IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2021] EWHC 1735 (Admin)

No. CO/9416/2008

Royal Courts of Justice

Friday, 21 May 2021

Before:

LORD JUSTICE DINGEMANS
and
MR JUSTICE HOLGATE

B E T W E E N :

HER MAJESTY'S ATTORNEY GENERAL — Claimant

- and -

ANTHONY BRANCH — Defendant

MR BAYO RANDLE (instructed by the Government Legal Department) appeared on behalf of the Claimant.

THE DEFENDANT did not appear and was not represented.

Hearing date: 21 May 2021

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1 This is the judgment of the court. This is a hearing of a contempt application dated 24 February 2021, brought by Her Majesty's Solicitor General against Mr Anthony Branch, the defendant. The case was last before this court two days ago, when Mr Branch did not attend, and a bench warrant, effectively backed for bail as we will describe, was issued.

2 The Solicitor General alleges that Mr Branch has repeatedly breached a court order dated 5 November 2008. That order restrained Mr Branch from acting or purporting to act on behalf of any person, other than himself, in court proceedings without leave of the High Court or Court of Appeal. It is said that it is not just the fact that Mr Branch has breached a court order which makes these proceedings serious, it is the fact that he has purported to assist a vulnerable person, Mr Downey, who has been left with adverse cost orders in the litigation in which it is contended that Mr Branch has assisted.

3 Mr Branch's position, which has been set out in numerous emails addressed to the court and written documents submitted to the court, is that: (1) there has been no proper service and the proceedings are fraudulent because no orders have been made by judges; they have been drafted or magicked up by the Solicitor General; (2) the case is closed and the contempt application cannot be brought; (3) he has not breached the court order or acted in contempt of court because, although he has assisted Mr Downey in court proceedings, Mr Downey is a friend who finds the legal proceedings difficult and Mr Branch has not carried out any reserved legal activities. Mr Branch has also emailed a draft order in which he seeks exemplary reputation damages in the sum of £25,000 from the Ministry of Justice and £10,000 from the Government Legal Department. We remind ourselves that he has a right of silence in contempt proceedings.

The hearing on 19 May

4 The hearing of this contempt application today, on 21 May, follows a refusal by Mr Branch to attend the hearing when it was originally listed on 19 May. That hearing had been directed to be in person because issues of contempt of court were being considered.

5 In response to the requirement to attend the hearing on 19 May 2021 in person, Mr Branch had submitted that he was too frail to attend court and sent in a letter, dated 6 May 2021, from the Family Medical Services of Parkstone Road, Poole, Dorset. It might be noted that Mr Branch lives in Poole, Dorset. The letter was addressed to "whom it may concern" and reported that Mr Branch is a Type I diabetic, hypertensive and has a history of ischaemic heart disease, hypolipidemia and osteoarthritis. The letter continued that:

> "Mr Branch would, therefore, be classified as a frail individual and I do not feel that it is appropriate or without risk for him to undergo legal proceedings as it may well precipitate further decline."

The letter was signed "pp Dr Newman".

6 We saw the letter before the hearing on 19 May 2021 and did not consider that the materials in that letter justified adjourning the case without hearing further submissions. Mr Branch was informed of that and he was also informed that the hearing on 19 May would not be

adjourned but he could put in more medical evidence which should comply with the relevant provisions of the Civil Procedure Rules, and he was informed that arrangements would be made for him to attend in person or via CVP to make submissions in support of his application for an adjournment.

7 In the event, on 19 May, Mr Branch did not attend either in person or by CVP. Therefore, during the hearing on 19 May the court was confronted with two issues. These were, first, whether the proceedings should be adjourned on medical grounds and, second, whether the proceedings should continue in the absence of Mr Branch.

8 In an *ex tempore* judgment given at the end of the 19 May hearing, the court concluded, first, that the proceedings should not be adjourned on medical grounds and, secondly, that the proceedings should not continue in the absence of Mr Branch. Instead, an order was made intending to secure Mr Branch's attendance today and the detailed reasons for that order will be set out later.

9 On the medical issue, the court considered that the submissions which had been made by Mr Branch before the hearing concerning his medical issues, about frailty and inability to attend court, were not sufficient to justify an adjournment. The court considered the principles relating to the adjournment of committal proceedings on medical grounds, some of which were set out in *Yuzu v Selvathiraviam* [2020] EWHC 1209 (Ch) [39]-[40]. We also considered the provisions of CPR PD 1A, to which Mr Randle had helpfully drawn our attention. The court concluded that the materials did not justify adjourning the case because the letter did not show that Mr Branch was not able to attend court and be involved in proceedings either in person or by CVP. Further, the court noted that Mr Branch had, in the materials which he had sent to the court, accepted that he had helped Mr Downey in court proceedings at a time when he must have had the same underlying medical conditions as he now has.

10 The second issue concerned in the 19 May hearing was whether the hearing should continue in Mr Branch's absence. Contempt proceedings are, as is well-known, *quasi*-criminal in nature. For this reason, the principles set out in *R v Jones* [2002] UKHL 5, [2003] 1 AC 1 are relevant. In that case the House of Lords confirmed that a judge had a discretion to commence a trial in the defendant's absence but it was a power to be exercised "with great caution". It was desirable that the defendant be represented, even if he had voluntarily absconded. In contempt proceedings, the court in *Sanchez v Oboz* [2015] EWHC 235 (Fam) [4] set out factors applicable to a court's decision on whether to continue an application in the absence of a respondent.

11 The court considered that, as a general principle, Mr Branch should be present at the hearing. He should be entitled to be represented by counsel even if he was deliberately not cooperating. Nevertheless, it was in the interests of justice that contempt proceedings should be promptly determined if it was possible to do so fairly. This is because of the importance of ensuring that orders are not flouted with impunity if court orders are, indeed, being flouted. Ultimately, the court concluded that the hearing should not take place without Mr Branch being present. He was clearly aware of the proceedings and efforts had been made to secure his attendance remotely.

12 The solution, in the best interests of both Mr Branch and the interests of justice, was to issue a bench warrant intended to secure his attendance at today's hearing. We decided that the terms of the bench warrant should provide for: Mr Branch's arrest; a direction to him to attend at the Royal Courts of Justice today; and his release. The effect would be similar to a warrant issued by a Crown Court backed for bail. We decided to issue the warrant because

it was apparent that Mr Branch would not attend without the issue of a bench warrant, but (in effect) backed it for bail because Mr Branch is, although capable of attending the Royal Courts of Justice in person, old and frail and we were conscious of the effect of incarceration even for a short period of time on him. This raised an issue about the court's jurisdiction to issue a bench warrant equivalent to a warrant backed for bail.

The jurisdiction to issue a bench warrant

13 The court's jurisdiction to issue a bench warrant is set out in CPR 81.7(2). This provides that:

> "The court may issue a bench warrant to secure the attendance of the defendant at a directions hearing or at the substantive hearing."

Nothing is said about the terms on which the warrant can be issued. CPR 81.7(2) codifies effectively the inherent jurisdiction of the court to issue a bench warrant.

14 That jurisdiction was most recently considered in *Hanson v Carlino* [2019] EWHC 1366 (Ch), where the court stated at para.11 that the power to issue a bench warrant is not limited to circumstances where there has been a finding of contempt but can, in a proper case, be used to secure compliance with court orders. This was an extreme remedy but it was observed that it was an inherent power supplemental to the court's other powers to secure compliance with its orders.

15 The High Court's inherent jurisdiction to secure compliance with its orders was also considered in *Zakharov v White* [2003] EWHC 2463 (Ch); [2003] All ER 453. At para.35 the court observed that cases from the Commercial Court, Chancery Division and Family Division all evidenced the general power of the High Court to issue, when necessary, a bench warrant for the arrest of an individual to whom an earlier order has been addressed and to which there appeared to have been no compliance. This power was an established part of the court's armoury which although at the time was only codified in the Family Procedure Rules 1991, could be exercised by any division of the High Court.

16 The discussion in *Zakharov v White* drew on earlier analysis of the Court of Appeal in *Re B (Child Abduction)* [1994] 2 FLR 479. That case concerned a bench warrant issued by the Family Division of the High Court in support of a seek and find order. The bench warrant played an ancillary role and ensured that parents or relatives who ignored court orders in relation to children could be brought before the court following an arrest. Hobhouse LJ stated, at p.486 of the report, that:

> "The power to order the arrest of a person so that he may be brought before the court is a well-established part of the jurisdiction in wardship and is available in other aspects of civil procedure should, exceptionally, the necessity arise."

17 In this application, made on Wednesday, we considered that the power to issue a bench warrant should be exercised. Although it was an extreme remedy, it was intended to ensure that Mr Branch was present at the hearing and would not be subject to contempt proceedings and the possible finding and possible penalty without having had every opportunity to make submissions concerning the contempt application. It would also ensure that the administration of justice was not frustrated at his whim. As noted above, the court considered that the bench warrant should be on terms providing for the immediate release of Mr Branch, so limiting the deprivation of liberty which Mr Branch would suffer as a result of the order. This was appropriate given his age and frailty and that the order was intended

to compel attendance at the substantive hearing. We considered that this was the least intrusive method of ensuring that the committal proceedings were not frustrated. The effect of the order was, therefore, that Mr Branch was arrested with a direction that he would attend court for today's hearing.

18 We have been informed that the warrant was executed by Dorset Police on behalf of the Tipstaff last night, or, in fact, in the very early hours of this morning. Mr Branch informed the police officer that he would not be attending. He had also made clear in earlier correspondence with the court that he would not be attending, even though he knew the bench warrant was on its way.

The current position

19 After being notified by email of the court's order, Mr Branch continued to communicate with the court by email. First, he pointed out that the court had recited that it considers the claimant's attendance necessary in the order that was produced before requiring him, the defendant, to appear. Mr Branch is right that there was an error in the recital on the court order, using Claimant and not Defendant on one occasion. That was amended and put right under the slip rule.

20 Secondly, he complained that attempts were being made to murder him and said he had received information from a medical practitioner, whose details he did not want to divulge, to the effect that both his hips had been replaced, he had back problems and the stress of court proceedings could kill him, and he had underlying conditions including diabetes, hypertension and ischaemic heart disease. The medical practitioner was said to have stated that attending court to answer bogus court proceedings was not conducive to maintaining his health.

21 Thirdly, Mr Branch sent an email pointing out that the court could proceed in his absence in committal proceedings and referred the court to the recent decision of Morgan J in the Chancery Division in *Lueshing* [2021] EWHC 1189 (Ch).

22 After his arrest and release on the bench warrant this morning, Mr Branch sent a further email confirming that he would not attend court. The email was sent, it seems at about 9.41 or thereabouts this morning, and we are grateful to Mr Randle for bringing its contents to our attention. Mr Branch repeated his complaints that the proceedings were corrupt and that he had not been told, he said, of what had happened on Wednesday (although he had referred to the court order which had been sent to him). He said he was being harassed by the Government Legal Department. He complained about fabricated affidavits and he made complaints that the proceedings were being brought by the Solicitor General even though they had apparently been commenced by the Attorney General.

No medical adjournment

23 We considered, first, whether to adjourn today's proceedings on medical grounds. We have not done so because the letter from the GP does not justify an adjournment for the reasons that we gave in relation to that letter on Wednesday, 19 May. Mr Branch has been given an opportunity to put in further medical evidence but he has only provided, by email, his report of what he says he has been told by a medical practitioner. It includes the slightly surprising statement, attributed to the medical practitioner, that these were bogus court proceedings. We do not consider that this is information in any sense independent of Mr Branch but we take it into account as information that he wishes to adduce. However, having taken it into account, we still do not see any grounds for a medical adjournment. It is apparent that Mr

Branch is now comparatively old and has underlying health conditions. However, he has regularly attended the Royal Courts of Justice and there appears to be no medical reason preventing him from doing so today. He has attended the Royal Courts of Justice when he has been suffering from those medical conditions in the past. We, therefore, did not adjourn the proceedings.

Continuing in his absence

24 We turn again to consider the matters set out in *R v Jones* and *Sanchez v Oboz*. It is apparent that Mr Branch will not voluntarily attend and he will not instruct legal representatives to attend on his behalf. He has set out in communications with the court and in documents the points that he wants considered by the Court.

25 This court does not consider it appropriate to issue a bench warrant, either backed for bail or the equivalent of backed for bail or not backed for bail, to bring him to court. This is because he is elderly and has underlying medical conditions and the Covid-19 pandemic, which inevitably influences conditions in custody, continues. On the other hand, this court does consider that this is one of those rare cases where it is appropriate to continue the proceedings in his absence. This is because it is clear that Mr Branch has been served and knows about the proceedings. It is because he has set out his defence in writing. It is because he has made a deliberate decision not to attend and because it is in the interests of justice, in our judgment, to have these proceedings determined. They are important proceedings and affect other court users, in the sense both that court time is diverted into these proceedings and because the effect of what is alleged against Mr Branch is that vulnerable persons have been affected by him acting on their behalf. We consider that continuing with the hearing and not issuing a bench warrant, either backed for bail or not backed for bail, is the least worst way of progressing matters today and is fair to all parties and consistent with the overriding objective.

The background to this application

26 On 17 February 2005, Mr Branch was made subject to a Civil Proceedings Order pursuant to s.42 of the Supreme Court Act 1981. The basis for this order, as explained in the judgment of Moses J, who granted the order in *R (Attorney General) v Branch* [2005] EWHC 635 (Admin), was that Mr Branch had made repetitious and unfounded claims against various parties. The evidence suggested that he brought twenty-three actions in his own name, or those of his immediate family members, all of which were concerned with the same two underlying grievances. These claims had subjected defendants to inconvenience, harassment and expense out of all proportion to any gain likely to accrue to Mr Branch.

27 Following those proceedings, Mr Branch continued to pursue what were described as "many hopeless, abusive and vexatious pieces of litigation on behalf of others", often using the litigation as a vehicle for airing claims of himself or family members which were ultimately the cause of the Civil Proceedings Orders that were made against him (see *HM Attorney General v Branch* [2008] EWHC 2872 (Admin) [2]). For that reason, the Attorney General applied for an injunction restraining Mr Branch from acting or purporting to act on behalf of anyone other than himself in legal proceedings. The application was made on the basis of the jurisdiction set out in *Paragon Finance Plc v Noueiri* [2001] EWCA Civ 1402, [2001] 1 WLR 2357. So called "*Noueiri* orders" typically involve restricting an individual from representing others or entering the Royal Courts of Justice to litigate on behalf of others where there is necessity to protect the proper processes of the administration of justice.

28 On 5 November 2008, Mr Branch was made subject to such an order. The material terms were as follows:

> "**IT IS ORDERED** that pending the final hearing of the Claimant's claim or until further order:-
> … the above named Anthony Branch be and hereby is restrained from taking any step whatever within the Royal Courts of Justice or any District Registry of the High Court or any County Court, whether in the face of the court or otherwise, by acting or purporting to act on behalf of any person other than himself in any legal proceedings or intended or prospective legal proceedings save with the leave of the High Court or the Court of Appeal …".

There was the usual penal provision attached to the order.

29 Mr Randle, in submissions this morning, helpfully drew our attention to para.61 of the decision of *Noueiri* which made it plain that the effect of the order was to cover various acts taken in litigation which went beyond reserved legal activities. We will return to that later.

30 Mr Branch subsequently applied to have the *Noueiri* order discharged and, in a judgment handed down on 15 January 2009, the Divisional Court refused the application considering it entirely without merit (see *Attorney General v Branch* [2009] EWHC 673 (Admin) [11] and [45]). It is clear from the terms of that judgment that Mr Branch was made aware of the fact that the order covered any intervention in anyone else's legal proceedings. Service of that order was dispensed with by Lane J, by order dated 15 February 2021. This was because there was evidence that Mr Branch was present in 2008 at the time when the court order was made.

This application

31 The present application arises as a result of what is said to be Mr Branch's conduct subsequent to the *Noueiri* order being made against him. The Solicitor General relies on six distinct proceedings in submitting that Mr Branch has breached the *Noueiri* order and Mr Branch's position, in respect of all these proceedings, is that he has not acted or purported to act for any person other than himself in legal proceedings. We return to the submissions later.

Relevant law governing contempt applications

32 The law governing contempt applications was recently summarised by the Court of Appeal in *Varma v Atkinson* [2020] EWCA Civ 1602, [2021] Civ 180 at para 54. It was stated:

> "… once knowledge of the order is proved, and once it is proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary for the contemnor to know that his actions put him in breach of the order; it is enough that as a matter of fact and law, they do so put him in breach."

33 There was another statement of principle in the judgment of *Masri v Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm). At para.144 and following, the court set out the principles governing the approach of the courts in contempt applications, noting that contempt needed to be proved to the criminal standard and dealing with issues of inferences, circumstantial evidence and the right to silence.

34 The powers of the court in contempt applications are now set out in the revised Part 81 of the Civil Procedure Rules. Rule 81.9 provides for the powers of the court to impose, if it finds a contempt of court, a period of imprisonment (an order of committal), a fine, a confiscation of assets or other punishment permitted under the law.

Proceedings served and not fraudulent

35 Alongside the submission that he has not acted in contempt of court, Mr Branch, as indicated earlier, has made various submissions that the application should be struck out on procedural grounds. It is apparent, as we have already indicated, that personal service of the original order was dispensed with by order of Lane J, and the receipt of emails show that various case management directions were given by Goose J and Holgate J, who sits as part of this Court, in relation to these proceedings.

36 Mr Branch submits that the contempt application is void and/or bogus. He considers that the case management directions issued by Goose J on 23 March 2021 cannot have come from him because they did not make it clear whether the applicant was the Attorney General or Solicitor General. He submitted that he has not needed to acknowledge service and so no claim could be brought and he considers that the judges involved in the case management must have been impersonated by the executive. Finally, Mr Branch has alleged that the Government Legal Department failed to serve the claim form properly due to deficiencies in the paperwork and because the server allegedly failed to comply with guidance.

37 In our judgment, there is nothing to support Mr Branch's submissions on these issues and they do not give rise to any basis to resist the application. There is no reason to consider that the directions given by Goose J, Lane J or Holgate J are in any sense wrongly made.

38 Secondly, the Solicitor General did acknowledge that there was an administrative error which meant that the claim form initially referred to the Attorney General rather than the Solicitor General. That error does not have the effect of making the proceedings a nullity, as contended for by Mr Branch, and it is notable that a feature of Mr Branch's dealings with the Government Legal Department and this court are that if he takes a point and considers it to be a good point he will then not engage in further relations with either the Government Legal Department or the court because he has decided that his analysis is right.

39 Mr Branch's submissions concerning service and fraud, therefore, do not disclose any arguable basis, or any basis at all, for not proceeding with these matters.

Proceedings not closed

40 Mr Branch submitted that the case was closed and that, therefore, this was a further ground on which the proceedings were fraudulent. He relied on an email sent, it seems, at first to Sarah Ritchie of the Government Legal Department, which was copied to him, which shows that she had been informed that the 2008 case was closed and transferred from the Administrative Court where it was heard. Miss Ritchie stated that she believed the application should be made in the 2008 case and, in our judgment, she was right to take that approach.

41 We accept that the 2008 case was described as "closed" by the Administrative Court office but that that does not assist Mr Branch for two reasons. First, it was a description of the administrative process by which the case was closed and stored rather than a statement that the *Noueiri* order made in 2008 ceased to apply. Secondly, even if it had been such a description, it would, subject to points about waiver or being misled (none of which are

relevant here), had been ineffective to alter the law and bring the *Noueiri* order to an end. Otherwise, it would have the effect of elevating a description given by a court officer into an order with the force of law. Court officers do not have that power and judges can only make orders after due process has been observed. We, therefore, go on to consider the merits of the Solicitor General's application.

The *Noueiri* order covers assisting litigants

42 We now address Mr Branch's final submission that he has not carried out reserved legal activity as set out in s.12 of the Legal Services Act 2007 and, therefore, has not acted in breach of the order and the contempt proceedings should be dismissed on the merits.

43 As set out above, the order made by Dyson LJ had an effect which was wider than reserved legal activities. This is because the order restrained Mr Branch "from taking any step whatever within ….. and or where in any County Court, whether in the face of the court or otherwise, by acting or purporting to act on behalf of any person other than himself in any legal proceedings … save with the leave of the High Court or the Court of Appeal". It is established that the wording goes beyond reserved legal activities. This is because acting on behalf of any person includes drafting legal proceedings, legal submissions and notices of appeal.

Knowledge and breach of the *Noueiri* order

44 Applying the relevant principles set out above, the Solicitor General must make us sure that Mr Branch (i) knew of the *Noueiri* order; (ii) that he committed acts which breached the order, and (iii) that he knew that he was doing the acts which breached the order. It is not necessary, as already indicated, to show that Mr Branch knew that the acts were a breach of the order but that might be relevant to issues of penalty if contempt is proved.

45 It is clear, in our judgment, that Mr Branch has known of the terms of the *Noueiri* order made against him throughout all the relevant proceedings. Mr Branch represented himself in *Her Majesty's Attorney General v Branch* [2008] EWHC 2872 (Admin). He also made various submissions in those proceedings, and others, which demonstrate and prove so that we are sure, of his knowledge of the terms of a *Noueiri* order. For instance, in a letter dated 18 November 2019, Mr Branch wrote:

> "I am not acting on behalf of Mr Downey and I have never stated that I was. I know the law and there is no restriction in law on my assisting him and there is no mention in the defunct order preventing me being a witness."

That proves knowledge, as we have already indicated, but it does show a misunderstanding of the effect of the order. This correspondence, along with other communications from Mr Branch, demonstrate some of the attempts made by Mr Branch to circumvent the terms of the *Noueiri* order by participating in legal proceedings as a witness, an informal assistant, an interested party or McKenzie Friend. For the reasons originally set out in para.61 of *Noueiri*, none of those devices work. These attempts demonstrate precise knowledge of the terms of the order, although Mr Branch's position is that he has not acted in technical breach of the order.

46 The central issue is, therefore, whether the Solicitor General can demonstrate, so that we are sure, that Mr Branch breached the terms of the *Noueiri* order. The Solicitor General submits that this must be understood by reference to the purpose of *Noueiri* orders, which is to restrain those who make a practice of representing otherwise unrepresented, vulnerable

people for their own purposes. Mr Branch submitted that he did not act in breach of the *Noueiri* order and he says that he is not a solicitor and he does not purport to be one, he is not a barrister and does not purport to be one, he does not act for the appellant and he does not purport to act for the appellant. Mr Branch has also explained that Mr Downey requires informal assistance because he is seventy-five years old, lacks savings, access to legal aid or *pro bono* representation, he has memory problems and requires medical attention. He cannot litigate in court and he cannot instruct any lawyer owing to his medical problems. It might be thought that that is important to bear in mind when we consider the acts alleged to have been performed by Mr Branch on behalf of Mr Downey.

47 The Solicitor General submits that even on Mr Branch's own case, he is in breach of the *Noueiri* order. That is because he has repeatedly acknowledged that Mr Downey cannot litigate and requires representation due to Mr Downey's medical issues. Mr Branch has also acknowledged that he has provided informal assistance to Mr Downey.

48 We turn, therefore, to consider each of the proceedings in which it is alleged that Mr Branch has acted on behalf of Mr Downey. These are described in detail in the affidavit of Joan Arnold, a legal adviser in the Attorney General's office, which is set out in the bundle before us behind divider 2 and is dated 16 November 2020. The material set out is really from paras.12 through to 26 and, in our judgment, we are sure of the following matters on the basis of the affidavit. First, that in claim E7YM329, issued on 28 November 2018, Mr Branch drafted the pleadings, he requested a default judgment on 2 January 2019, together with legal submissions, and he confirmed that he was acting as a representative for Mr Downey in an email to the Government Legal Department on 1 July 2019, and a further email on 22 July 2019.

49 Although reliance is placed on the affidavit on the fact that there is a consistency in the way in which Mr Branch has set out submissions, that on its own would not have been enough to make us sure that Mr Branch had carried out these acts in breach of the orders. What concludes the matter and makes us sure are Mr Branch's own acknowledgements that he was acting as a representative for Mr Downey and, of course, we have already described Mr Downey's state of health on Mr Branch's own evidence. The relevant material is set out in para.12 of Ms Arnold's affidavit and we are sure that Mr Branch had breached the order of 2008 in that respect.

50 The second and third breach relates to actions 2 and 3, which are Crown Office reference CO/327/2019 and Crown Office reference CO/592/2009. The first action was dismissed on 5 March 2019 and the second on 16 July 2019. We are sure, based on the evidence set out in paras.13-16 of the affidavit of Ms Arnold, that Mr Branch conducted proceedings on Mr Downey's behalf by acting as a litigation friend and by seeking to join himself as an interested party when he had no interest in those proceedings other than acting on Mr Downey's behalf.

51 The fourth breach is in relation to claim number QB-2009-003171, issued on 6 September 2019. On the basis of the material set out in paras.17-21 and 25-26 of Ms Arnold's affidavit, we are sure that Mr Branch drafted pleadings, sent legal submissions and correspondence on Mr Downey's behalf to the court and the judges and the other parties.

52 In relation to claim number QB-2019-003947 which is the fifth breach, we are sure, on the basis of the material set out in paras.17-21 of Ms Arnold's affidavit and paras.25-26, that Mr Branch drafted the pleadings. In respect of the sixth breach in QB-2019-003171 and QB-2019-003947, which were heard together, we are sure that he drafted and sent written statements, he drafted the skeleton argument on behalf of Mr Downey and he drafted and

sent a skeleton argument and appellants notice and grounds of appeal in respect of an application for permission to appeal on 17 August 2020.

53 Finally, in relation to the seventh breach, which was QB-2020-00031 *Downey v Government Legal Department, Ministry of Justice and Estelle Dehon* (a barrister who had acted against him when instructed by the Government Legal Department), when issued on 28 January 2020, he drafted the pleadings, he drafted the appellant's notice, grounds of appeal and skeleton argument. We rely and are sure, based on the information set out in paras.22-23 of Ms Arnold's affidavit, that all of those actions were in breach of the terms of the *Noueiri* order. These findings will be set out in the order of the Court.

54 In summary, therefore, a number of claims have been brought in the name of Mr Downey alleging fraud or other misconduct in public office by the police, Court Service and others involved in legal proceedings. Correspondence, claim forms, witness statements, skeleton arguments and other documents have been received from Mr Downey and at times from Mr Branch. This material has all been before this court and we have been assisted by detailed bundles containing much of the underlying material.

55 Mr Branch has repeatedly claimed that Mr Downey does not understand legal technology and legal materials but the documents received from Mr Downey, and sent to the court, are all in Mr Branch's style and make frequent reference to case law, statutes, Civil Procedure Rules, legal proceedings and principles such as *res judicata*. We are sure, on the materials that we have seen, that the only person who could have performed all those actions and referred to all those relevant authorities is Mr Branch. For this reason, each judge involved in the six claims above has stated that Mr Branch's involvement has amounted to an attempt by him to circumvent the order against him.

56 It might be noted that it is not apparent that Mr Branch's assistance has helped Mr Downey. We have seen, for example, Coulson LJ's order dated 29 April 2021 affirming the dismissal of Mr Downey's appeal because of a deliberate default in providing a transcript of the judgment.

57 In these circumstances, we are sure that Mr Branch has acted in breach of the terms of the *Noueiri* order in the details set out above. The only reasonable inference to be drawn from Mr Branch's own submissions is that he has been involved in prospective legal proceedings in order to assist a vulnerable, otherwise unrepresented litigant. We reject the technical distinction drawn by Mr Branch between formally acting for Mr Downey as a trained barrister or solicitor and providing informal assistance. That is not a distinction which is relevant to the terms of the *Noueiri* order and it does not alter the position in relation to the contempt of court.

58 For these reasons, we find that we are sure that Mr Branch knew of the terms of the order made against him and did acts to his knowledge and that those acts breached the terms of the order. As such, Mr Branch is liable to a penalty to be imposed on him for contempt of court.

The appropriate penalty

59 An individual found in contempt of court may be imprisoned for up to two years (see s.14 of the Contempt of Court Act 1981) or given a fine or the other penalties that I have already identified. Any sentence of imprisonment may be suspended.

60 The decision of the Court of Appeal in *Liverpool Victoria Insurance Company Ltd v Zafar* [2019] EWCA Civ 392; [2019] 1 WLR 3833, sets out guidance as to how appropriate penalties should be determined at [57]-[71]. The Supreme Court recently approved and summarised that guidance in *Attorney General v Crosland* [2021] UKSC 15. The court listed seven relevant considerations. First, the court should adopt an approach analogous to that in criminal cases where the Sentencing Council Guidelines require the court to assess the seriousness of the conduct by reference to culpability and harm caused, intended or likely to be caused. Second, in light of its determination of seriousness, the court must first consider whether a fine would be a sufficient penalty. Third, 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. Fourth, due weight should be given to matters of mitigation, such as genuine remorse, positive character and similar matters. Fifth, due weight should be given to the impact of committal on persons other than the contemnor, such as children or vulnerable adults in their care. Sixth, 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 Guidelines on reduction in sentence for guilty pleas. And, seventh, 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 affect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.

61 We consider these relevant factors. First, in our judgment, Mr Branch's contempt of court is of particular seriousness. It demonstrates high culpability. This is because Mr Branch has knowingly flouted the terms of a *Noueiri* order, in our judgment. He has been told repeatedly by judges that his actions are in breach of the order and yet he has persisted and has committed breaches over a period of between 2018 and 2020. He has decided to ignore the judges who have told him he is acting in breach of the order because he disagrees with them. It might be noted that Mr Branch has put in submissions to the effect that litigation can be harmful to his health. It is unfortunate that he did not heed the terms of the 2008 order and stop involving himself with Mr Downey's litigation, exposing Mr Downey to adverse costs orders and adversely affecting Mr Branch's health.

62 Further, there has been actual harm from the breaches. This is because Mr Branch has acted on behalf of a vulnerable person, providing inappropriate guidance to those most in need of proper advice, and he has ended up with adverse costs orders against Mr Downey. Mr Branch's actions have plainly had an impact on public resources in the sense that he has diverted court resources to actions that he has brought without merit on behalf of Mr Downey.

63 Secondly, in our judgment, a fine will not be a sufficient penalty. This is because of the seriousness of the offending and its affect upon both the court and the vulnerable person, Mr Downey.

64 Thirdly, Mr Branch has not, in our judgment, demonstrated any remorse. He appears to have deliberately decided to ignore the order relying on the fact that he contends that the case is closed, and so the order does not cover him, or that he is not in breach of the order because he is not carrying out reserved legal activities, regardless of the wording of the order and what he has been told about it. He has, in our judgment, decided to act as a judge in his own cause in deciding these matters and ignoring the court.

65 Fourthly, there are other important relevant factors. In Mr Branch's own words, he is a seventy-four year old, taking twice-daily insulin independent injections, Type II diabetic

with high blood pressure on eleven tablets per day and mobility problems, and, as he put it, "not exactly prisoner material". Although these matters do not prevent him from appearing today, for the reasons we have given earlier, these are relevant factors to take into account when deciding what penalty is appropriate. It is obviously desirable to keep a potentially vulnerable first-time offender out of prison (compare *Templeton Insurance v Thomas* [2013] EWCA Civ 35 [27] and the authorities to which that case referred). This is particularly so given that Covid-19 restrictions still affect prisons and mean that time spent in custody will be even more difficult than usual for any person, let alone a person with these frailties.

66 Assessing all of these factors but still reflecting the seriousness of the contempt, we consider that the appropriate sentence is, therefore, a custodial sentence of six months' imprisonment. This is a significant sentence which reflects the seriousness of the offence, the number of offences, the lack of genuine remorse and the impact of the contempt on the vulnerable litigant.

67 We, therefore, will then go on to consider the issue of suspension. We do consider that there are good reasons to suspend the sentence in this case. The guidance given in *Liverpool Victoria Insurance v Zafar* at para.69 is that there must be a powerful factor when making it appropriate to suspend the term because usually the court will have given full weight to mitigating factors in determining the length of the term. In relation to this application, in our judgment, there are powerful factors supporting a suspended sentence and these are Mr Branch's age and ill health, the potential impact of an immediate custodial sentence on him and his wife and the fact that what is intended to be prevented is the continuation of unmeritorious legal proceedings and the likelihood is that a suspended sentence will have the desired effect of encouraging the final compliance with the *Noueiri* order.

68 So, for the detailed reasons given above, we find that Mr Branch has acted in contempt of court. We order that he be sentenced to a suspended committal order in the terms set out below, which is a penalty of six months suspended for two years on the terms that he does not act in breach of the order dated 5 November 2008. For these detailed reasons, we find that Mr Branch has acted in contempt of court and we order the suspended committal order in the terms set out above.

69 Finally, I should record our particular thanks to Mr Randle and those who instruct him for all their assistance over the course of Wednesday's hearing and today's hearing.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.