[2017] EWHC 2762 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BIRMINGHAM
INSOLVENCY AND COMPANIES LIST (ChD)

Case number 8191 of 2017

Birmingham Civil Justice Centre
33 Bull Street
Birmingham
B4 6DS

Date : 6-7 November 2017

Before
His Honour Judge Simon Barker QC sitting as a Judge of the High Court

IN THE MATTER OF THE INSOLVENCY ACT 1986

AND IN THE MATTER OF CLIVE WASHINGTON BROWN

BETWEEN

THE OFFICIAL RECEIVER

Applicant

-and-

CLIVE WASHINGTON BROWN

Respondent

Lydia Pemberton instructed by Government Legal Department for the Applicant
Clive Washington Brown in person
David Lock QC instructed by Neil Davies & Partners for the trustees in bankruptcy on 7 November 2017

Hearing dates : 25 October and 1 November 2017

JUDGMENT (2)

I direct that pursuant to CPR 39APD6 paragraph 6.1 no tape recording shall be made of this judgment and that copies of this version shall stand as authentic and be treated as the official transcript

HHJ Simon Barker QC :

Introduction

1 For reasons that will become apparent this judgment was delivered in two parts.

2 On 6.11.17, after Mr Clive Washington Brown ('Mr Brown') confirmed that he did not want legal aid for legal representation. I gave Mr Brown an opportunity to address any reasonable excuse, purging and mitigation in relation to for his contempts as found by me in a judgment given on 1.11.17, and Mr Brown addressed the court for some 30 minutes. What Mr Brown said did not provide any reasonable excuse, atonement or mitigation. I then began my sentencing judgment. I set out in paragraphs 3 to 12 below what I said on 6.11.17 until Mr Brown interrupted and said that he had not addressed purging and that he was willing to purge by cooperating fully with the Official Receiver ('OR') and his trustees in bankruptcy ('the Trustees'). That constitutes the first part of the judgment. The remainder of the judgment was given during the afternoon of 7.11.17.

3 This judgment follows my judgment, given on 1.11.17, in which I made various findings of contempt of court against Clive Washington Brown ('Mr Brown') for failure to comply with obligations under ss. 288, 291, 312 and 333 of the Insolvency Act 1986 ('IA 1986'). Mr Brown walked out of the committal hearing on 25.10.17 at an early stage and did not attend the judgment hearing.

4 On 28.10.17 Mr Brown sent an email to the court stating, inter alia, that Mr Brown

> "...wil not be returning to Birmingham Civil Justice Centre as events on 25.10.17 prove there is a health and safety risk which he has a statutory obligation to protect himself, the bias, prejudice, and hostility proved against Mr Brown by Judge Barker taking oral evidence that he knew to be false invalidates any order entered by him, and provides additional grounds for appeal against an adverse order for Mr Browns committal to prison".

That extract from Mr Brown's email foreshadowed his non-attendance on 1.11.17 and gave a clear indication of his attitude to the committal proceedings.

5 I adjourned consideration of punishment for the contempts found to have been committed until today, 6.11.17. I made an order, issued on 2.11.17, fixing the further hearing of the committal application for sentence, subject to any representations, purging or mitigation by Mr Brown. Mr Brown was given a yet further opportunity to obtain legal representation at public expense should he so wish. Mr Brown was also directed by that order to confirm to the court by noon on Friday 3.11.17 that he would attend court for this hearing of his own accord failing which a warrant would be issued for his arrest.

6 In response to receiving a copy of my committal judgment, Mr Brown sent emails to the court on 2.11.17 by which (1) he effectively confirmed that he had received and read the judgment given on 1.11.17 and (2) put forward his case as to reasonable excuse for non-compliance with his obligations under ss.288, 291, 312 and 333 of the Insolvency Act 1986 ('IA 1986').

7 Mr Brown's case as to his reasonable excuse for non-compliance with his IA 1986 obligations was expressed in an email to the court and to the Official Receiver ('OR') timed at 00.23 on 2.11.17. Mr Brown said this :

> "... Further, and unless committal proceedings are set aside by the courts own motion, Mr Brown will rely on the statutory provisions of the IA, the legal effect of case No 8210 of 2016, his continuing duties and obligations as a Trustee for his daughters Trust, as reasonable excuse for not co-operating with the official receivers, as well as proof of fraud against him as a Trustee for his daughters Trust.
> in short Judge Barkers Freezing order has provided Mr Brown with reasonable excuse for not recognising a reasonable obligation to the official receiver, because the Official receiver has conspired with the judiciary, David Lock, and others to dishonestly represent property held by Mr Brown on Trust for his daughter, as his personal property, clearly knowing between them that they are prevented by statute from doing so..
> ..
> Judge Barker has therefore been well aware of Mr Browns reasonable excuse for not co-operating with the Official Receiver in order to protect his daughters Trust from the illegal freezing order that he himself had illegally entered against that Truts as Mr Browns personal property. On the evidence of that freezing order against her Trust, Mr Browns daughter, as well as his son as the other beneficary of that Trust, is entitled to compensation for the detriment caused by the dishonest representation of her Trust as part of Mr Browns personal estate".

This statement by Mr Brown continues and develops his incorrect view of the litigation which led to his bankruptcy and of his bankruptcy process and of the bankruptcy litigation concerning him. It does not begin to provide a reasonable excuse for non-compliance with his obligations under ss. 288, 291, 312 and 333 IA 1986.

8 In the event Mr Brown did not confirm by noon on 3.11.17 that he would attend at court on 6.11.17. I issued a warrant for his arrest and he has appeared at court today, 6.11.17, following arrest, earlier this morning, pursuant to the warrant.

9 As to punishment, purging of contempt and/or mitigation, Mr Brown addressed the appropriate sanction for his contempts in his email to the court of 2.11.17 timed at 00.23 as follows:

> "At best there are grounds only for a fine given Mr Browns daughters cointinuing need for representation by him, and her potential need for representation under a private prosecution for fraud against her Trust. Take note that where the s.339 order is not set aside immediately, Phoenix has the authority of Mr Brown to invite Judge Barker to not waste further time and to enter his fine as he sees fit, that is unless he intends to have Mr Brown incarcerated in prison to obstruct, frustrate, and pervert justice for his daughter."

I keep in mind Mr Brown's sense of grievance while considering the appropriate sanction; however, the factual basis is misconceived. Mr Brown addresses punishment but there is no indication of atonement and nothing that constitutes mitigation.

10 Late on 3.11.17 Mr Brown, using the name of Phoenix Leisure and Entertainments Limited ('P Ltd'), supposedly as a litigation friend, sent an email to the Birmingham Civil Justice Centre's delivery manager accusing her of complicity in the alleged fraudulent conspiracy and making other allegations. On 4.11.17 Mr Brown, again as or using P Ltd's name, sent a further email complaining that Mr Brown was being maliciously and dishonestly targeted and unlawfully deprived of his property.

11 At the commencement of the hearing at 11.30am on 6.11.17, Mr Brown was given an opportunity to make submissions as to reasonable excuse, purging of contempt and/or mitigation. What followed was a repetition of his view as to the invalidity of the earlier proceedings and his bankruptcy and the sense of grievance that he feels about what he regards as a conspiracy to defraud him and his daughter of their assets.

12 Unfortunately, the position remains that Mr Brown has no reasonable excuse for non-compliance with his obligations under ss.288, 291, 312 and 333 IA 1986. He also declines to purge his contempt and has no relevant mitigation.

13 At this point in my judgment on 6.11.17 Mr Brown interrupted to say that he had not said that he would not purge his contempt, and agreed to attend court at 10.30 on 7.11.17 in order to answer all questions put by or on behalf of the OR and the Trustees and to deliver up his estate. He was also told to bring any books, papers or records relating to his affairs to court, including for example bank statements.

14 Prior to today Mr Brown had not complied with the OR's and the Trustees' reasonable requirements and so Mr Brown remained in contempt of court. At the hearing today the Trustees were represented by Mr David Lock QC. Mr Brown agreed to be questioned on oath in order to purge his contempt. Mr Lock QC asked a number of questions which demonstrated that Mr Brown refused to accept the validity of court orders including his bankruptcy but was prepared to provide limited information as to assets and the whereabouts of records. Mr Lock QC's questioning prompted the disclosure of a property owned and rented out by Mr Brown in Florida USA, but Mr Brown gave few details including an incomplete or at least partially incorrect address (zip codes in Kissimmee Florida have 4 digits not 5). Ownership of this property was also inconsistent with an affidavit sworn by Mr Brown on 19.6.17. Mr Lock QC discontinued his questioning and submitted that Mr Brown was not sincere in his wish to purge his contempt. Ms Pemberton also questioned Mr Brown but he chose not to answer certain questions and Ms Pemberton also discontinued her questioning of Mr Brown. Mr Brown then made a lengthy statement to the effect that proceedings leading to orders against him, including his bankruptcy, are founded on null and void proceedings and orders and, therefore, as he put it, the bankruptcy proceedings do not exist.

15 I therefore have to consider the proper punishment for Mr Brown's contempt by non-compliance with statutory obligations in the context of his limited cooperation at court. I

also have regard to an affidavit Mr Brown handed to Mr Lock QC and introduced into evidence during the afternoon on 7.11.17. That affidavit refers extensively to me being involved in a fraudulently conspiracy for purposes including defrauding his daughter out of trust property (eg paragraphs 34-35) and, incorrectly, to numerous assertions made by Mr Brown which I am said, by him, to have accepted in court (eg paragraphs 46-56). I do not regard any of that as a basis for recusing myself and I do not evaluate any criticism of or incorrect statement attributed to me personally as aggravating Mr Brown's contempt. What is relevant is that Mr Brown's affidavit evidences his continuing refusal to recognise a succession of court orders. That demonstrates a lack of sincerity in purging his contempt.

Principles applicable to sanctions for contempt of court

16 The sanctions for contempt of court include imprisonment for a period of up to 2 years (s.14(1) Contempt of Court Act 1981), and/or an unlimited fine and/or sequestration or seizure of assets. It seems that until the 1960s the imposition of a fine by a civil court was relatively rarely invoked as an alternative sanction to imprisonment, see Phonographic Performance Ltd v Amusement Caterers (Peckham) Ltd 1964 Ch 195, Cross J at p.200. Cross J took the view that the imposition of a fine as an alternative to imprisonment was to be viewed as a lesser penalty. Taking a fine as the starting point has become the modern approach.

17 Following a finding or admission of contempt, punishment falls to be considered in the context of both the gravity of the conduct and also the need to secure future compliance with or adherence to the rule of law, that is to deter repetition of the contempt, and further to encourage or ensure compliance with any outstanding and/or continuing obligation pursuant to an order or undertaking to the court or a statutory obligation. The court's interest is confined to (1) punishment to mark the court's disapproval of the breach or non-compliance and disregard of the rule of law, (2) deterring future or continued breaches or non-compliance and upholding the rule of law, and (3) coercion, that is encouraging or ensuring present and/or future compliance by the contemnor. The punitive element addresses the seriousness of the breach or non-compliance of the particular contempt. The deterrence element reflects the public interest in maintaining adherence to the rule of law. The coercive element encourages purging, or atonement, for the particular contempt. A contemnor has an unqualified and continuing right to purge the contempt and seek an order for immediate release.

18 The obligation of the court is to impose the minimum punishment commensurate with meeting these objectives. The court should ask itself whether a fine is a sufficient punishment and is viable (ie is the contemnor in a position to pay). When considering the imposition of a sentence of imprisonment, the court should always ask itself whether such sentence might properly be suspended. In addition, the court should make clear that, if a sentence of imprisonment is imposed, the contemnor will be released after serving half the sentence; s.258(2) of the Criminal Justice Act 2003 imposes on the Secretary of State the duty to release a contemnor as soon as (s)he has served half the term for which (s)he was committed.

19 Drawing by analogy on ss.152-153 of the Criminal Justice Act 2003, imprisonment should be viewed as a sanction of last resort; a fine or seizure of assets must be inadequate as a sanction; and, if the court decides that a sentence of imprisonment is absolutely necessary and must be imposed, the term should be as short as possible commensurate with the gravity of the contempt and the need to deter the contemnor and coerce compliance.

20 Further, in line with general sentencing principles, if the appropriate period of imprisonment under consideration is 12 months or less, the court should further consider whether a shorter term will sufficiently meet the sentencing objectives, especially if the contemnor has not previously experienced imprisonment.

21 If the court has decided that a prison sentence is necessary and has also decided on the appropriate term, it should then consider whether that sentence should be suspended. A feature of suspending a sentence is that the deterrent effect is emphasised, at least over the period of suspension. Suspension may be for up to 2 years, but not usually more than 18 months for a prison sentence of 12 months or less.

22 In the relatively recent case of JSC BTA Bank v Solodchenko (No.2) [2010] EWHC 2843 (Ch) Proudman J set out a checklist of factors a judge should take into account for sentencing purposes when dealing with contempt of court. These include :

(1) whether another party to proceedings is prejudiced, by virtue of the contempt and whether that prejudice is capable of remedy;
(2) the extent to which the contemnor has acted under pressure;
(3) whether the breach of the order or the contempt in the face of the court was culpable or unintentional;
(4) the degree of culpability;
(5) whether the contemnor was placed in breach by reason of the conduct of others;
(6) whether the contemnor appreciated the seriousness of the breach;
(7) whether the contemnor has cooperated, and if so, at what stage and to what extent;
(8) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea, and if so what, if any, reduction should be applied to the appropriate sentence;
(9) whether the contemnor has made a sincere apology for his contempt;
(10) the contemnor's previous character and antecedents; and,
(11) any personal mitigation advanced on the contemnor's behalf.

Culpability in the context of sentencing has four gradations or categories : deliberate, knowing, reckless and negligent.

23 In JSC BTA Bank v Solodchenko (No.2), Proudman J's decision, which was to limit the punishment for contempt to costs for breach of and non-compliance with a disclosure order, was overturned on appeal, see JSC BTA Bank v Solodchenko (No.2) [2012] 1 WLR 350. Proudman J's decision was based on an assumption later

shown to be incorrect. The Court of Appeal held that the contemnor was guilty of continuing, deliberate non-compliance with his disclosure obligation and had aggravated the contempt by putting forward false evidence. The Court of Appeal substituted a sentence of 21 months imprisonment and apportioned 9 months to punishment for past non-compliance and the need to deter others and 12 months to coercion. The effect was that the Court of Appeal recommended that prompt and full compliance should, upon an application to purge lead to a reduction of the sentence, but not below 9 months. It is also noteworthy the Court of Appeal did not add to or revise Proudman J's checklist.

24 The deterrence element reflects the public interest in ensuring that orders and, in cases such as this, statutory provisions deeming contempt for non-compliance are complied with and, therefore, effective. This point was emphasised in another application in the JSC BTA Bank litigation, JSC BTA Bank v Solodchenko (No.7) [2012] 1 WLR 1988, see Gross LJ at [33] and [48] with whom Sir Andrew Morritt C and Moses LJ agreed.

25 The coercive element is central to upholding the rule of law. Where a public official, such as the OR or a trustee in bankruptcy, is seriously impeded by non-cooperation on the part of a bankrupt, the official's and the court's primary objective is to encourage and ensure compliance. It is only when faced with misconceived, persistent and/or obstinate non-compliance that resort is had to certification of contempt and, as the OR's counsel, Ms Pemberton, made clear at the hearing on 25.10.17, what the OR seeks is compliance by Mr Brown not his punishment as such.

26 In the similar, but not exactly analogous, context of punishing contempt for non-disclosure pursuant to a freezing order the Court of Appeal gave guidance in JSC BTA Bank v Solodchenko (No.2) on the approach to sentencing for contempt by breach of disclosure obligations in a freezing order, see Jackson LJ at [55] to [57]. This guidance was reiterated in JSC BTA Bank v Solodchenko (No.8) [2013] 1WLR 1331 by Rix LJ at [102] to [109]. In summary the guidance comes to this :

(1) a substantial breach of a freezing order merits condign punishment;
(2) condign punishment normally means imprisonment. However, there may be circumstances where a substantial fine is sufficient, for example if the contempt is purged and relevant assets recovered;
(3) continuing failure to disclose information engages consideration of a long sentence, possibly the maximum two years for the coercive purpose;
(4) where a breach is continuing, fairness may require the court to identify the portion of the sentence that is punishment and the portion that is coercive and might be remitted in the event of prompt and full compliance; and,
(5) when passing the sentence, the court does not have regard to the actual time likely to be spent in prison.

27 Of course, when applying these principles in a particular case it is essential to keep in mind also the scale or seriousness of the contempt and the culpability of the contemnor together with the other factors identified by Proudman J.

28 As to the former, the JSC BTA Bank litigation involved fraud on a massive scale. That is an aggravating factor. It does not render the principles inapplicable to contempt on a much lower scale or in different circumstances, but the principles must be adapted and applied in the context of the particular circumstances of the particular case.

29 As to culpability, at one extreme there is deliberate or intentional contempt, at the other there is negligent contempt; in between are knowing contempt and reckless contempt. It may not always be easy, or even possible, to determine the degree of culpability on the part of a contemnor. My view is that, in such a case, the judge should proceed on that basis of culpability to the degree of which the judge can be certain beyond reasonable doubt, and no higher.

The principles applied to the circumstances of the case and to Mr Brown

30 Mr Brown has persistently refused to recognise the validity of a series of court orders and he maintains that his bankruptcy is part of a conspiracy on the part of judges, lawyers and officials involved in the conduct of his bankruptcy. There is no pending appeal against orders made in the present or previous actions concerning Mr Brown. There is no pending application to annul, set aside or appeal any aspect of Mr Brown's bankruptcy.

31 Attending court voluntarily today, albeit 15 minutes late, and having promised to answer questions from his trustees in bankruptcy ('the Trustees') and the OR was a positive step, but it comes at a very late stage. In the event, Mr Brown's attendance was revealed to be other than a genuine attempt to cooperate with the Trustees and the OR and to purge his contempt.

32 Accordingly, the first task is assessing the gravity of Mr Brown's contempt. Mr Brown's refusal to recognise the validity of adverse court orders stretches back to 2014 and extends to the order made in his bankruptcy proceedings by Hickinbottom LJ on 31.10.17, by which Mr Brown's application for permission to appeal HHJ Worster's order in the bankruptcy proceedings was refused and certified as totally without merit. That fixed mindset has been determinative of Mr Brown's approach to his statutory obligations towards the OR and the Trustees under the IA 1986.

33 Mr Brown was adjudged bankrupt on 15.5.16. His failure and refusal to comply with his statutory obligations is apparent from the record of his dealings with the OR and the Trustees and was referred to in my judgment given on 1.11.17. Mr Brown's conduct has severely impeded and added to the cost of his bankruptcy. It led to his automatic discharge being suspended on 20.1.17 until compliance with his statutory obligations to the OR. The bankruptcy debt is not substantial, £27,500. However, a bankruptcy petition is the exercise of a class right and Mr Brown has other substantial costs liabilities which form part of his total liability to creditors, all of which are still wholly unpaid. He is beneficially interested in five properties; his interest in a fifth property came to light today, 7.11.17, in questioning by Mr Lock QC; Mr Brown's evidence reveals his attitude to have been uncooperative to the point of misleading and raises the need for further detailed information. As to the properties in the UK and in Florida, whether there is, and if so the extent of, any equity is presently unknown and Mr

Brown said that his wife dealt with such matters; I regard that as an exemplifying the true extent of Mr Brown's approach to cooperation and purging his contempt. Persistent refusal for a year and a half to comply with statutory obligations to the OR and the Trustees and withholding information as to assets is a serious matter.

34 Next, I approach the appropriate sanction for contempt by reference to the factors identified by Proudman J and referred to above.

35 First, both the OR and the Trustees have plainly been prejudiced by Mr Brown's unrelenting, until today, refusal to engage or cooperate in his bankruptcy. This has had a consequential effect on his creditors as a class, one of whom, Mr Percival Patterson the petitioning creditor, is a party to the bankruptcy proceedings. To an extent Mr Brown's non-compliance could be overcome in that the Trustees have obtained a court order enabling them to recover and realise certain properties in the UK registered in Mr Brown's name. However, they and/or the OR will still be put to considerable and disproportionate unnecessary work and inconvenience if they have to attempt to compile a statement of affairs for Mr Brown from third party sources and make further court applications.

36 As to pressure on Mr Brown, there is no evidence or suggestion that another person has exerted pressure on him.

37 As to whether the contempts were culpable or unintentional, they stem from Mr Brown's insistence that he is not indebted to Mr Patterson because the proceedings which gave rise to the costs order forming the petitioning debt were null and void and that the bankruptcy proceedings are similarly invalid. These views have been repeatedly voiced by Mr Brown, including at length this afternoon, as an aspect of his complaint that the judiciary, lawyers, the OR and the Trustees are all complicit in a fraudulent conspiracy against him and his interests. Mr Brown advances these views as a means of attempting to stave off his liability as established by court orders. That is misconceived but not unintentionally so.

38 As to the degree of culpability, prior to today Mr Brown has persisted in taking an unreasonable and totally unmeritorious stance for years. That is background relevant to the evaluation of his culpability; of course, it has no further bearing on consideration of the appropriate sanction for the proven contempts. The position today is that Mr Brown's stance has not altered in any material way. He simply refuses to face the reality of his situation. This is the consequence of his own doing and self-determination. Mr Brown is articulate, both orally and in writing. He is familiar with complex concepts such as trusts. Mr Brown does not appear to be delusional and there is no question of him lacking capacity or being unfit to be punished for committal pending a medical report. In all the circumstances, it is impossible to view his contempt as anything other or less than serious and deliberate.

39 Mr Brown's stated refusal to attend court for the hearing on 1.11.17 provides a further indication that he appreciates the seriousness of his breaches of the IA 1986.

40 Prior to today, Mr Brown had not at any stage cooperated with either the OR or the Trustees. To the contrary, he had refused to engage sensibly or constructively and had caused disproportionate delay and expense by persisting in his refusal to recognise and accept the rule of law as embodied in the relevant provisions of IA 1986. That remains the position.

41 An indication of Mr Brown's attitude to the OR and the Trustees is evident from the issue, in October 2017, of statutory demands in the name of P Ltd against them, their employees, and their legal representatives, and numerous others including judges. In those statutory demands Mr Brown is named as the individual to be contacted in relation to the demands. This is nothing short of harassment of the OR, the Trustees, their employees and legal representatives and reinforces the seriousness of the contempts and the culpability of Mr Brown.

42 Mr Brown has made clear that he has no intention of admitting contempt or apologising for his contempts. He refuses to acknowledge that he is in contempt if that means, as it must, recognising court orders which he regards as invalid.

43 As to today, 7.11.17, questioning by Mr David Lock QC, for the Trustees, and by Ms Pemberton for the OR has not led to anything approaching the provision of meaningful information as to Mr Brown's financial affairs, even the address of the property in Florida is at least partially incorrect. In answer to questions by Ms Pemberton Mr Brown admitted to being the registered keeper of more than one vehicle but was hazy about the details of one and declined to provide details of the other.

44 The long history of the proceedings and the numerous different cases that have led to this committal application led to the making of an extended CRO against Mr Brown in December 2016. Putting aside this litigation, Mr Brown appears to be of previous good character; or, more accurately, nothing has been drawn to my attention to the contrary.

45 Mr Brown's mitigation is confined his cooperation, which came at a very late stage, was marked by late arrival at court, and fell some considerable way short of meaningful cooperation and purging of his contempt.

46 Accordingly, the elements of punishment, deterrence and coercion are all engaged for the purpose of deciding upon the appropriate sanction for contempts by Mr Brown as found in my judgment given on 1.11.17.

Decision

47 In reaching my decision, I bear in mind all the matters set out in this judgment and everything that has been said by and for Mr Brown, including the OR's counsel's submission that the OR's concern is to secure compliance by Mr Brown with his statutory obligations and not to seek punishment for any other purpose.

48 This is not a case in which the contempt may properly be addressed by the imposition of a fine. Mr Brown's own evidence as to his finances is that he has no income or means. Even if Mr Brown had the means to pay a fine, the seriousness of the contempts renders a fine an inadequate sentence. Imprisonment is a punishment of last resort, but Mr Brown's contempts are a serious matter. They are not isolated or infrequent but reflect an obstinate and sustained refusal to recognise the rule of law as provided for by Parliament in the IA 1986. Mr Brown's contempts unquestionably cross the custody threshold. By his own account, in communications to and statements in court, they will not abate unless his demands for the overturning of orders in respect of which there are no pending appeals, and are now well past the time for appeal, are met.

49 I consider that the punishment for the contempts found proven, for which there is no reasonable excuse, should be approached on the basis of a totality sentence. That is because the contempts are each part of a continuing series of statutory contempts of a similar kind. The statutory contempts separately concern the OR and the Trustees but the common feature is refusal to acknowledge and engage with the consequences of the bankruptcy order.

50 Cooperation with the OR would largely, but not entirely, obviate the need for cooperation with the Trustees and vice versa. It is therefore essential in this case to consider the appropriate punishment in the round or from the point of view of totality. Put another way it would be inappropriate to punish each contempt separately and then aggregate the sentences; equally, it would be inappropriate to sentence separately for those contempts concerning the OR and those contempts concerning the Trustees.

51 In my judgment, and disregarding for the moment Mr Brown's approach to cooperation today, on a totality basis a term of 12 months is the shortest sentence commensurate with the gravity and all other circumstances of the contempts. This is because there are many aggravating features, including the fact that the contempts form a series of continuing disobedience of the law and having regard to the factors identified by Proudman J. Further, nothing other than very late and partial cooperation weighs in the balance in mitigation; even that is marred by untruth and persistence in denying the validity of court orders.

52 Mr Brown has no prior experience of prison, it would be just to recognise this by reducing the term of 12 months by a further 4 months. Thus, the term of the sentence for the contempts under each of s.288, 291, 312 and 333 IA 1986 is 8 months on a concurrent basis.

53 On the question of whether the sentence should be suspended, the only purpose would be the coercive effect of a suspended sentence as an encouragement to Mr Brown to cooperate. It would be a realistic option if Mr Brown had cooperated fully as reasonably required or had cooperated meaningfully and gave an assurance that he would continue to cooperate as reasonably required with the OR and the Trustees. Absent that, the gravity of the contempts in this case is such that, in my judgment, it must be marked by the imposition and serving of an immediate prison sentence. Should Mr Brown decide to cooperate properly with the OR and the Trustees he may apply to purge his contempt at any time.

54 That still leaves the question of identifying the element in the sentence which represents punishment for the contempts found to have occurred. My view is that the coercive element should be the dominant element and should represent 5 of the 8 months which would leave as my recommendation as to sentence for punishment of past contempts and deterrence a sentence of 3 months immediate imprisonment.

55 I therefore impose an immediate sentence of 8 months imprisonment for the contempts of court established against Mr Brown for which he has no reasonable excuse. This means that, by reason of the provisions of s.258(2) of the Criminal Justice Act 2003, 4 months will be served in prison and Mr Brown will then be released unconditionally.

Conclusion

56 In conclusion, Clive Washington Brown has been held to be in contempt of court by persistently failing to comply with his obligations as a bankrupt to the Official Receiver under ss.288 and 291 IA 1986 and his obligations to his trustees in bankruptcy under ss.312 and 333 IA 1986 in all instances without reasonable excuse. In essence these obligations are to provide information as to his affairs, assets and liabilities and to deliver up his estate or property, and his books, papers and records. The punishment imposed on Clive Washington. Brown is an immediate custodial sentence of 8 months. By reason of s.258(2) Criminal Justice Act 2003 the term of imprisonment to be served by Mr Brown before the Secretary of State releases Mr Brown is 4 months.

57 In the meantime, Mr Brown may appeal against my committal decision and this decision as to punishment. He has a continuing right apply to the court to purge his contempt fully. For any such applications Mr Brown is entitled to legal aid for representation.