

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday 11 August 2022

BEFORE:

MR JUSTICE ADAM JOHNSON

BETWEEN:

(1) JONATHAN DAVID ROWLAND
(2) DAVID JOHN ROWLAND

Claimants

- and -

KEVIN GERALD STANFORD

Defendant

MR T GRANT, QC (instructed by Forsters LLP) appeared on behalf of the Claimants

MR K STANFORD appeared in person

JUDGMENT

(Approved)

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1. MR JUSTICE ADAM JOHNSON: Mr Stanford, the Defendant, was committed to prison on 13 June 2022 on three counts of contempt, each corresponding to a separate paragraph of the order made by this Court on 21 April 2021, by which Mr Stanford was required to provide certain documents and information to the Claimants. Mr Stanford was given three separate sentences of eight months each, to run concurrently. In making my sentencing remarks, I indicated that one-half of each eight-month period was given as punishment for Mr Stanford's past contempts and one-half was in respect of any future continuing contempts. Having regard to section 258(2) of the Criminal Justice Act 2003, Mr Stanford is required to serve half of each period of imprisonment. He has already served two months' imprisonment or thereabouts, corresponding to the period of imprisonment referable to his historic contempts. It follows that, if his contempts are satisfactorily purged, as he says they are, then he will be entitled to immediate release from custody.
2. This is in fact the adjourned hearing of Mr Stanford's application to secure discharge. The matter was first before this Court on 25 July 2022. It was apparent at that stage, however, that matters had not sufficiently moved on to warrant Mr Stanford's release. In the course of submissions, I made some observations about what needed to be done in order to secure compliance with the April 2021 order. Efforts have been undertaken in light of my observations and so Mr Stanford returns to Court and presses his application for discharge.
3. As to the relevant legal principles, the Court has an inherent power, preserved by section 14(1) of the Contempt of Court Act 1981, to discharge a person who has been committed for contempt. The power is not unfettered, however, and its exercise is not discretionary. There must be "*a reason for discharge known to the law*" and "*it is for the contemnor to advance such a reason for discharge, not for the court to find a reason for refusing it*" (see the comments of Sedley LJ in *CJ v Flintshire Borough Council* [2010] 2 FLR 1224 at [37]).
4. Also in the *Flintshire* case, Wilson LJ (as he then was), at paragraph 21, proposed a series of nine overlapping questions to be considered in determining an application for early discharge. That case concerned contempts in respect of a prohibitory order, not a mandatory order as in the present case. Nonetheless, the questions still have relevance,

although not all are directly transposable. In any event, as Sedley LJ said in the *Flintshire* decision at [36], they should not be treated as a tick-list but instead “*as windows on a problem which will always be case-specific and to which, as often as not, there will be no single right answer*”.

5. I turn then to the present case.
6. To begin with I am satisfied that, as long as Mr Stanford now complies with the April 2021 order, he has suffered punishment proportionate to his past contempts. He has served a period of two months’ imprisonment or thereabouts. That is the period which I indicated on 13 June 2022 should be referable to Mr Stanford’s past contempts. That addresses the first of the questions derived from the *Flintshire* case.
7. The second question is whether the interest of the State in upholding the rule of law will be significantly prejudiced by early discharge. The answer, it seems to me, follows from that to the first question. If the April 2021 order is now complied with, then the rule of law will not be significantly prejudiced.
8. The third question is whether the contemnor has made a genuine expression of contrition. As to this, I consider that Mr Stanford has done so. In a sense, actions speak louder than words and I shall shortly describe the steps undertaken by Mr Stanford to secure compliance. It is also relevant, however, that Mr Stanford has now, on more than one occasion, expressed his apology to the Court and specifically has now acknowledged the authority and jurisdiction of the Court over him (matters which, in the past, he has refused to concede).
9. It seems to me that the fourth, fifth and sixth of the *Flintshire* questions, transposed into a case involving a mandatory order, require an assessment of the steps undertaken, notwithstanding the contemnor’s historic contempts, to secure compliance with the relevant order or orders. I will not repeat the detail of the provisions in the April 2021 order. It is sufficient to record that it has three main paragraphs. Paragraph 1 required an imaging exercise to be undertaken in order to capture an image or images of what has been described as “*the Archive*”. Paragraph 2 required provision by Mr Stanford of copies of communications with third parties, including the supplier of the Archive, in

relation to the Archive. Paragraph 3 required Mr Stanford to provide an Affidavit setting out details of, broadly speaking:

(4) the circumstances in which Mr Stanford came into possession of the Archive; and

(ii) his use of the Archive, including the circumstances in which he has made available material from the archive to third parties.

Paragraph 3 is then presently subject to a proviso entitling Mr Stanford to decline to provide the information otherwise sought by paragraph 3 if to do so would be likely to incriminate him.

10. What has happened since the adjourned hearing on 25 July is as follows:

(1) An imaging exercise has been undertaken. This has involved the imaging of a number of electronic devices and other data storage devices and email and other accounts associated with Mr Stanford. This has all been undertaken pursuant to an agreed imaging protocol.

(2) The Claimants proposed terms for a further protocol, namely a search protocol, the purpose of which is to allow the imaged data to be searched in an orderly way. The search protocol is now effectively also agreed in light of exchanges we have had during the course of the hearing today.

(3) Mr Stanford has now put forward an Affidavit in response to paragraph 3 of the April 2021 order, which was sworn today outside Court shortly before the commencement of the present hearing.

11. The question is whether these matters now sufficiently address the requirements of paragraphs 1 to 3 of the April 2021 order so as to justify Mr Stanford's release.

12. To begin with, I detect no remaining material issue as regards paragraph 1 of the April 2021 order. That required images to be taken of the documents specified. I am satisfied that that imaging exercise has now been completed. The relevant documents will be identifiable by the Claimants by means of the agreed search protocol.
13. I consider that the same broad logic applies as regards paragraph 2 of the April order. That required Mr Stanford to make available copies of the documents specified in that paragraph, i.e., copies of his communications with the supplier of the Archive and with third parties referencing the Archive. Copies of such documents have now been supplied by means of the agreed imaging exercise and should be identifiable by the claimants by means of the search protocol.
14. Dealing, then, with paragraph 3 of the order, the position there is not so straightforward. As I have mentioned, it falls into two parts. The first part requires provision on Affidavit of full and accurate details of the circumstances in which Mr Stanford came into possession of the Archive. The second part requires full and accurate details to be provided of the provision of copies of the Archive, or of parts thereof, to third parties and full and accurate details of the circumstances in which such copies came to be provided. Paragraph 3 is qualified by the proviso I have mentioned.
15. As to the first part of paragraph 3, the circumstances in which Mr Stanford came into possession of the Archive are dealt with at paragraphs 3 to 16 of his Affidavit. I accept that this goes further than previous efforts to comply with paragraph 3 in Mr Stanford's witness statement of 18 May 2021 and then in his later evidence during the course of these present committal proceedings. Although Mr Grant QC for the Claimants has identified certain potential inadequacies, it seems to me that I have to stand back and undertake essentially a qualitative assessment. Having done so, I consider that these paragraphs of Mr Stanford's new Affidavit do represent a good-faith effort by him to comply with his obligations and which, in light of his present circumstances, go as far as can reasonably be expected of him. Further details will no doubt be available to the Claimants from the documents now to be recovered from the Archive. I therefore consider that Mr Stanford has sufficiently complied with his obligations under the first part of paragraph 3 of the order.

16. As to the second part of paragraph 3, this is dealt with in paragraphs 17 to 21 of Mr Stanford's Affidavit. Here, Mr Stanford provides no more detail or information than he has done previously, but makes two further points.
17. He says firstly that he cannot be expected to provide the detail sought from memory and, in any event, all relevant information as to communications with third parties will be apparent from the now imaged data once it is searched. Mr Stanford secondly relies, or suggests he may wish to rely, on the privilege against self-incrimination. He says in his Affidavit that he has been advised that providing the information would likely incriminate him under the Data Protection Act 1998 and/or the Data Protection Act 2018.
18. In response, the Claimants say that paragraphs 17 to 21 of the Affidavit are quite inadequate. They say Mr Stanford has made no real attempt to comply with the second part of paragraph 3, even allowing for his present circumstances. He could at least have done his best and in reality has done nothing. Without some type of account by Mr Stanford of his communications with third parties, the Claimants will be left themselves to wade through a huge amount of data in an entirely inefficient and inappropriate way.
19. As to the privilege against self-incrimination, Mr Grant QC made again the submission he made at the hearing on 25 July, that reliance on the privilege is simply not now open to Mr Stanford since he has had plenty of opportunities to make out a case and has missed all of them. Part of the Court's holding in its Judgment in the committal application was that Mr Stanford had not properly invoked the privilege against self-incrimination and there has been no appeal against that finding. In the circumstances, it is far too late for Mr Stanford now to take any issue about it.
20. I propose to deal with the issues under paragraph 3 of the April 2021 order as follows. It seems to me that I should take into account Mr Stanford's present position in determining how to proceed. He is presently in prison and communications are apparently very difficult. He does not have access to his computers or electronic data. He cannot be expected to provide any sort of detailed narrative. His position, described in paragraph 18 of his Affidavit, is effectively that the detail is in the documents and

for now all he can really be expected to do is affirm that the documents provide effectively a comprehensive account of the information the Claimants want.

21. As I read the fourth and fifth of Wilson LJ's questions in the *Flintshire* case, I am required to ask whether Mr Stanford has done all he reasonably can given his present circumstances and also to consider what proposals he has made as to his future conduct. As to the latter point, Mr Stanford has said that he will now provide the required information, he just needs the means to do so properly, and he should not be required effectively to resort to guesswork when the relevant data is available to enable him to do the job properly and indeed he wishes to do so.
22. I have found this a difficult question. On the one hand, one wishes to be fair to the Claimants. Their concern, understandably, is that Mr Stanford, once released, may become less co-operative in his attitude. On the other hand, from Mr Stanford's position, he is faced with a rather Kafkaesque situation in which he maintains that he is willing to do what is required of him in order to secure his release, and indeed has done so in other respects, but he is prevented from complying further with the remainder of the order because he is incarcerated.
23. I have decided that I am on Mr Stanford's side on this point. That is for a number of reasons:

(1) I am satisfied that his attitude has changed. I will put my faith in him and I hope I will not be disappointed.

(2) Mr Stanford now has the experience of the past two months in prison. He knows full well that the consequences for him if he does not take his remaining obligations seriously may be very grave indeed.

(3) I take comfort from the fact that the Claimants now have the imaged data, which provides them, it seems to me, with a high degree of protection.

(4) If the real purpose of the information to be provided on Affidavit is to provide a route map through the imaged data, then it is much better done by Mr Stanford in an orderly manner with access to the relevant information and not by Mr Stanford having a stab at it given the constraints presently affecting him.

24. In the event, the issue as regards the privilege against self-incrimination has rather dissolved. That is because, during the course of the hearing, Mr Stanford has indicated that he does not intend to make any further efforts to invoke the privilege. That seems to me an understandable concession for him to make in the circumstances. Even the latest attempt to invoke or rely on it in his present Affidavit is vague and unclear. This comes, as Mr Grant QC has pointed out, well over a year after the order made in April 2021. The attempt made is sketchy at best and even now no specific offence is identified. One might therefore say that Mr Stanford is not really giving up very much in making the concession he has proposed.
25. There is, it seems to me, a further point, which is that the contents of any Affidavit will largely be inspired by the contents of the documents the Claimants already have access to. There is therefore a sense in which Mr Stanford may be making his position neither better nor worse by providing essentially the same information affirmed on Affidavit. In any event, that is very much a matter for him. During the course of this hearing, he has been given the opportunity of taking legal advice. Having done so and having considered his position, he has provided the confirmation I have referred to.
26. What I therefore propose to do is this. I will give Mr Stanford further time to comply with the second part of paragraph 3 of the April 2021 order. I will do so by means of a further order. In the circumstances, that will not need to contain the proviso presently reflected in the April 2021 order. I will hear any further submissions as necessary on the terms of that order, although the parties, I think, are already agreed that Mr Stanford should be given a period of 28 days for provision of the required Affidavit. In any event, this seems to me in the circumstances the fairest way of moving matters forward. It properly takes into account not only Mr Stanford's present situation but also his confirmation that he will now, if properly able to, comply with the remaining parts of paragraph 3.

27. I turn, then, to the final two questions in the *Flintshire* decision. Question (vii) is what length of time the contemnor has served in prison in relation to the full term imposed and the term he is required to serve pursuant to section 258(2) of the Criminal Justice Act 2003. I have already addressed this question. Mr Stanford has served two months of his eight-month sentence. That is effectively the full term of imprisonment to be served as punishment for his past contempts. He is entitled to release if, as I have determined, he has now purged his contempt in relation to the remaining provisions of the order.
28. The final question, question (viii), is whether there are any other special factors. Here, beyond the matters already mentioned in this judgment, none have been suggested and I have identified none myself.
29. My overall conclusion, therefore, is that Mr Stanford has satisfactorily purged his contempt, both by expressing contrition and by now having complied with the April 2021 order to the extent I have identified. I will therefore make an appropriate order for his release and discharge.

(After further submissions)

30. It seems to me that Mr Grant is correct in his basic submission that the Claimants should be entitled to their costs. It is true that, on the substance of it, Mr Stanford has been successful, but his success only arises because of information and concessions made very late in the day (in other words, made at a point in time by which the Claimants' costs had very largely, if not entirely, been incurred already). In those circumstances, I will make an order for the Claimants to recover their costs of the hearing today and of the hearing on 25 July.
31. I have a summary assessment form giving a grand total amount of £103,017. Looking at the schedule as a whole, I see that the hourly rates charged by the fee earners are not excessively high, measured by reference to the guideline hourly rates. I have little to say about the schedule of work done on documents. As on previous occasions, though, it seems to me that some deduction ought to be made on account of proportionality. What I propose to do is to award the Claimants an amount corresponding to

approximately 80 per cent of their costs. That is to say I will summarily assess the costs at £80,000.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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This transcript has been approved by the Judge