the Search Order on Monday 26 April 2021, saying that Mr Brears would provide access to his online email account on 24 April 2021. However, Mr Warner said the search would proceed on 24 April.

13. On the evening of 23 April 2021, Mr Brears made searches including: "*mobile phones near me for sale*" and "*how to open a Samsung S20 phone*". At some point thereafter, but before the actual search, Mr Brears acquired a new Samsung A21 mobile telephone that he subsequently handed over during the search, having transferred the SIM card from his existing Samsung phone into the new phone.

14. During the early morning of 24 April, the day of the rescheduled search, Mr Brears searched for and deleted incriminating emails using the search terms "*Coveris*" "*Globe*" and "*Globe Imports*".

15. The search took place on the afternoon of 24 April 2021. Mr Brears was accompanied by a solicitor representative.

16. At the return date for the Search Order, before Murray J on 29 April 2021, the order was continued by consent, with an agreed exception whereby Mr Brears/Globe would be permitted an exception to the prohibitory injunction so as to allow Globe to complete pending orders.

17. Despite the making of the prohibitory injunction, and the agreed defined exception to it, Mr Brears and Globe continued during April, May and June 2021 to solicit orders from customers of Coveris, including TQL, in the respects detailed by Coveris in its Statement dated 31 August 2021 setting out specific allegations of contempt of court. In Schedule A to that Statement, Coveris sets out details of 15 orders solicited from TQL and the value of those orders, which total approximately £362,362 plus US$ 88,000. It also sets out details of five other emails or exchanges of emails evidencing solicitation of orders.

18. On 13 May 2021 Mr Brears swore an affidavit pursuant to paragraphs 22 and 23 of the Search Order that included the statement that Mr Brears had not misused the Claimant's confidential information. Mr Brears now admits that that statement was untrue.

19. Mr Brears served his Defence on 4 August 2021, with a Statement of Truth signed by him. He now admits that it contained 24 false statements.

20. Coveris made a Part 18 request of Mr Brears on 9 August 2021. On 18 August 2021 Mr Brears responded to an email from Coveris's solicitors about inspection of documents with a voicemail left for Ms Canning of Coveris's solicitors in which he used vulgar abuse, for which Mr Brears apologised during the hearing before me (saying he had been drinking).

21. Coveris issued its committal application on 2 September 2021.

22. On 9 September 2021 Mr Brears sent a letter to Coveris's solicitors stating that he was "*moving abroad*", would be travelling and of no fixed abode, and that unless documents were handed to him personally, they would be "*deemed not to be served*". In Mr Brears' oral evidence before me, however, Mr Brears explained that the actual position was that he was visiting a friend for a time at his house in Florida, though he (Mr Brears) also hoped he could move to the US full time. Mr Brears' letter led Coveris to apply for alternative service, which Master Gidden allowed on 24 September 2021. Master Gidden made a costs order for £5,000 against Mr Brears which remains unpaid.

23. Coveris issued a Part 18 application against Mr Brears, which was heard by Master Thornett on 1 December 2021. During the course of the hearing, at which Mr Brears represented himself, Mr Brears explained in substance that certain emails had been sent on Globe's behalf by a friend of Mr Brears, Scott James, who had been helping him but whom Mr Brears was currently unable to reach. Mr Brears has subsequently admitted that the explanation was untrue and that Mr Brears sent the emails himself. Master Thornett required the gist of Mr Brears' explanation on this point to be recorded in the recitals to his formal order, which accordingly recorded Mr Brears' statement that Mr James had been engaged by Globe on a voluntary basis and had acted on Mr Brears' instructions. Master Thornett ordered Mr Brears to provide a Part 18 response, made a costs order for £6,250 against Mr Brears, which remains unpaid.

24. Mr Brears served his Part 18 response on Coveris on 6 December 2021. He now admits that it was "*entirely false and misleading*", because he denied having sent or authorised the sending of emails and sought to blame Mr James, whereas in fact Mr Brears sent the emails himself.

25. On 11 November 2021 Mr Brears served his witness statement in response to the committal application. Mr Brears now admits that the contents of that witness statement included false statements.

26. On 16 December 2021 the solicitors who now act for Mr Brears, in relation to the committal application only, wrote to Coveris indicating that Mr Brears admitted each of the allegations of contempt set out in Coveris's Statement setting out the allegations of contempt. Mr Brears also admitted that aspects (as yet unspecified) of his self-drafted witness statement dated 11 November 2021 were untrue. The letter said Mr Brears would be filing a further affidavit in due course. Mr Brears did not at this stage volunteer that his Defence had also contained numerous untruths. The letter indicated that medical evidence would be sought for the purposes of sentencing, rather than to defend the committal application, and that this would take several months.

27. Mr Brears then provided the promised further affidavit, on 26 January 2021. At this stage, the hearing of the committal application was due to commence on 8 February 2022, i.e. only two weeks away. In that affidavit Mr Brears set out admissions to the allegations of the contempt which Coveris had to date put forward, together with admissions of false statements in his Defence and his 11 November 2021 witness statement. Mr Brears said, at various points, that he had panicked and acted stupidly; and he set out matters he wished the court to take into account by way of mitigation.

28. Coveris was in due course permitted to add further allegations to its application, arising from the admissions made in Mr Brears' affidavit of 26 January 2022.

(C) THE CONTEMPTS OF COURT

29. Arising from these matters, Mr Brears accepts having committed the following contempts of court.

Search order

(1) breaching the Search Order by refusing access to the Supervising Solicitor, after the latter had explained to him the terms of the Order and the penal notice it contained;

(2) breaching the Search Order by wrongly telling the Supervising Solicitor that Mr Brears potentially had Covid-19;

(3) making the untrue statement to the Supervising Solicitor on 23 April 2021 that there were no electronic devices covered by the Search Order at his home, when in fact he had a mobile phone and a personal computer;

(4) breaching the Search Order by making more than one telephone call to Mr Harbinson after service of the Order, in which he told Mr Harbinson "*what had happened*";

Concealing/destroying evidence

(5) breaching the Search Order by not providing his mobile phone to the Supervising Solicitor, instead handing over a new phone which he had purchased at 24 April 2021 and into which he had inserted the SIM card from the original phone; Mr Brears also admits that on 22 June 2021 his then solicitors, based on false information provided in his instructions, wrongly told Coveris's solicitors that the phone he had handed over was the one he had used since returning his company mobile phone; later, Mr Brears provided the original phone to his solicitors on 20 December 2021, who then notified Coveris's solicitors and arranged for it to be handed over (albeit it appears no data could be found on it);

(6) failing to disclose the existence of a new SIM card which he acquired after the date of the search;

(7) on 23/24 April 2021, after service of the Search Order, searching for potentially incriminating emails and deleting 40 such emails, in breach of the search order;

Breach of prohibitory injunction

(8) in breach of the prohibitory injunction contained in the Search Order and continued in the Return Date Order (in a form agreed with Mr Brears), soliciting orders from named customers of the Claimant other than in the manner allowed by the Return Date Order, as alleged by Coveris. Coveris's allegations related to TQL and two other customers, and included the numerous solicitations of TQL referred to in § 17 above.

False statements in documents and to the court

(9) making a false statement made in an affidavit dated 13 May 2021, to the effect that Mr Brears had not misused Coveris's confidential information;

(10) making 24 false statements in his Defence;

(11) making a false statement in his response to the Part 18 request dated 6 December 2021, in relation to the sending of emails from his email account;

(12) making false statements made during the Part 18 application before Master Thornett on 1 December 2022 (though not explicitly set out in Mr Brears' affidavit, this was accepted on his behalf during hearing before me); and

(13) making false statements in his witness statement dated 11 November 2021, served in response to the committal application.

(D) PRINCIPLES

30. In *Crystal Mews Ltd v Metterick* [2006] EWHC 3087 (Ch.) Lawrence Collins J set out a list of factors that the court should consider when sentencing parties. That case was applied, and the factors supplemented, by Proudman J in *FW Farnsworth Ltd v Lacy* [2013] EWHC 3487 (Ch) § 28:

> "The decision in *Crystalmews Limited v. Metterick* contains a check-list of matters the court should consider relating to sentence. This comprises:
>
> - whether the claimant is prejudiced by virtue of the contempt and whether the contempt is capable of remedy,
> - the extent to which the contemnor has acted under pressure,
> - whether the breach of the order was deliberate or unintentional,
> - the degree of culpability,
> - whether the contemnor was placed in breach by reason of the contempt,
> - whether the contemnor appreciated the seriousness of the breach,
> - whether the contemnor has cooperated.
>
> I would add to these factors the following:
>
> - whether the contemnor has admitted his contempt and has entered a guilty plea. By analogy with sentencing in criminal cases the earlier the admission the more credit the contemnor is entitled to be given,

- whether the contemnor has made a sincere apology for his contempt,

- the contemnor's previous good character and antecedents, and

- any other personal mitigation advanced on his behalf."

31. In *Financial Conduct Authority v McKendrick* [2019] 4 WLR 65 the Court of Appeal (Hamblen and Holroyde LJJ) said:

> "The length of that 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 a 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 as therefore justifying a sentence at or near the maximum." (§ 40)

32. Leech J in *Solicitors Regulation Authority Limited v Soophia Khan* [2022] EWHC 45 (Ch) § 52 provided a summary which was also adopted by the court in *Business Mortgage Finance 4 Plc v Hussain* [2022] EWHC 661 (Ch). The summary lists the following points:

i) There are no formal sentencing guidelines for sentence/sanction in committal proceedings.

ii) Sentences/sanctions are fact specific.

iii) The court should bear in mind the desirability of keeping offenders and, in particular, first-time offenders, out of prison: see *Templeton Insurance Ltd v Thomas* [2013] EWCA Civ 35 and *Otkritie International Investment Management Ltd v Gersamia* [2015] EWHC 821 (Comm).

iv) Imprisonment is only appropriate where there is "*serious, contumacious flouting of orders of the court*": see *Gulf Azov Shipping Company Ltd v Idisi* [2001] EWCA Civ 21 at [72] (Lord Phillips MR).

v) The key questions for the court are the extent of the defendant's culpability, and the harm caused by the contempt: see *Otkritie International Investment Management Ltd v Gersamia* (above).

vi) Committal to prison may serve two distinct purposes: (a) punishment of past contempt and (b) securing compliance: see *Lightfoot v Lightfoot* [1989] 1 FLR 414 at 414-417 (Lord Donaldson MR).

vii) It is good practice, for the court's sentence to include elements of both purposes (punishment and compliance) to make clear what period of committal is regarded as appropriate for punishment alone, i.e. what period would be regarded as just if the contemnor were promptly to comply with the order in question: see *JSC Bank v Soldochenko* (No 2) [2012] 1 WLR 350.

viii) Committal may be suspended: see CPR Part 81.9(2). Suspension may be appropriate: (a) as a first step with a view to securing compliance with the Court's orders: see *Hale v Tanner* [2000] 1 WLR 2377 at 2381; and (b) in view of cogent personal mitigation: see *Templeton Insurance Ltd v Thomas* [2013] EWCA Civ 35.

ix) The court may impose a fine. If a fine is appropriate punishment, it is wrong to impose a custodial sentence because the contemnor could not pay the fine: see *Re M (Contact Order)* [2005] EWCA Civ 615.

x) Sequestration is also available as a remedy for contempt: see CPR Part 81.9(2).

Counsel for Mr Brears particularly highlighted points (iii) and (iv) above.

33. In addition, the Lord Chief Justice in *R v Manning* [2020] EWCA Civ 592 said, in relation to the Covid-19 pandemic:

> "… The current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. In accordance with established principles, any court will take into account the likely impact of a custodial sentence upon an offender and, where appropriate, upon others as well. Judges and magistrates can, therefore, and in our judgment should, keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are, for example, confined to their cells for much longer periods than would otherwise be the case – currently, 23 hours a day. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19.
>
> Applying ordinary principles, where a court is satisfied that a custodial sentence must be imposed, the likely impact of that sentence continues to be relevant to the further decisions as to its necessary length and whether it can be suspended. …" (§§ 41 and 42)

34. In *R v Arapi* [2021] EWCA Crim 1905 (decided on 2 December 2021) the Court of Appeal said:

> "We are told that although the nation is no long in lockdown, as it was at the time of the decision in *Manning*, prison conditions remain difficult. By reason of the pandemic, prisoners frequently remain confined to their cells for very long periods and have no access to education or other facilities within the

> prison. Visits remain impacted. In our judgment, it thus remains incumbent on judges and magistrates who are imposing shorter sentences to consider the impact of prison conditions upon the offender. In our view, the date of the commission of the offence has no relevance in this regard. The impact of the pandemic on prison conditions remains the same for all offenders, whatever their state of knowledge about them may have been at the time that they committed the offence." (§ 15)

35. A few months later, on 11 March 2022, in *Business Mortgage Finance 4 v Hussain* [2022] EWHC 661 (Ch) Miles J said:

> "In *Korta-Haupt v Chief Constable of Essex Police* [2020] EWCA Civ 892, the Court of Appeal explained that there is no automatic Covid-19 discount and that the question is fact-specific. *R v Manning* was decided in the height of the pandemic and the public health emergency has largely dissipated since then. There is for instance published guidance showing that visiting has recommenced in many prisons." (§ 7)

36. I was not shown the guidance referred to in the above passage, and there was no evidence before me as to current conditions in whichever prison Mr Brears would be likely to be detained in, in the event of an immediate custodial sentence. Though it might be said that the lack of specific evidence cuts both ways, I prefer to take the more cautious view that in the light of *Manning* and *Arapi*, it remains appropriate to have regard to the possibility (at least) that prison conditions, such as time spent in cells each day, remain more adverse than they were before the pandemic.

37. On the question of whether any custodial sentence should be suspended, it was common ground that, although it is not directly applicable, assistance can be obtained from the Sentencing Council's Guideline on Imposition of community and custodial sentences, which indicates that the following factors should be weighed in considering whether it is possible to suspend a sentence:

> "**Factors indicating that it would not be appropriate to suspend a custodial sentence**
>
> Offender presents a risk/danger to the public
>
> Appropriate punishment can only be achieved by immediate custody
>
> History of poor compliance with court orders"
>
> "**Factors indicating that it may be appropriate to suspend a custodial sentence**
>
> Realistic prospect of rehabilitation
>
> Strong personal mitigation

> Immediate custody will result in significant harmful impact upon others"

38. Suspension of sentence was also the subject of the following observations by the Court of Appeal in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] 1 WLR 3833:

> "68. Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt. In this regard, the timing of the admission is important: the earlier an admission is made in the proceedings, the greater the reduction which will be appropriate. Consistently with the approach taken in criminal cases pursuant to the Sentencing Council's definitive guideline, we think that a maximum reduction of one third (from the term reached after consideration of all relevant aggravating and mitigating features, including any admissions made before the commencement of proceedings) will only be appropriate where conduct constituting the contempt of court has been admitted as soon as proceedings are commenced. Thereafter, any reduction should be on a sliding scale down to about 10% where an admission is made at trial.
>
> 69. The court must, finally, consider whether the term of committal can properly be suspended. In this regard, both principle and the case law to which we were referred lead to the conclusion that in the case of an expert witness, the appropriate term will usually have to be served immediately, and that one or more powerful factors justifying suspension will have to be shown if the term is to be suspended. We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as the Bashir case [2012] ACD 69 shows, an immediate term—greatly shortened to reflect the personal mitigation—may well be necessary."

39. I also refer, in section D below, to certain statements of principle relating to particular categories of contempt of court.

(E) APPLICATION

40. I begin by considering individually each of the four categories of contempt which Mr Brears committed, and then consider the offending more broadly, along with the

mitigation Mr Brears has advanced and the credit which should be given for his admissions.

41. By reference to the list of contempts set out in § 29 above, the first four relate to actual or attempted obstruction of the execution of the Search Order. Such conduct is a serious matter: it involves breach of an order which the court, rightly, grants only in special circumstances and on which the successful applicant is entitled to rely. As Neuberger J said in his judgment on liability in *Shalson v Russo* (Ch.D, 9.7.01 unrptd.):

> "… when the court has granted a search order, it is because there is strong and convincing evidence of wrongdoing on the part of the respondent and of the risk of destruction or variation, alteration or removal of items and documents. Therefore, where the court has thought it right to make such an order, the party at whose suit it was made can reasonably expect the court to be properly rigorous in ensuring that the order has been complied with."

and in his judgment on sentence, Neuberger J said:

> "… it seems to me that it is important that this court sends out a clear message that, when search orders are made served and executed, they have to be complied with, indeed strictly complied with. Any significant breach of a search order should normally be visited by an order for imprisonment, possibly on a suspended basis, and/or substantial fine."

42. Similarly, in *Taylor Made Golf Co Inc v Rata & Rata* [1996] FSR 528, Laddie J said :

> "…defendants who are the subject of Anton Piller orders must be aware that they are not granted by the courts simply for fun. They are in strong terms and are meant to be complied with fully and properly".

43. In the present case, by delaying the search Mr Brears bought himself time (and, it is reasonable to infer, intended to buy himself time) to carry out the acts of attempted concealment which he then committed, by deleting emails and by purchasing a new phone to pass off as being the one he had been using. The tipping off of Mr Harbinson was also a serious matter, and created the risk that evidence has been destroyed or concealed.

44. The second group of contempts, numbered (5) to (7) in the list, involved actual and/or attempted destruction of evidence following service of the Search Order. That was self-evidently an extremely serious breach. As Sir John Donaldson MR said in *WEA Records Ltd v Visions Channel 4 Ltd* [1983] 1 WLR 721, 726A-B, if there is reason to suppose that, between service of the order and the time of eventual compliance, any steps have been taken inconsistent with the order (for example, by destruction of records) the consequences are of "*the utmost gravity*". In *Daltel Europe Ltd (In Liquidation) v Makki* [2006] 1 WLR 2704, Jackson LJ stated that the first instance authorities collectively showed that:

> "any deliberate and substantial breach of the restraint provisions or the disclosure provisions of a freezing order is a serious matter. Such a breach normally attracts an immediate custodial sentence which is measured in months rather than weeks and may well exceed a year"

I agree with Coveris that a deliberate breach of the restraint provisions or the disclosure provisions of a Search Order is no less serious.

45. In the present case, Mr Brears took deliberate steps to try to destroy or conceal evidence, in emails and his phone, following service of the Search Order. That was a deliberate and flagrant attempt to subvert the court's order, as Mr Brears cannot fail to have appreciated.

46. The third group of contempts is the multiple breaches to which Mr Brears has admitted of the prohibitory injunction contained in the Search Order, both as originally made and as varied on the return date. It was a particularly cynical breach given the exception which was negotiated on Mr Brears' behalf in the form of order as continued on the return date. The breaches were committed deliberately, and for the purpose of obtaining financial gain for Mr Brears at the expense of Coveris and in plain breach of the court's orders. (I add for completeness that the circumstances are very far from those in *Teighmore Limited, LBQ Fielden Limited v Ian David Bone* [2019] EWHC 2962, a case cited in argument, relating to a young and immature "*urban explorer*" who climbed the exterior of The Shard in breach of an injunction against persons unknown and was sentenced to 24 weeks' immediate custody for contempt of court.)

47. It is highly probable that the breach caused tangible harm to Coveris, of which the aggregate value of the customer orders, mentioned earlier, gives an indication. Mr Brears makes the point that the aggregate figures of £362,362 and US$88,000, even if one adds Coveris's costs of the present application (put at around £200,000), are small in comparison to Coveris's most recent reported turnover of around £162 million and profits of around £9 million. On the other hand, as Coveris points out, the aggregate order figures are not immaterial in the context of Coveris's overall profits, and are significant in the context of the figures for the (apparently relatively small) packaging division which was affected by these events. It is in any event clear that potential losses of this order cannot be dismissed as being *de minimis* and must be regarded as amounting to appreciable harm.

48. The final group of breaches relates to deliberately false statements made in court documents and, in one instance, to the court direct in oral argument. Contempts of this nature are self-evidently very serious. The Court of Appeal in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] 1 WLR 3833 said (in the context of a case about contempt by an expert witness):

> "We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient." (§ 59)

49. Turning to factors identified in the case law considered earlier as being relevant, the following considerations arise.

i) Mr Brears' culpability for all of these contempts is high, as his counsel accepts. They were committed deliberately, with the intention of furthering his own ends (including concealing his own pre-existing conduct in knowing breach of his duties to Coveris), and in knowing violation of his duties under the court's orders and procedures. I am sure that he knew exactly what he was doing, and knew that his actions were in breach of the court's orders or, in some cases, his duty to the court to be truthful. The fact that, belatedly, Mr Brears has come to admit that he committed all these contempts does not diminish his culpability in having done so.

ii) There is no evidence or suggestion that Mr Brears acted under pressure from others.

iii) Coveris has been prejudiced by Mr Brears' contempts. There is specific commercial prejudice arising from the breaches of the prohibitory injunctions as already explained. His breaches have also led to Coveris incurring very substantial legal expenses: regardless of what sums might in due course be assessed as being recoverable (in theory) from Mr Brears himself. Conversely, it is fair to say that there may well be no further, ongoing harm, since Globe is now in liquidation, and Mr Brears says he has no intention of being involved in the same area of business as Coveris any more (or necessarily in business at all).

iv) Mr Brears is bound to have appreciated the seriousness of his breaches, particularly given the clear terms of the Search Order and the penal notice which he now admits was explained to him, and the obvious need to tell the truth when signing statements of truth and making submissions in court.

v) Mr Brears can be said to have cooperated only to the extent that, starting with his solicitors' letter of 16 December 2021 letter, and rather more fully in his 26 January 2022 affidavit, he has admitted the contempts. However, (a) by the time of the fuller confessions in the affidavit, a full trial of the contempt application was only two weeks away, and (b) that came in the wake of a substantial period of covert activity contrary to his duties to his employer, Coveris, from April 2020 to mid 2021, and a sustained series of deliberate self-serving breaches of the court's orders and processes from April 2021 to December 2021. Moreover, as Coveris points out, Mr Brears admitted the allegations of contempt only when faced with a contempt application which made many of the allegations virtually unanswerable, Coveris having through its own forensic and other enquiries ascertained the truth. Mr Brears also demonstrated markedly uncooperative conduct in other aspects of the litigation, including by seeking to evade service of documents by claiming to be emigrating and of no fixed abode (leading to Coveris having to make an alternative service application); and by setting up his email account to send automated responses to the effect that emails were not being delivered to the recipient, when in fact Mr Brears was using the very same email account for his communications with the court and thus evidently was receiving messages sent to it. Further, Mr Brears has not given a full account of events, in particular as to the role of Mr Harbinson, about which he has appeared reticent.

vi) Mr Brears has now admitted his contempts and, in substance, entered a guilty plea. He is entitled to a degree of credit accordingly.

vii) Mr Brears has apologised for his contempt, though it is hard to judge its sincerity in circumstances where even in his most recent affidavit, his second affidavit dated 9 June 2022, he has not been entirely forthcoming. I return to this topic shortly.

viii) Mr Brears is of previous good character, though only if by 'previous' one ignores the whole of his conduct since April 2020 when he commenced the breaches of duty to which Coveris's substantive claims relate, those being claims which Mr Brears no longer seeks to contest.

ix) There is some personal mitigation available to Mr Brears, though I would hesitate to describe it as strong. I return to this topic shortly.

x) In the present case, there is no particular remedial action which the court could now seek to encourage Mr Brears to take by making an order conditional on compliance by Mr Brears.

50. As to personal mitigation, Mr Brears makes a number of points in his January 2022 affidavit and subsequent evidence.

51. I have already mentioned the point about Mr Brears being of previous good character. It can be said on his behalf that there is no evidence of previous convictions or contempts of court prior to the events with which we are now concerned.

52. There is evidence, in the form of a report from Professor GC Fox, a consultant psychiatrist, dated 14 February 2022 and referencing underlying medical records, that Mr Brears has an extensive history of depression and anxiety going back many years, has been on medication a long time, and has tried counselling which has not helped. In Professor Fox's opinion Mr Brears is suffering from moderately severe depressive illness with somatic symptoms. At the same time, Professor Fox says:

> "He is clear that he took the decisions he did to try and make the legal process end. He admitted that he knew what he was doing was wrong when he did it. He said that things changed in the pandemic and he felt angry with his employer, mistreated and was trying to start again. It is my view given the fact that he was trying to set up a new business, and also had made active statements in November 2021 in his defence which were untrue shows that he is capable of making decisions and that he was aware of what he was doing was wrong. I do not believe his depression can be blamed for this and there is certainly no evidence of any psychosis. It is likely that his depressive illness has been aggravated by his actions. It was also present at the time of his actions."

Professor Fox also expresses the view that prison will affect Mr Brears' mental health and likely increase the risk of suicide. Professor Fox notes that there are prison medical/mental health services available, though they can be limited, and believes that with the right follow-up Mr Brears could be improved significantly and the risks reduced.

53. Coveris does not challenge Professor Fox's evidence, but makes the points that:

    i) between about April 2020 and December 2020, Mr Brears was a full-time employee of Coveris, while simultaneously managing and running the day-to-day business of Globe;

    ii) Mr Brears provided a doctor's certificate to Coveris in September 2020 indicating that he was too ill to work as a consequence of depression, but between September and December 2020 was nonetheless actively engaged in the business of Globe (as detailed in the Amended Particulars of Claim § 19C);

    iii) when faced with the Search Order, Mr Brears referred to his mental health, but immediately engaged in a course of action that sought to deceive the Supervising Solicitor and allow him to destroy or conceal important evidence; and

    iv) whilst dealing with this litigation is obviously stressful for Mr Brears, his mental health problems provide no excuse or justification for his unlawful acts.

54. Mr Brears states that his mother lives about five miles from his home and that he visits her about 3 or 4 times a week, and as and when needed in between. His sister also lives about five miles from his mother. His mother is 84 years old and suffers from arthritis, with limited walking ability. Mr Brears helps her with shopping and other tasks. He is worried about the effect on her if he is sent to prison. Mr Brears does not, though, state that his sister would be unable to provide the necessary care for his mother if he were sent to prison for a period.

55. Mr Brears also states that he lives in rented accommodation paid for by housing benefit as part of his universal credit. However, he understands that if he is in prison and unlikely to return home within 13 weeks, then he will cease to receive housing benefit and be unable to pay, resulting in likely loss of his current home. He has not suggested that he would then be street homeless, or that his sister or mother would be unable to accommodate him for a time if needed.

56. In his oral evidence, Mr Brears made the further point that he is currently taking steps to qualify as an HGV driver (as noted in his affidavit). He benefits from government funding. However, he says such funding will no longer be available if, due to being in prison, he is unable to complete the process including passing the practical test by December 2022. Coveris points out that there is no documentary evidence of this, and that in any event Mr Brears has brought any such problem on himself by his own actions.

57. Mr Brears in his first affidavit states that he has no assets and no means to contest Coveris's substantive legal claim. In his second affidavit, dated 9 June 2022, Mr Brears states that he has no source of income other than universal credit of £799.86 a month, including the housing benefit element, which is less than his outgoings of £1,092; and that he is in arrears on utility bills and has a number of debts, which he lists. He produces copies of recent statements from what he says are his only bank accounts. Mr Brears says he hopes to qualify as an HGV driver but at present has no way of paying anything towards Coveris's costs.

58. In response to Mr Brears' second affidavit, Coveris served a solicitors' affidavit evidencing the fact that on 2 July 2021 a company called Luxo Security Services Ltd ("***Luxo***") was incorporated, stating its business to be private security activities, and that Mr Brears was its sole shareholder and director. The statement exhibited a Facebook post on 12 May 2022 showing a picture of Mr Brears, wearing a jacket with Luxo's name printed on it, with a man named Lee Freeman and the caption *"Always making sure I arrive safely and on time I couldn't recommend or value Simon Bears any higher".* In oral evidence before me, Mr Brears said he acquired Luxo as a new company as he had a long term plan to have a business unconnected with the packaging industry, and that he had the jacket printed in July 2021. The business had not, however, got off the ground and Luxo was to be dissolved. Mr Brears said Mr Freeman was a friend who worked as a disc jockey. Mr Brears had accompanied him to some events and driven him home, being paid about £250 in total for three or four events, some in cash and some to his bank account, the most recent payment having been on 22 May 2022 (18 days before his second affidavit). However, Luxo itself had no clients and Mr Brears just happened to wear the Luxo jacket on that occasion. He had hoped to use Mr Freeman's endorsement on Luxo's website had the business gone ahead. Mr Brears accepted that he had made no mention of Luxo in his affidavits, but said it was not a regular source of income. He said his only regular income is universal credit, which had very recently increased to £1,168 a month. In my judgment, the position with Luxo is something that Mr Brears should have mentioned in his affidavit, even if his position were that it does not provide a regular income to him.

59. Mr Brears was also asked about a post on 9 October 2021 showing him driving a Bentley in Florida. Mr Brears said he had bought a flight before the pandemic, to visit a friend with a house there, but the flight had been cancelled. He then took the flight last year using the credit voucher, and stayed at the friend's house. The car belonged to the friend, who allowed him to drive it. Mr Brears accepted in cross-examination that it followed that the statement in his letter of 16 September 2021 to Coveris that he was "*moving abroad on 16th September 2021 and will therefore no longer reside in the UK*" was inaccurate, albeit that he had hoped to move to the US permanently.

60. Counsel for Mr Brears made the additional submissions in mitigation that there was a prospect of rehabilitation; that Mr Brears had learned his lesson and was unlikely to wish to endure stress of the kind caused by the present application again; that Mr Brears had no intention of returning to the Coveris's area of business; that he did not present a risk of harm to other members of the public; and that his admissions and apology indicated that was remorseful. If the court were minded to suspend the sentence, appropriate conditions could be attached, for example relating to business activities and obtaining mental health treatment.

61. Having all of these matters in mind, I now turn to the appropriate sentences for the contempts, subject to the consideration I then give to credit for Mr Brears' admissions, totality, and whether any custodial sentence should be suspended.

62. Mr Brears concedes that the custody threshold is passed, though he submits that the sentence should be suspended. In my view the threshold is very clearly crossed. I have borne in mind (when considering both whether the custody threshold is passed, and whether the sentence can be suspended) that imprisonment is always a punishment of last resort, and whether a sentence other than one of imprisonment might be sufficient. However, each of the groups of contempts was serious, or very serious, for the reasons

I have already outlined. Even after taking account of such mitigation as is available to Mr Brears, and the effect of the pandemic on prison conditions, I consider that a custodial sentence is necessary, and that the appropriate custodial term for the contempts, prior to considering credit for admissions or totality, would be as follows:

i) Contempts 1-4, relating to attempts to delay or frustrate the search, and the call to Mr Harbinson, would in aggregate merit a term of 2 months' custody.

ii) Contempts 5-7, relating to efforts to destroy or conceal evidence, would in aggregate merit a term of 6 months' custody.

iii) Contempt 8, relating to multiple breaches of the prohibitory injunction, would merit a term of 9 months' custody.

iv) Contempts 9-13, relating to false statements in documents and to the court, would in aggregate merit a term of 6 months' custody.

63. The sentences for those four groups of contempts should in my judgment be consecutive to each other, before (as I have said) considering totality in the round, albeit the sentences within each group should be concurrent with each other. The four groups of contempts arise out of separate incidents and/or facts; and in any event, the overall seriousness of Mr Brears' conduct could not properly be reflected by concurrent sentences (unless they were in any event increased so as to reflect the same overall custodial term).

64. Those consecutive groups of sentences would result in a total of 23 months' custody. Mr Brears is entitled to credit for his admissions. However, he did not make full admissions at the outset, so as by analogy to merit a one-third discount: far from it. It is only with his 26 January 2022 affidavit, served shortly before the original contempt trial listing, that he made full admissions, albeit important admissions were also made in his solicitors' letter of 16 December 2021. Even being generous to Mr Brears, it would not in my view be appropriate to give a discount of more than about 20%, which would imply an overall custodial term of just over 18 months.

65. However, it is also necessary to stand back and consider, having regard to all factors, what term is appropriate to reflect the totality of Mr Brears' contempts of court. I have come to the conclusion that the appropriate custodial period as a whole is one of 14 months' imprisonment, comprising 1 month for contempts 1-4, 4 months for contempts 5-7, 6 months for contempt 8 and 3 months for contempts 9-13. Those are the shortest terms that I can impose commensurate with the seriousness of Mr Brears' contempts of court.

66. I have then to decide whether those sentences can be suspended. In my view they cannot. I accept, subject to the qualifications I have already mentioned, Mr Brears points out that he is of previous good character, and that there appears now to be a limited risk of his reoffending. I also take account of the potential effect on his mother of immediate custody, Mr Brears' mental health problems, his housing and HGV qualification situations, his other personal mitigation, and the possibility of rehabilitation. I have well in mind the desirability too of keeping offenders, particularly first-time offenders, out of prison and the matters discussed earlier about prison conditions resulting from the Covid-19 pandemic. Despite all those matters, I consider

that appropriate punishment can be achieved only by immediate custody. Mr Brears from April to December 2021 committed a sustained and intentional series of contempts, deliberately misleading Coveris and the court, and flouting the court's orders, on multiple occasions. He did so for his own personal gain and, in my judgment, in full knowledge of the nature and seriousness of his conduct; and his conduct has caused significant cost and other harm to Coveris. His course of conduct in my judgment makes a sentence of immediate custody unavoidable.

67. I accordingly sentence Mr Brears to the terms I have just indicated, resulting in an overall immediate custodial term of 14 months' imprisonment. Mr Brears will serve half of his sentences (and, hence, of the overall custodial term) and then be entitled to release from prison. An order of committal and warrant of committal will be issued immediately.

68. Mr Brears is entitled to appeal this sentence without permission The appellate court is the Court of Appeal. Any appeal must be commenced within 21 days after the order reflecting this judgment.

(F) COSTS

69. Mr Brears accepts that pursuant to the general rule at CPR44.2(2)(a), he would ordinarily be ordered to pay the Claimant's costs. However, the court has discretion under CPR44.2(2)(b) to make a different order and is invited to do so, given what is said to be the anomalous position of respondents in committal proceedings.

70. The Legal Aid Agency considers committal proceedings to be 'criminal' for the purpose of legal aid funding, due to the risk of imprisonment. Mr Brears is therefore in receipt of criminal legal aid. Defendants in receipt of civil legal aid are protected from adverse costs orders by virtue of section 26 of LASPO 2012. However, that has no application to Mr Brears, who is in receipt of criminal legal aid.

71. Defendants in criminal proceedings are usually subject to an adverse costs order only if the court is satisfied that the defendant can pay and, if so, limited to the amount of their means, pursuant to the Criminal Procedure Rules. However, those rules have no application in this case. Mr Brears adds that a defendant in contempt proceedings does not have the same bargaining power as a regular litigant in civil proceedings; a defendant cannot settle a contempt case.

72. Mr Brears submits that respondents in committal proceedings are therefore in an anomalous position, which is not intentional, as noted by HHJ Lewis in *Chief Constable of Essex v Douherty* (Chelmsford County Court, 6.7.20). Since that judgement appears to be unreported, I think it helpful to set out what he said:

> "7. The statutory basis for legal aid is set out in Part 1 of LASPO. Section 1(2) defines legal aid as "(a) civil legal services to be made available under section 9 or 10 or paragraph 3 of Schedule 3 (civil legal aid), and (b) services consisting of advice, assistance and representation required to be made available under section 13, 15 or 16 or paragraph 4 or 5 of Schedule 3 (criminal legal aid)".

8. The regimes for civil and criminal legal aid are distinct and mutually exclusive: "civil legal services" are defined broadly as "any legal services other than the types of advice, assistance and representation that are required to be made available under sections 13, 15 and 16) (criminal legal aid)", see s.8(3).

9. When LASPO came into force, there was considerable confusion about whether defendants to civil committal applications should apply for civil or criminal legal aid. A series of cases has established that these applications fall within the definition of "criminal proceedings" under s.14(h) and so respondents to them are entitled to 'criminal legal aid' rather than 'civil legal aid'. See, for example, King's Lynn and West Norfolk Council v Bunning [2015] 1 WLR 531; Brown v London Borough of Haringey [2015] EWCA Civ 483, in respect of a committal application brought in the County Court for breach of an anti-social behaviour injunction; and All England Lawn Tennis Club (Championships) Ltd v McKay (No. 2) [2019] EWHC 3065.

10. The Legal Aid Agency accepts this position and has produced guidance, the most recent version of which was issued in February 2020: "Apply for legal aid in civil contempt – committal proceedings". This guidance confirms that criminal legal aid for civil contempt proceedings heard in civil venues is not means tested, a position

consistent with the decision in All England Lawn Tennis Club (supra): "In criminal proceedings other than those in the magistrates' court or Crown Court, the relevant authority must make a determination that the individual's financial resources are such that he or she is eligible: see reg. 39 of the Criminal Legal Aid (Financial Resources) Regulations 2013 (SI 2013/471)", per Chamberlain J.

11. A party in receipt of civil legal aid will have the benefit of s.26 LASPO. This provides that costs ordered against an individual in 'relevant civil proceedings' must not exceed the amount (if any) which it is reasonable for the individual to pay having regard to all the circumstances, including (a) the financial resources of all of the parties to the proceedings, and (b) their conduct in connection with the dispute to which the proceedings relate. Where s.26 is engaged, the process to be followed by the court and the parties is set out in the Civil Legal Aid (Costs) Regulations 2013. A legally aided defendant only becomes liable to pay costs once the court has applied the test in s.26 and evaluated financial resources and conduct.

12. Section 26 relates to "costs ordered against an individual in relevant civil proceedings". "Relevant civil proceedings" for this purpose are defined under s.26(2) as "(a) proceedings for the

> purposes of which civil legal services are made available to the individual under this Part or (b) if such services [ie civil legal services] are made available to the individual under this Part of the purposes of only part of proceedings, that part of the proceedings."
>
> 13. As Section 26 of LASPO only applies to civil legal aid, it must follow that it does not apply in civil committal proceedings where the defendant is in receipt of criminal legal aid. There does not appear to be an equivalent provision for criminal legal aid, no doubt because the criminal courts already take account of an offender's means and ability to pay before making a costs order: see R v Northallerton Magistrates' Court, ex parte Dove [2000] 1 Cr App R (S) 136 (CA) and the Criminal Costs Practice Direction (2015).
>
> 14. There appears to be a lacuna. There are mechanisms in place to protect impecunious parties facing costs orders in the criminal courts, and legally aided parties in the civil courts. The exception seems to be civil committal proceedings. There is nothing to suggest such an omission is intentional, rather it appears to have come about because of the general confusion in 2012 about the type of legal aid that respondents to civil committal applications should receive, as outlined in Bunning (supra). It does, however, seem unfair to those defendants who are impecunious that in certain respects they are put in a worse position by the decision that they should receive criminal, rather than civil legal aid."

73. HHJ Lewis noted, however, that ability to pay is not usually considered during civil costs assessment, and no rules had been made to that effect (unlike, for example, in cases of small claims). The judge addressed the point by assessing costs summarily under ordinary principles, but staying the order for three months, to allow time for the defendant (if the claimant wished to enforce the order) to make an application supported by evidence and making clear, by reference to the law and rules, what the defendant was asking the court to do and the legal and procedural basis for doing so. The report does not indicate how matters unfolded subsequently.

74. In the present case, Mr Brears invites me to address the anomaly by ordering that any costs order adverse to him is not to be enforced without leave of the court.

75. Coveris makes the point that there is in fact no anomaly. A defendant to an ordinary civil claim such as this one would nowadays not be likely to receive civil legal aid, or the costs protection that goes with it, in any event. The court should simply make the usual costs order, which would be for Mr Brears to pay Coveris's costs, on the indemnity basis, to be the subject of a detailed assessment if not agreed, together with a payment on account.

76. I am not persuaded that there is an anomaly. The usual position in civil proceedings is for costs to be ordered based on the factors set out in CPR Part 44, even if the paying party would in fact be unable to pay. They are viewed as a form of compensation, akin

in that respect to damages, rather than as punitive measures that should not be ordered unless the payer has the means to pay. Costs protection is, at least in my experience, not commonly available: at the very least, Mr Brears has not demonstrated that it ordinarily would be available in a civil case such as this.

77. I therefore consider that a costs order should be made in the ordinary way. Though Mr Brears submitted that costs should be ordered only on the standard basis as from the date of his admissions, in my view the indemnity basis remains appropriate for the subsequent work, arising as it has from Mr Brears' very serious contempts of court.

78. Mr Brears invites me to assess costs summarily, on the basis that he would be unable to pay for representation in a detailed assessment. However, I do not consider that the costs of this application, which has been long running and has led to costs claimed by Coveris to amount to £198,754, can fairly be assessed summarily. Mr Brears would remain entitled to represent himself, and the costs judge would in any event have regard to the usual considerations of proportionality (as modified for an award on the indemnity basis).

79. I have heard brief submissions as to the level of the claimed costs, which are of relevance when considering the level of any payment on account. Even applying the indemnity basis, the level of costs is high and I consider that I should exercise considerable caution when ordering any payment on account. I consider the appropriate payment on account would be one representing just over a third of the claimed costs, or £70,000. I shall hear submissions as to whether that order should be stayed for any period in the light of the sentence of immediate custody that I am imposing.

(G) CONCLUSIONS

80. For the reasons set out above, I sentence Mr Brears to an aggregate term of immediate custody of 14 months.

81. Mr Brears must pay Coveris's costs of this application, on the indemnity basis, to be the subject of a detailed assessment if not agreed. A payment on account of £70,000 shall be made, subject to submissions as to any possible stay.

82. I am grateful to both counsel for their cogent and helpful written and oral submissions.