Neutral Citation Number: [2025] EWCA Civ 20

Case No: CA-2024-002556

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Mr Justice Rajah
BL-2021-001939; BL-2021-002082

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/01/2025

Before :

LADY JUSTICE ELISABETH LAING
and
LORD JUSTICE ZACAROLI

- -

Between :

SCOTT DYLAN	**Appellant**
- and –	
BARCLAYS BANK PLC	**Respondent**

- -
- -

Ian Bridge (instructed by **Lewis Nedas Law**) for the **Appellant**
James Knott (instructed by **Eversheds Sutherland (International) LLP**) for the **Respondent**

Hearing date : 17 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

....

Lord Justice Zacaroli:

1. This is an appeal against the order of Rajah J dated 30 October 2024 committing the appellant, Scott Dylan ("Mr Dylan"), to prison for 22 months for contempt of court. At the conclusion of the hearing, we announced our decision to dismiss the appeal, with reasons to follow. These are my reasons.

2. The background is described in the judge's careful ex tempore judgment on sentencing delivered on 30 October 2024 and, in greater detail, in his judgment dated 31 July 2024 dealing with liability. The following is a brief summary.

3. In November 2021 the respondent, Barclays Bank plc (the "Bank") commenced proceedings against a number of parties, including Mr Dylan, David Antrobus ("Mr Antrobus"), Jack Mason ("Mr Mason"), Fresh Thinking Group Limited ("FTG"), a company owned by Mr Dylan, Mr Antrobus and Mr Dylan's partner, and Inc Travel Group Ltd ("ITG"). FTG and ITG were companies in the Fresh Thinking group (the "Group"). According to a witness statement filed by Mr Dylan on 8 February 2022 the Group had a turnover of more than £130 million.

4. The Bank alleged that these, and others, were parties to an unlawful conspiracy to take advantage of the Bank's automated decision-making processes to make unauthorised borrowings through Group companies, which were then paid away. The value of the claim exceeds £13 million.

5. Immediately prior to those proceedings, on 31 October 2021 and 18 November 2021, the Bank obtained freezing orders against, among others, Mr Dylan, Mr Mason, Mr Antrobus, FTG and ITG, preventing them from, among other things, transferring out of the jurisdiction FTG's and ITG's shares in their subsidiary companies.

6. On 23 March 2022, in breach of those orders, FTG and ITG transferred all but one of their subsidiaries to two companies in the British Virgin Islands, with the consequence that the entire operational base of the Group was transferred out of this jurisdiction.

7. On 27 February 2023, the Bank issued a committal application against Mr Dylan, Mr Antrobus and Mr Mason. Four separate counts of contempt were alleged against each of them: (1) they knowingly assisted in breaches of the FTG freezing order, consisting of the transfer to the BVI on 23 March 2022 of the shares in two of its subsidiary companies, Inc & Co Group Limited ("ICGL") and Inc Logistics Group Limited ("ILGL"); (2) they knowingly assisted in breaches of the ITG freezing order, consisting of the transfer to the BVI on 23 March 2022 of the shares in two of its subsidiary companies, Baldwins Travel Agency Ltd ("Baldwins") and Inc Travel Ops Ltd ("ITOL"); (3) they knowingly assisted in breaches of the FTG freezing order, consisting of the release or transfer between 23 and 28 March 2022 of certain assets of FTG and the release of certain debentures; and (4) they committed (in Mr Mason's case) or knowingly assisted (in the case of the others) breaches of the freezing order against Mr Mason, consisting of the transfer on 23 March 2022 of his shares in ICGL and the filing of related documents at Companies House in September and October 2022.

8. The trial of the committal application commenced on 25 June 2024. On the fifth day of the trial, shortly before he was due to go into the witness box to give evidence, Mr Dylan filed an affidavit admitting the first two counts of contempt. The Bank did not

pursue the third and fourth counts of contempt against him, and the application was adjourned for sentencing. The trial continued in respect of all counts against Mr Mason and Mr Antrobus.

9. In his judgment of 31 July 2024, the judge found Mr Mason and Mr Antrobus guilty on all counts. He also made certain findings of fact against Mr Dylan (both in that judgment and the judgment delivered on 30 October 2024) which are not the subject of any appeal. Specifically, he found as follows:

   (1) The transfer of assets by FTG and ITG was a deliberate and planned flouting of the freezing orders and was a joint enterprise among the three defendants;

   (2) Mr Dylan appeared to be the "brains" who had a leading role and "cooked up this plan";

   (3) There was a lack of co-operation from Mr Dylan (and the other defendants) after the breaches of the freezing orders, and Mr Dylan "wrote anonymous letters from a non-existent Legal Department to Barclays putting up the shutters on the provision of information";

   (4) Mr Dylan (and the other defendants) lied to the Court on a "prolific scale";

   (5) Notwithstanding that they had ample time to reverse what they had done, they had not done so, and showed no sign of having any intention to return the assets to this jurisdiction;

   (6) Mr Dylan's breach was "deliberate" with a "high degree of planning"; and

   (7) Mr Dylan had filed three affidavits in the course of the proceedings running a false story about the involvement of someone called Rea Barreau, and those affidavits were not withdrawn or corrected.

10. In his sentencing judgment, the judge followed the approach mandated by the Supreme Court in *HM Attorney-General v Crosland* [2021] UKSC 15; [2021] 4 WLR 103, per Lord Lloyd-Jones, Lord Hamblen and Lord Stephens at §44:

> "1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council's Guidelines require the court to assess the seriousness of the conduct by reference to the offender's culpability and the harm caused, intended or likely to be caused.
>
> 2. In light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty.
>
> 3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.

> 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
>
> 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.
>
> 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence for a Guilty Plea.
>
> 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension."

11. As against Mr Dylan, the judge reached the following conclusions:

    (1) He assessed the degree of Mr Dylan's culpability as high.

    (2) He assessed the degree of harm as high, partly because he was not satisfied that the value of the assets transferred away could be described as small, low or insignificant but, more importantly, because this was a deliberate flouting of a freezing order which is an attack on the administration of justice.

    (3) He gave credit for Mr Dylan's admission but, applying the approach set out in the Sentencing Council's Guidelines on Reduction in Sentence, and the fact that the admission came only on the fifth day of trial, he allowed only a 5% reduction.

    (4) He found that the first two counts were so serious that only a custodial sentence would suffice and that, had the counts been tried, an aggregate sentence of two years would have been appropriate. Taking into account, however, various points of personal mitigation together with the 5% reduction for Mr Dylan's admission, he imposed a sentence of 22 months for each count, to run concurrently.

    (5) He considered whether this was a suitable case for suspension of the sentence, but decided that the case was far too serious for suspension to be appropriate.

    (6) He noted that Mr Dylan had said in his affidavit of 4 July 2024 that he would assist in any way he could in order to have the transactions reversed, and indicated that a remission of up to 12 months might be appropriate in the event that the full value of the assets transferred was returned to this jurisdiction.

12. The judge then dealt separately with Mr Mason and Mr Antrobus, imposing a sentence of 22 months' immediate imprisonment against them on each of the counts 1 to 3, 3

months against Mr Antrobus on count 4, and 12 months against Mr Mason on count 4, in each case to run concurrently.

Grounds of appeal

13. Mr Dylan appeals against both the length of the sentence and the decision not to suspend it. At the hearing of the appeal, Mr Bridge, who appeared for Mr Dylan, did not press the contention that the judge ought to have suspended the entire sentence. Instead, he contended that the judge ought to have suspended it in part. There are five grounds of appeal, which I summarise as follows:

14. **First**, the judge erred in imposing a sentence that was too long, compared to other cases in which the High Court has made findings of contempt, and the judge was therefore wrong to adopt a starting point at or near the maximum two-year period.

15. **Second**, the judge failed to take into account adequately, or at all, various points of personal and other mitigation advanced on Mr Dylan's behalf.

16. **Third**, the judge erred in "concluding that he should approach the sentencing exercise by questioning the value of the transferred assets" as detailed in valuations obtained just prior to, and 18 months after, the transfers.

17. **Fourth**, the judge erred in failing to follow the overarching sentencing guidelines by refusing to suspend any part of the sentence.

18. **Fifth**, the judge failed to distinguish adequately or at all between Mr Dylan and the other defendants when there was a manifest distinction between them.

The role of the appeal court

19. It is common ground that an appeal court will interfere in a sentencing decision of the lower court in a contempt case only if the judge (1) made an error of principle; (2) took into account immaterial factors or failed to take into account material factors; or (3) reached a decision which was plainly wrong in that it was outside the range of decisions reasonably open to the judge; *Liverpool Victoria Insurance Co Ltd v Khan & Ors* [2019] EWCA Civ 392, at §44.

Ground 1

20. The essence of the complaint under ground 1 is that the period of detention in this case does not bear comparison with other cases, because there are numerous other examples of more egregious breaches than that found in this case, but where significantly lesser periods of detention were imposed. It is accordingly contended that the judge was wrong to conclude that this case was so serious that he should adopt a start point at or near the maximum.

21. The first point to note is that this Court has emphasised that the maximum sentence of two years cannot 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": see *Financial Conduct Authority v McKendrick* [2019] EWCA Civ 524, per Hamblen and Holroyde LJJ at §40.

22. This Court has also emphasised that "the attack on the administration of justice which is made when a freezing order is breached usually merits an immediate sentence of some not insubstantial amount": *Templeton Insurance Limited v Thomas* [2013] EWCA Civ 35 at §42.

23. Aside from those points of principle, as Mr Bridge frankly acknowledged, citation of other committal cases for the purpose of comparison of sentences is rarely, if ever, helpful. As this Court said in *Thursfield v Thursfield* [2013] EWCA Civ 840, per Lloyd LJ at §33, each case depends on its own facts, and a comparison with other cases is unhelpful unless there are two cases that are so closely related that there might conceivably be arguments as to inconsistency. None of the cases cited by Mr Bridge, who appeared for Mr Dylan, are sufficiently closely related to give rise to such arguments.

24. The principal case identified by Mr Bridge in this regard – *HM Solicitor General v Yaxley-Lennon* [2024] EWHC 2732 – well illustrates the difficulty of trying to make any meaningful comparison. It involved breaches of an order precluding repetition of certain libelous matters, not the breach of a freezing order. The harm was categorised as not being at the highest end of the spectrum. Moreover, the "punitive" element of the sentence was in fact longer (at 14 months, less 3 days) than that imposed in this case (being 10 months, on the basis that judged indicated that a remission of up to 12 months might be appropriate if Mr Dylan purged his contempt). The fact that the overall sentence was 18 months (compared to 22 months in this case) provides no basis at all for contending that the judge's conclusion in this case was outside the range of decisions open to him. I need not deal in detail with the other cases relied on by Mr Bridge in his skeleton, but the same can be said for each of them.

<u>Ground 2</u>

25. Under this ground, Mr Bridge identifies the following matters of personal or other mitigation affecting Mr Dylan which it is alleged the judge failed to take into account "adequately or at all":

(1) His vulnerability by reason of his psychiatric condition and the impact of a custodial sentence upon him, taking account of his mental health.

(2) The financial and personal consequences of the proceedings on him.

(3) His previous good character.

(4) The impact of a custodial sentence on innocent third parties in particular members of his immediate family.

(5) His admission of breach.

(6) The impossibility of reversing the consequences of the breach, due to subsequent insolvency/administration, thereby being unable to purge his contempt.

(7) The substantial period during which Mr Dylan had these allegations hanging over him and the substantial delay following the breach of pursuing the contempt proceedings (2½ years in total, before sentence).

(8) The relative value of the claim as against the value of the transferred asset and the "eyewatering" cost of prosecuting the contempt.

(9) The impact of current conditions in the UK prison estate.

26. Insofar as these matters were relied on before the judge, in particular the first, third to fifth, eighth and ninth factors, the contention that they were not taken into account "at all" is hopeless, since the judge expressly referred to them. In so far as the complaint is that they were not taken "adequately" into account, Mr Bridge has not identified any error of principle. A complaint that the judge should have placed more weight on them in the overall balancing exercise does not reach the threshold for an appeal: see, for example, the comments of Arnold LJ in *Solicitors Regulation Authority v Khan* [2022] EWCA Civ 287, at §41:

> "The final point that is advanced on behalf of Ms Khan, at least in writing although not repeated in counsel's oral submissions, is that the judge had failed to give proper weight to the aspects of personal mitigation relied upon by Ms Khan before him. That is a point which counsel was correct not to pursue orally. It is a hopeless point given that the judge expressly considered the personal mitigating factors and stated that he was taking them into account."

27. Mr Bridge referred in his skeleton, in particular, to cases in which the court has emphasised the need to keep offenders, particularly first-time offenders, out of prison, and the need to take into account overcrowding of prisons. These were matters the judge specifically referred to, but concluded that the seriousness of Mr Dylan's conduct meant that an immediate prison sentence was justified. There was no error of principle in his conclusion in this respect. As this Court noted in the recent case of *Ouajjou v Ahmad* [2024] EWCA Civ 1480, at §30, prison overcrowding is a factor to be taken into account, but is not a valid reason not to pass a sentence of immediate custody if that is the appropriate sentence for the contempt in question.

28. Mr Bridge also made specific reference to Mr Dylan's mental health condition. The contention that very little, if any, consideration was given to this aspect of Mr Dylan's health does not withstand scrutiny. The judge, at §41 of his judgment, referred to the reports of Professor Nathan, detailing Mr Dylan's mental health issues. He noted that they were based on what Mr Dylan had self-reported, and that Professor Nathan – who was not in a position to assess the truthfulness of Mr Dylan's reports – proceeded both on the basis that Mr Dylan's self-reporting was truthful and, in the alternative, that it was not. On the assumption that it was true, his opinion was that going to prison would be highly likely to have a negative impact on Mr Dylan's mental state, which might be temporary or more permanent. His recommendation was that Mr Dylan be monitored. This did not persuade the judge that a custodial sentence should not be imposed, but prompted him to direct, at §46, that the reports be made available to the Tipstaff and, if possible, be sent with Mr Dylan to prison. Having considered the evidence taken into account by the judge, I do not think there was any error of principle in the judge's conclusion.

29. As to the second factor, namely the financial and personal consequences of the proceedings on Mr Dylan, there will always and inevitably be a significant personal

and financial cost to someone committed to prison, and I have little doubt that the judge was fully aware of this and took it into account. It is not something which needed specific mention by the judge, in the absence of some special feature being relied on. To the extent that special features were relied on, they are those set out in the other factors under this ground, which the judge did address.

30. As to the sixth factor – the contention that the judge failed to take into account the impossibility of reversing the consequences of the breach – this was not a submission made to the judge. On the contrary, Mr Dylan had said, in his affidavit of 4 July 2024, that he would assist in any way he could to reverse the transactions. The suggestion that the transactions could not be reversed is based on the assertion that it is "impossible" to do so because the principal asset is Baldwins, which continues to trade as a travel agent with the benefit of a bond form ABTA or IATA, and that it could not do so if its shares were transferred to a company in administration. There was no evidence to substantiate this and the highest that the point was put before the judge (at the July hearing, not in the context of sentencing) was that "a scheme would need to be devised whereby those interests could be protected at the same time as making sure that Barclays continued to have some means of enforcement against that business which continues to trade." That falls far short of an assertion that it was impossible to ensure that the value in the business was restored to ITG.

31. Finally, as to the seventh factor – the length of time that the proceedings were hanging over Mr Dylan – Mr Dylan cannot legitimately complain of this in circumstances where it was his decision to contest the allegations of contempt until almost the very last moment that contributed significantly to the delay: see, for example, *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392; [2019] 1 WLR 3833, at §67:

> "An alleged contemnor is, of course, entitled to contest the allegation, and the fact that he or she does so cannot make the contempt more serious; but the contemnor cannot then expect much weight to be given in his or her favour to the fact that the necessary court proceedings result in the passage of a substantial period of time."

<u>Ground 3</u>

32. Mr Bridge contended that the judge erred in principle because, in assessing the degree of harm caused by the breaches of the freezing orders, he failed to recognise that the burden lay on the Bank to establish, to the criminal standard of proof, that the breaches involved the transfer of assets of substantial value. The judge was accordingly wrong to assess harm as "high" in circumstances where his conclusion as to the value of the assets transferred was merely that they "possibly" ran into the millions of pounds.

33. In assessing both whether a contempt has been committed and the gravity of that contempt, the court must be satisfied to the point of being sure of matters which it would regard as adverse to the defendant, or which would tend to lead it to view his actions in a more serious light and so affect its view of the appropriate penalty: *Gulf Azov Shipping Co Ltd v Idisi* [2001] EWCA Civ 21, per Lord Phillips MR at §16, citing with approval a passage in the judgment of Moore-Bick J in that case; *Z Bank Ltd v D1* [1994] 1 Lloyds Rep 656, per Colman J at p.667.

34. The flaw in this ground of appeal, however, is that the judge did *not* regard the value of the assets transferred, *per se*, as a point that led to Mr Dylan's actions being viewed in a more serious light, or which tended to increase the seriousness of the breach. The relevant conclusion of the judge was (at §16 of the judgment) that it was "not clear how valuable the transferred companies were". What was clear, on the other hand, was that – whatever the actual value of the assets transferred – they consisted of virtually all of the assets of the Group. The matter which, in his view, gave rise to a high degree of harm was that this was a deliberate flouting of the freezing order, which set at nought the purpose of the freezing orders: see §32 of the judgment. The harm therefore consisted primarily in the attack on the administration of justice.

35. It was Mr Dylan and his co-defendants who sought positively to rely upon the fact that the assets transferred were of insignificant value. As Elisabeth Laing LJ suggested in the course of the hearing, that gave rise to at least an evidential burden on the defendants to make good that point. The judge's comments on the value of the assets were made in that context.

36. The evidence which Mr Dylan relied on consisted of desktop valuations, of FTG and ITG, prepared overnight in March 2022, and others of the same companies (by now in administration) provided in September 2023. These indicated the companies had no or relatively low value (and no more than a little over £300,000) and were subject to a debenture in favour of a firm of solicitors, securing indebtedness in an unknown amount but believed to be in excess of the value of the assets.

37. The judge considered that little reliance could be placed on this evidence, given that it consisted of desktop valuations, it was prepared on the basis of information provided by Mr Dylan, and that it contained significant caveats, including that the valuations were based on information which the valuers had been unable to verify. He also pointed to discrepancies between these valuations and information obtained from the most recent public filings. For example, the accounts for FTG to June 2020 indicated net assets of £2.7 million. A further discrepancy pointed out by Mr Knott, who appeared for the Bank at the hearing of this appeal, was that the valuation of ITG from March 2022 referred to its accounts to October 2020, whereas the company had only been incorporated in 2021.

38. The contention that the assets lacked value was also inconsistent, as the judge pointed out, with the significant and carefully planned lengths the defendants had gone to in creating an offshore structure in the BVI and Delaware to receive and hold the assets.

39. Mr Bridge, while maintaining his submission that it was for the Bank to establish beyond reasonable doubt that the assets had substantial value, fairly accepted that it might be said that it was incumbent on Mr Dylan, who could be expected to have – or at least to obtain – information as to the value of the assets, to produce that information to the court.

40. In my judgment, the judge was entitled, for the reasons he gave, to question the veracity of the evidence presented by Mr Dylan, and to reject the contention advanced by the defendants that the value of the assets was small or insignificant. I find no error of principle in his assessment that there was a high degree of harm, or in his treatment of the value of the assets transferred.

Ground 4

41. Under this ground, it is contended that the judge failed, in not suspending the sentence or any part of it, to follow sentencing guidelines on the imposition of community and custodial sentences. Mr Bridge submitted that the case meets all the factors in the guideline whereby the suspension of the sentence would be appropriate and none of the contrary factors are present.

42. These guidelines, which cover the wider variety of orders that can be made in the magistrates' court, do not apply directly to sentencing for committal. The judge directed himself in accordance with the Supreme Court's decision in *HM Attorney-General v Crosland* [2021] UKSC 15, namely that having decided that a custodial sentence is required, consideration should be given to suspending the term of imprisonment. His conclusion, that this case was of far too serious a nature for suspension to be appropriate, lay within the range of reasonable decisions open to him. No basis for interfering with that decision has been made out on this appeal.

Ground 5

43. Under this ground, it is contended that the judge failed to distinguish between the defendants. It is demonstrably hopeless, in that the judge clearly dealt separately with Mr Dylan, relying on matters as they related specifically to him, before turning to deal with the other defendants.

44. In substance this is a complaint that the judge should have imposed a lighter sentence on Mr Dylan than the other defendants, because of his admission. On this point, however, the judge's conclusion lay well within the Sentencing Council's guidelines on reduction in sentence for a guilty plea. Those indicate that a discount of a maximum of 10% might be appropriate if an admission is made at the beginning of a trial, with the discount reducing, even to zero, in relation to admissions made thereafter. Mr Dylan's admission did not come until the fifth day of the trial. As such, it did not lead to significant savings in terms of trial time and costs. A reduction of 5% is well within the range of reasonable decisions open to the judge.

45. Mr Bridge submitted that Mr Dylan was encouraged to make his admission by "how the contempt case was opened", because he then understood it differently. This cannot assist Mr Dylan. There is no suggestion that the Bank's case had not been clearly set out prior to it being opened at trial. It had always been open to Mr Dylan to make an admission. The unsupported assertion in Mr Bridge's skeleton that "the plea was never available before" is plainly wrong.

Conclusion

46. Standing back from the detail of the grounds of appeal, Mr Bridge's essential complaint was that the overall sentence was too long, taking into account the various mitigating factors, the uncertainty as to the value of the assets transferred and Mr Dylan's admission.

47. As he acknowledged, however, in order for this court to interfere with the judge's conclusion it is necessary to show that the decision fell outside the range of decisions reasonably open to the judge. Mr Bridge did not shy away from making that submission.

For the reasons set out above, I am not persuaded by it. I find that there is no basis for interfering with the judge's conclusion, reached after careful consideration of all the relevant factors.

Lady Justice Elisabeth Laing

48. I agree.