Neutral Citation Number: [2021] EWHC 664 (Ch)

Case No: C30MA552

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (ChD)

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: 30th March 2021

Before:

HH JUDGE EYRE QC

- -

Between :

BRIAN THOMAS TAYLOR	**Claimant**
- and -	
1) JOHN ROBINSON	**Defendants**
2) GO FULFILMENT LIMITED	
3) NICOLA TAYLOR	
4) DIANA WOODS	

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Kristian Cavanagh (instructed by **Stephen Lickrish & Associates**) for the **Claimant**
The First Defendant appeared in person
Eddison Flint (instructed by **Stephen Lickrish & Associates**) for the **Third Defendant**
The Second and Fourth Defendants took no part in the hearing

Hearing date: 8th January 2021

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JUDGMENT

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time of hand-down was 10.30am on 30th March 2021.

HH Judge Eyre QC:

Introduction.

1. On 7th September 2020 the First Defendant ("Mr. Robinson") issued an application for the committal of the Claimant and the Third Defendant for alleged non-compliance with four court orders made in 2019. On 8th January 2021 the matter came before me on the hearing by MS Teams of the application by the Claimant and the Third Defendant for the striking out of that committal application. I reserved judgment at the conclusion of the hearing but in the course of my consideration of the arguments it became apparent that further submissions were appropriate as to the source of my powers in light of the issue identified at [38] below. I invited further submissions in that regard and received written submissions from Mr. Robinson and from the Third Defendant, the latter of whose submissions were adopted by the Claimant.

2. The Claimant and the Third Defendant are married to each other and although they are separately represented there is no material difference between their stance and interests for current purposes. I will refer to them as "the Taylors" save on the occasions when a distinction is to be drawn between them.

3. The committal application is the latest of a series of applications in an acrimonious dispute. The proceedings started with a claim being brought against Mr. Robinson by Mr. Taylor. At the hearing of a preliminary issue a finding on that issue was made in Mr. Robinson's favour. That resulted in a costs order against Mr. Taylor. The bulk of the amount later assessed as due in respect of that order is still outstanding and unpaid.

4. The Taylors contend that the committal application is to be struck out as being inadequately particularised; as failing to comply with the requirements of the CPR; and as being an abuse of process by reason of the principle enunciated in *Henderson v Henderson* (1843) 3 Hare 100. Mr. Robinson does not concede that the committal application is deficient procedurally or in terms of particularisation and denies any abuse of process.

The Background to the Committal Applications

5. I have already noted that Mr. Robinson did not commence the proceedings which started this train of events but was instead the defendant to a claim which failed and that he has still not received the major part of the costs which the court ordered should be paid to him. The Taylors are now both bankrupt and Mr. Robinson believes that the Taylors have deliberately sought to conceal or secrete assets in order to avoid paying him. It is that belief which underlies the committal application. Mr. Robinson says that the breaches which he alleges and in respect of which he seeks the Taylors' committal are instances in the course of sustained attempts by the Taylors improperly (and Mr. Robinson says dishonestly) to hide assets so as to thwart the costs order in Mr. Robinson's favour. In his words he believes that he has been "led a merry dance". In that regard Mr. Robinson points, amongst other matters, to the fact that the discharge of the Taylors' from their bankruptcies has been suspended contending that this shows that their obstructiveness has extended to their

dealings with their trustee in bankruptcy. I make it clear that I am not determining the extent to which, if at all, Mr. Robinson's contentions are correct although it will be seen at [10] below that at least in relation to one transaction there has been a judicial finding that Mrs. Taylor was acting with the intention of putting property beyond Mr. Robinson's reach. In any event I have no doubt from considering the documents and from Mr. Robinson's oral submissions that he has a genuine sense of grievance. I am satisfied that the sundry applications he has made including the current committal application result from that sense of grievance and the belief that he has been wronged and not from any improper vindictiveness.

The Procedural History.

6. It is necessary to set out the procedural history in some detail.

7. The action was begun in 2013 and it resulted in the dismissal of the claim with a costs order against Mr. Taylor being made in Mr. Robinson's favour. There was a detailed assessment of the costs on 25th October 2016 and Mr. Robinson's recoverable costs were assessed in the sum of £135,480.86. £40,000 had been paid on account and so by an order of 2nd November 2016 Mr. Taylor was ordered to pay the balance of £95,480.86 by 15th November 2016.

8. Mr. Robinson became concerned that the Taylors were disposing of their assets so as to avoid enforcement of that costs order. He applied for a freezing order and on 15th January 2019 HH Judge Pearce made such an order against the Taylors on Mr. Robinson's without notice application. The matter came back before Judge Pearce on 8th February 2019. The Taylors did not attend that hearing but Judge Pearce had before him a letter from their solicitors. By an order sealed on 14th February 2019 Judge Pearce continued the freezing order. He also, at [16], ordered Mr. Taylor to provide by 22nd February 2019 copies of his credit card statements for the period from January 2012 to December 2017 together with statements for a Santander bank account. Mrs. Taylor was ordered, at [17], to provide by the same date copies of her Santander bank statements. Judge Pearce also made an interim charging order in Mr. Robinson's favour charging Mrs. Taylor's interest in 67 Preston Road, Whittle-le-Woods (the Taylors' home) with the sums due under the order of Deputy District Judge Benson to which I will turn shortly.

9. On 12th April 2019 Mr. Robinson applied for a variation of the existing order so as to require the Taylors to provide further information about their assets. He also sought their committal for alleged failures to make the disclosure required by order of 14th February 2019. The matter came back before Judge Pearce on 2nd May 2019 and he varied his earlier order by an order sealed on 11th June 2019. At [16A] he ordered that Mr. Taylor was by 28th June 2019 to swear and serve an affidavit setting out details of: all his assets exceeding £5,000 in value; any motor vehicles in his control giving details of their location; and all his bank accounts other than the Santander account already identified. At [16B] Mr. Taylor was ordered by 28th June 2019 also to provide copies of bank statements in respect of any additional bank or building society accounts which were disclosed. At [17A] and [17B] Mrs. Taylor was ordered

to swear an equivalent affidavit and to make equivalent disclosure also by 28th June 2019. At the same time Judge Pearce gave directions in respect of the committal application. Those directions required service by Mr. Robinson of an amended committal application which was to be compliant with CPR Pt 81 and to identify separately the alleged acts of contempt. Judge Pearce directed that the committal application be heard on 24th July 2019.

10. In the meantime Mr. Robinson had brought proceedings against Mrs. Taylor under section 423 of the Insolvency Act 1986 alleging that a transfer from Mrs. Taylor to Diana Woods, her mother, had been entered into with the intention of putting property beyond Mr. Robinson's reach. That application was successful and by an order of 4th February 2019 Deputy District Judge Benson recorded a finding that the transfer had been "a transaction that was entered into to defraud a creditor" and ordered Mrs. Taylor to pay Mr. Robinson £46,500 together with costs of £5,200 by 25th February 2019.

11. In accordance with Judge Pearce's directions the committal application of 12th April 2019 came before HH Judge Stephen Davies on 24th July 2019. By an order sealed on 26th July 2019 Judge Davies struck out the committal application because Mr. Robinson had produced no evidence that the earlier order had been personally served on the Taylors and because the application did not comply with CPR Pt 81 or contain the necessary information. Judge Davies then proceeded to order that Mr. and Mrs. Taylor post to the court by 16th August 2019 witness statements fully and properly complying with [16], [16A], [16B] and [17], [17A], and [17B] respectively of the 11th June 2019 order. It is the Taylors' alleged breach of this order which forms the core of the committal application with which I am concerned.

12. On 14th August 2019 the Taylors provided statements but Mr. Robinson says that they were not complete and did not amount to proper compliance with the order of Judge Davies.

13. The sums due to Mr. Robinson were not paid and on 3rd October 2019 and 16th September 2019 respectively Mr. and Mrs. Taylor were made bankrupt on their own petitions. On 3rd October 2020 orders were made in those bankruptcies suspending the Taylors' discharge until the fulfilment of conditions as set out in the orders.

14. On 3rd February 2020 Mr. Robinson applied again for the committal of the Taylors. He alleged non-compliance with the orders of 14th February 2019 and 11th June 2019.

15. Nine breaches on the part of Mr. Taylor were alleged. Seven of these related to the 14th February 2019 order. Mr. Taylor was said to have breached the freezing provision of that order by having opened new bank accounts on 23rd February and 2nd March 2019 with a view to bypassing the restrictions in the freezing order and to have used those accounts to receive his wages. Mr. Taylor was also said to have breached the requirements in the order for the provision of information by failing to provide by 22nd February 2019 details of his credit card transactions, bank account transactions, assets, and motor vehicles. In relation to those breaches the application made reference to Mr.

Taylor's statements of 22nd July and 14th August 2019 but contended that these were deficient because they did not give full details of the assets or transactions and failed to provide the location of the vehicles identified. In addition two breaches of the order of 11th June 2019 were alleged and it was said that Mr. Taylor had failed to provide by 28th June 2019 details of all his bank accounts including the account into which his salary was paid together with statements for that account. Nine breaches on the part of Mrs. Taylor were alleged. These substantially mirrored the allegations against Mr. Taylor with immaterial differences. They again asserted breaches of the orders of 14th February and 11th June 2019 and made reference to Mrs. Taylor's statement of 14th August 2019 which was said to have been deficient in various respects.

16. In the affidavit he filed in support of that application Mr. Robinson made a number of references to the order of 26th July 2019 and to the Taylors' alleged failure to comply with it.

17. Thus at [11] Mr. Robinson said:

> "Mr. and Mrs. Taylor have not supplied the documents required by the penal order issued by HHJ Davies. This order relates to numerous previous orders, in the last hearing HHJ Davies made Mr. Taylor very aware of the requirements to comply with the order. Despite this Mr. and Mrs. Taylor [have] again chosen to ignore their obligations…"

18. At [16] he said:

> "At a committal hearing on 24th July 2019 Mr. Brian Taylor stated a new bank account was opened by Mr. and Mrs. Taylor with Nationwide to bypass the restrictions imposed on the existing account due to the freezing order…."

19. In the concluding section of this affidavit Mr. Robinson set out, at [27], a list of fourteen "notable issues" which he said demonstrated that "when dealing with the court Mr. & Mrs. Taylor are prepared to do and say anything". This was followed, at [28], by a list of thirteen instances where it was said that the Taylors "have continued to ignore court orders". The last of these was:

> "m. 24th July order to disclose – breached not provided."

20. That application came before HH Judge Hodge QC for directions on 20th February 2020. The Taylors did not attend that hearing but their solicitors had written to the court inviting the striking out of the application by reason of the bankruptcies of the Taylors. Judge Hodge declined to do so observing that the contempts alleged were said to have taken place before the Taylors were made bankrupt. Judge Hodge listed the application for a two-day hearing on 2nd and 3rd June 2020.

21. On 2nd June 2020 the hearing commenced before Judge Pearce and Mr. Robinson began giving evidence in the absence of the Taylors. At 1.40pm solicitors for the Taylors emailed the court seeking an adjournment on the grounds of Mrs. Taylor's asserted ill-health and the Taylors' desire to instruct lawyers to represent them. Judge Pearce adjourned the matter but expressed concern about the waste of court time which had been caused by the Taylors' failure to seek an adjournment earlier.

22. The matter was relisted for hearing on 11th June 2020. Again the Taylors sought an adjournment on the day of the hearing. Judge Pearce adjourned the hearing again but expressly recorded that he was doing so with reluctance and recorded also that the Taylors had been warned that any further non-compliance with directions on their part could cause the court to draw the inference that they were deliberately seeking to frustrate the committal application of 3rd February 2020.

23. On 19th August 2020 that committal application came before HH Judge Halliwell for hearing. There was a two-day hearing and on 20th August 2020 Judge Halliwell gave judgment dismissing the application.

24. The current committal application was issued on 7th September 2020. I will shortly turn to consider its terms in detail but it will be noted that it is the third such application which Mr. Robinson has made.

25. The application came before Judge Halliwell for directions on 15th October 2020 and by an order sealed on 29th October 2020 the learned judge ordered that the matter be listed on 16th December 2020 for further directions and also for the court to consider, first, whether to permit Mr. Robinson to amend his application and, second, whether parts of the application should be struck out. The order provided that Mr. Robinson was by 5th November 2020 to file and serve particulars of the alleged contempts ("the Particulars") "in the form required by CPR 81.10 (3)": that was a reference to CPR Pt 81 in the form current at the time the committal application was issued. The order required the Particulars to specify which provisions of which court orders were alleged to have been broken and to specify the acts or omissions alleged to amount to a contempt but to be limited to that information. However, it also permitted Mr. Robinson, again by 5th November 2020, to append to the Particulars a document ("the Support Document") referring to the information which was to be relied upon in support of the allegations of breach and to file affidavit evidence in support of the amendment application and the committal application. Any application to amend so as to incorporate the Particulars and the Support Document in the committal application was to be made by 5th November 2020. The Taylors were to make any application for striking out of the application by 3rd December 2020. Judge Halliwell also directed that a written transcript be obtained of the ex tempore judgment he had given on 20th August 2020.

26. Despite Judge Halliwell's order no transcript of his August judgment has yet been prepared. However, it is not disputed that the crucial factor in his conclusion that the 3rd February committal application was to be dismissed was that it had transpired that the orders of 14th February 2019 and 11th June 2019 had been served on the Taylors after the dates provided in those orders for the provision of the witness statements and information (namely 22nd February and 28th June 2019). It followed that at the time of service of the orders it had not been possible for the Taylors to comply with them. In addition Judge Halliwell was not persuaded that the opening by the Taylors of a bank account or accounts was a breach of the freezing order.

27. Mr. Robinson did file an amendment application together with an affidavit, Particulars, and a Support Document but only did so on 14th December 2020. Mr. Robinson explained that this was because he had only received a copy of the order of 29th October 2020 on 2nd November 2020 and that this had given him minimal time before 5th November 2020 to prepare the documents given that he was having to do so at weekends and in the evenings when not occupied in his full-time work. However, it is to be noted that Mr. Robinson attended the hearing on 15th October 2020 and so was presumably aware then of the timetable being laid down by Judge Halliwell.

28. On 7th December 2020 the Taylors applied to strike out the committal application as being an abuse of process; as failing to comply with the requirements as to particularisation of a committal application; and as failing to disclose reasonable grounds for bringing the application. The Taylors also sought relief from sanction in respect of their failure to make the application in compliance with Judge Halliwell's directions. In seeking that relief the Taylors' solicitors explained that they had been first instructed at the time of the hearing in October 2020 and because of home working in the context of the Covid-19 pandemic had not been aware of the precise terms of Judge Halliwell's order until after 19th November 2020.

29. The matter came before me on 16th December 2020 but it could not be heard substantively then and I gave directions leading to the hearing on 8th January 2021.

30. For the reasons I set out orally on 8th January 2021 I granted both sides relief from sanction in respect of their failures to comply with the timetable laid down by Judge Halliwell. It follows that I am able to consider the strike out application and to do so by reference to the committal application in the form in which Mr. Robinson now wishes to present it.

The Committal Application.

31. The committal application in its proposed amended form consists of the Particulars and the Support Document together with an affidavit sworn on 14th December 2020 (to which the Support Document was exhibited).

32. The Particulars set out six separate allegations against each of Mr. Taylor and Mrs. Taylor. The format of each allegation is similar and follows that of the first allegation against Mr. Taylor which says that:

> "On 16 August 2019 Mr. Brian Taylor deliberately breached a penal order by not complying with the penal order (24 July 2019 issued 26 July 2019) paragraph 2, in that Mr. Brian Taylor did not provide a witness statement that properly complied with paragraph 16 clause a which required copies of the statements showing all transactions on any credit card which he may have held in the period 1 January 2012 to 31 December 2012"

33. In somewhat condensed form the allegations against Mr. Taylor are as follows (with the numbers in parentheses being the paragraph number of the allegation in the Particulars – a number of allegations having been removed by amendment on the part of Mr. Robinson):

(2) A breach on 16th August 2019 of the 26th July 2019 order by failing to provide copies of statements showing credit card transactions in the period 1st January 2012 to 31st December 2017 (the reference to 2012 in the Particulars being a clear typing error).

(9) A breach on 16th August 2019 of the 26th July 2019 order by failing to provide copies of bank statements for account no 43701545.

(10) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out all his assets in the witness statement in that he failed to mention his pensions.

(12) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out in the witness statement the location of his motor vehicles.

(13) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out in the witness statement details of all his bank or building society accounts whether in his own name or held jointly or held in the name of others.

(14) A breach "on 1 April 2019 and 30 June 2019 and 16 August 2019" of the orders of 15th January 2019, 14th February 2019, and 11th June 2019 by disposing of assets.

34. The allegations, again in condensed form, against Mrs. Taylor are:

(11) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out all her assets in the witness statement in that she failed to mention her pension.

(15) A breach "on 1 April 2019 and 30 June 2019 and 16 August 2019" of the orders of 15th January 2019, 14th February 2019, and 11th June 2019 by disposing of assets.

(21) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out in the witness statement the location of her motor vehicles.

(22) A breach on 16th August 2019 of the 26th July 2019 order by failing to set out in the witness statement details of all her bank or building society accounts whether in her own name or held jointly or held in the name of others "specifically" by failing to provide details of the bank account into which her wages were being paid.

(23) A breach on 16th August 2019 of the 26th July 2019 order by failing to provide details of the transactions on her bank accounts in particular for those which received her salary and into which a payment of £3,783.35 was made on 12th May 2018. It is said that Mrs. Taylor provided a bank statement showing the latter transaction but failed to provide details of the account into which the payment was made.

> (24) A breach on 16th August 2019 of the 26th July 2019 order by failing to provide receipts or evidence to support the expenditure to which she had referred in a witness statement made in January 2019 pursuant to the order of Deputy District Judge Benson.

35. The affidavit is principally concerned with addressing the strike out application and other procedural matters and it is in the Support Document that the substance of the material on which Mr. Robinson relies as demonstrating the Taylors' breaches is contained. This document runs to about 90 pages and consists of text written by Mr. Robinson into which other documents have been inserted by way of cutting and pasting. By way of example paragraph 4 is said to contain the material supporting paragraph 2 of the Particulars (the allegation that Mr. Taylor failed to disclose his credit card statements). At 4.1 Mr. Robinson sets out what he contends is evidence that Mr. Taylor only sought the relevant documents after 16th August 2019 and then inserts the text of a letter from Mr. Taylor dated 5th September 2019. Then at 4.2 Mr. Robinson sets out the evidence said to show that the amounts paid by way of Mr. Taylor's Visa card were substantial. This consists of a two-page schedule of dates and payments followed by 57 pages of copy bank statements. That format is continued throughout the Support Document with an assertion that the evidence in support of a particular allegation is being set out which assertion is then followed by copies of bank, building society, or credit card statements; copies of correspondence; and extracts from witness statements.

The Power to Strike Out a Committal Application.

36. The court's power to strike out a committal application was formerly set out in paragraph 5 of the Practice Direction to RSC Ord 52. As explained by Briggs J in *Sectorguard PLC v Dienne PLC* [2009] EWHC 2693 (Ch) at [23] this provided for striking out on three alternative grounds namely: the absence of a reasonable ground for committal; abuse of process; and procedural default.

37. From 1st October 2012 the provisions of RSC Ord 52 were replaced by CPR Pt 81 and Practice Direction 81. At paragraph 16.1 the Practice Direction set out the same grounds for striking out a committal application.

38. On 1st October 2020 the former CPR Pt 81 was replaced in its entirety by a new Pt 81. The new Pt 81 does not itself contain any reference to a power for the court to strike out a committal application. In that regard it replicated the approach taken in RSC 52 and the former Pt 81. However, unlike them it was not supplemented by a Practice Direction. The current position accordingly is that neither the Rules nor any applicable Practice Direction make any reference to the court having a power to strike out a committal application. What effect does that have on the current application? Does the court nonetheless have power to strike out the committal application?

39. The provisions of CPR Pt 3.4 do not assist because they address the striking out of a statement of case or a part thereof. A statement of case is defined at CPR Pt 2.3(1) as meaning:

> "(a) … a claim form, particulars of claim where these are not included in a claim form, defence, Part 20 claim, or reply to defence; and
>
> (b) includes any further information given in relation to them voluntarily or by court order under rule 18.1"

It follows that a statement of case does not include a committal application made by an application notice under CPR Pt 23.

40. As I have already explained I invited and received the parties' further submissions on this issue.

41. Mr. Robinson based his submissions on an article "Committal for contempt: CPR Part 81 and recent cases" by Richard Ascroft of counsel which Mr. Robinson appears to have downloaded from the website of Guildhall Chambers. I did not understand Mr. Robinson to be contending that I did not have a power to strike out a committal application as an abuse of process. Rather he relied on Mr. Ascroft's assessment of the authorities to argue that the current application is premature and that striking out is not appropriate in the particular circumstances and I will address those arguments when considering whether to strike out this committal application.

42. Mr. Flint, whose submissions were adopted by Mr. Cavanagh, contended that notwithstanding the absence of express words the court has an inherent power to dismiss a committal application on the ground of abuse of process and referred me to the decision of the Court of Appeal in *Taylor v Ribby Hall Leisure Ltd* [1998] 1 WLR 400. Alternatively he submitted that to the extent that the transition from the former CPR Pt 81 created a mismatch between the position before and after the change I should follow the approach taken by Marcus Smith J in *Secretary of State for Transport v Cuciurean* [2020] EWHC 2723 (Ch) at [6] and adopt whichever position was most favourable to the person subject to the committal proceedings. In the circumstances here that would, he said, entail assuming that the previous power to strike out remained in being.

43. I am satisfied that the court has an inherent power to strike out a committal application which is an abuse of process. That power is an inherent one deriving from the court's right to control its own proceedings so as to prevent abuse of its process and is exercisable notwithstanding the absence of express reference to it in the CPR or in a Practice Direction.

44. That conclusion follows from the approach of the Court of Appeal in *Taylor v Ribby Hall Leisure Ltd*. In delivering the judgment of the court Mummery LJ explained the position as follows at 407H – 408B:

> "Our conclusion is that there is an inherent discretionary power in the court to strike out both contempt or supervisory proceedings as an abuse of process. …
>
> The absence of the limitation period for initiating a proceeding does not preclude the power to strike out for abuse of process. There may exist a legal right to initiate proceedings at any time, but the exercise of that right

> must nevertheless be subject to the overriding power of the court to protect the integrity of its own processes."

45. In the circumstances of that case the inherent power was invoked to strike out committal proceedings as an abuse where the delay in commencing such proceedings meant that there was an abuse of process. The power was available and was used notwithstanding the absence of a limitation period for bringing such proceedings. Although concerned there with delay the Court of Appeal clearly regarded the power as being a wide-ranging one to take such steps as were necessary to protect the integrity of the court's process.

46. That conclusion is reinforced by consideration of the nature of practice directions (the power to strike out having formerly been set out in the practice directions to RSC Order 52 and CPR Pt 81). In *Bovale Ltd v SSCLG* [2009] EWCA Civ 171, [2009] 1 WLR 2274 at [28] Waller and Dyson LJJ explained that the issuing of a practice direction is an exercise of the court's inherent power. It follows that a practice direction is an explanation and enunciation of that inherent power and of how it will be exercised in particular circumstances but that a practice direction does not of itself create new powers. If a practice direction were to be issued supplementing the new Pt 81 it would not give the court any new power but would simply be a statement of the existing power. It follows that if there is an inherent power to strike out a committal application the absence of a practice direction referring to that power does not remove the power or preclude its use. The existence of the court's inherent power notwithstanding the absence of any express reference to it in the Rules or a practice direction can be see even more clearly when attention turns to the approach set out by Lord Bingham in *Johnson v Gore Wood* [2002] 2 AC 1. At 22 D – G Lord Bingham adopted the statement of Lord Diplock in *Hunter v Chief Constable of the West Midlands* [1982] AC 529 at 536 that there is an:

> "inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people"

Lord Bingham went on to say that the former RSC Ord 18 r 19 was a "manifestation" of that power. The power was inherent in the court and the rule was a manifestation of it but not its source.

47. I explain below my assessment of Mr. Robinson's argument that the principle in *Henderson v Henderson* does not apply to committal applications. He contends that this means that there is no power to strike out a committal application as an abuse of process on that basis alternatively that it is inappropriate to do so. As will be seen below I have concluded that the court does have power to strike out a committal application if it is an abuse of process by reference to the *Henderson v Henderson* principle. I am, moreover, satisfied that the exercise of that power is an aspect of the court's inherent power to control its own process and no more constrained by the absence of reference to it in the Rules or a practice direction than is its power to strike out for an abuse of process arising in some other way.

Is the current Committal Application adequately particularised?

48. CPR Pt 81 now sets out at 81.4 (2) nineteen matters which must be included in a committal application unless, in the case of six elements, they are "wholly inapplicable". Reference is made to this requirement in Mr. Lickrish's statement in support of the strike out application and in the skeleton argument of Mr. Flint. It is said that the committal application does not meet the requirements of CPR Pt 81 and this is put forward as a factor supporting striking out. The committal application does not contain all the matters listed in CPR Pt 81.4 (2) but that does not of itself mean that it is appropriate to strike this committal application. The application was issued on 7th September 2020 and so before CPR Pt 81 took its current form. The fact that the application would not have been compliant with the CPR if issued on or after 1st October 2020 does not mean that it was not compliant with the Rules when issued.

49. In that regard it is significant that Judge Halliwell's order of 29th October 2020 did not require Mr. Robinson to serve particulars compliant with the then current form of CPR Pt 81. Instead at [3] the learned judge ordered Mr. Robinson to serve "particulars of each alleged contempt on which he relies … in the form required by CPR 81.10 (3)". That was a reference to the former terms of CPR Pt 81 which had provided at 10 (3) that the application notice had to:

> "a) set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known the date of each of the alleged acts; and
>
> b) be supported by one or more affidavits containing all the evidence relied upon".

50. In *Super Max Offshore Holdings v Malhotra* [2019] EWHC 2711 (Comm) Sir Michael Burton set out the principles to be applied when the court was considering the striking out of a committal application having first noted that it was the party seeking striking out who bore the burden of establishing that this was appropriate. The first, second, and eighth of the principles identified by Sir Michael Burton were in the following terms and are relevant here:

> "8. First, the court order and the particulars of breach of it must be clear and comprehensible, and the particulars must make plain the thrust of the claimant's case (see e.g. per Woolf LJ in *AG for Tuvalu v Philatelic Distribution Corporation Ltd* [1990] 1 WLR 926 at 42).
>
> 9. Secondly, the particulars of breach must be supported by prima facie evidence contained in the affidavits or witness statements, and any exhibits, accompanying the application, so as to show a real prospect of success.
>
> ….
>
> 15. Eighthly, whereas at the end of a committal hearing, after all the evidence has been considered, if there can be seen to be more than one reasonable inference to be drawn, and at least one of them is inconsistent with a finding of contempt, or if an innocent explanation of the contempt is a real possibility (see

> *Daltel Europe Ltd v Makki*[2005] EWHC 749 Ch at 30 per David Richards J, followed by Teare J in *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm) at 9), the claimant fails. But that is not the appropriate test in considering a claimant's claim at the outset, such as I am doing here."

51. It follows that I am to consider whether the application satisfies those requirements both as to form and substance. The fact that Mr. Robinson represents himself does not mean that he can bring an application which does not comply with the requirements of the CPR or of proper particularisation (see *Giles v Tarry* [2012] EWCA Civ 1886 at [15] per Lewison LJ and *Barton v Wright Hassall* [2018] UKSC 12 at [18] per Lord Sumption) let alone an application which is an abuse of process. In that regard it is also to be remembered that the Taylors are private individuals facing an application which if successful could result in the loss of their liberty. However, although Mr. Robinson's position does not excuse any failure of proper particularisation it does mean that he is not to be criticised for using language different from that which a lawyer might use or for setting out matters in a somewhat different way provided the end result complies with the Rules and is adequately particularised.

52. I will consider the Particulars and the Support Document together. Those are the documents which contain the case against the Taylors. Mr. Robinson contends that when they are read together his allegations are clear. It would not be appropriate to strike out the committal application solely because a matter which should have been in the Particulars is in the Support Document or vice versa. I accept Mr. Robinson's assertion to me that he had tried to get the balance right having been told in the course of his previous applications not to put everything in the application itself and to separate out the material he relies on. The question is not one of whether the balance between the Particulars and the Support Document is right but whether those two documents when read together and with the affidavit enable the Taylors and the court properly to identify the allegations being made and the acts or omissions which are said to amount to contempt. In that exercise I will assess both whether the allegations are properly particularised and whether reasonable grounds for alleging contempt are shown.

53. I turn first to the allegations against Mr. Taylor:

i) At (2) Mr. Robinson alleges a failure to provide copies of statements showing all Mr. Taylor's credit card transactions from 1st January 2012 to 31st December 2017. The Support Document incorporates a letter of 5th September 2019 in which Mr. Taylor sought copies of his credit card statements from Kevills Solicitors together with a schedule of amounts paid to a Visa credit card and copies of the bank statements from which that schedule was compiled. Although it is not said in terms that there was a failure to disclose the Visa card statements the allegation is made clearly and the supporting material provides reasonable grounds for the allegation.

ii) The allegation at (9) is of a failure to provide copy bank statements for the bank account identified in paragraph 16(a) of Judge Pearce's order.

In the Support Document Mr. Robinson explains that Mr. Taylor's witness statement of 14th August 2019 had exhibited some pages of the statements from that account and had said that the pages which were missing "did not include transactions". Mr. Robinson says that in June 2020 he obtained bank statements covering the missing dates one of which he incorporates showing that it did include transactions. The nature of the allegation namely that Mr. Taylor did not provide full copies of the relevant bank statements is clear and material prima facie establishing it is set out.

iii) The allegation at (10) is of a failure to mention assets with that failure consisting of a failure to disclose pensions. The Support Document incorporates an extract from Mr. Taylor's witness statement of 10th June 2020 in which he admits not disclosing details of his pension saying that this was because he believed he was not obliged to disclose it because he believed that it was not an asset against which a creditor could enforce a right to payment. The allegation is accordingly clearly stated, namely that Mr. Taylor's pension was an asset which should have been disclosed but which was not. Mr. Cavanagh adopts Mr. Flint's argument that a breach has not been shown in respect of the non-disclosure of the pensions because Mr. Robinson has not provided evidence to show that Mr. Taylor or Mrs. Taylor had sufficient access to their pensions for those to qualify as assets. In my judgement the fact that Mr. Robinson has not spelt out the details of the pension or of Mr. Taylor's rights in respect of it does not mean that the allegation is not adequately particularised. The statement of Mr. Taylor to which Mr. Robinson refers accepts that the former has a pension and says that there was a deliberate decision not to disclose it. Mr. Robinson is not to be criticised for failing to give details of a pension which Mr. Taylor accepts he has but which he has not disclosed. It may well be that in due course it will be accepted that the pension was not an asset for the purposes of Judge Pearce's order but at this stage the allegation is properly particularised and reasonable grounds for alleging contempt have been set out.

iv) At (12) it is said that Mr. Taylor failed to provide the location of his motor vehicles. The Support Document contains an extract from Mr. Taylor's 14th August 2019 statement in which Mr. Taylor gives the registration numbers and values of a car and a motor bike but does not disclose their location. The breach may well turn out to have been innocent or of limited gravity but the nature of the allegation is clear and it appears to be substantiated by reference to Mr. Taylor's own statement.

v) At (13) it is said that Mr. Taylor failed to provide details of all his bank or building society accounts. The Support Document incorporates a copy of documents from Mr. Taylor's employer seeming showing salary payments of £2,796 in each of June and July 2019 and it is asserted that no bank statement showing receipt of those payments has been disclosed. The allegation is clear, namely that there is a bank

account into which those payments were made and that it was not disclosed, and there are reasonable grounds for the allegation being advanced.

vi) The allegation at (14) is one of the diminution or disposal of assets in breach of the restrictions imposed by the various freezing orders. It is set out in the most general of terms in the Particulars. However, the Support Document explains that what is being alleged is that there were withdrawals from a Nationwide Building Society account in amounts exceeding the £700 weekly allowance provided for in the orders. The Support Document incorporates schedules and copy account statements which are said to show such withdrawals. A professional lawyer might well have made the contention in a rather better structured form but the allegation is sufficiently clearly particularised and substantiated for Mr. Taylor and the court to be able clearly to see what is being alleged and for the contention to be prima facie substantiated.

54. Addressing the allegations against Mrs. Taylor:

i) At (11) she also is said to have failed to disclose a pension. The Support Document confirms that no reference was made to a pension in Mrs. Taylor's 14th August 2019 witness statement. It does not contain a reference mirroring Mr. Taylor's acceptance that he had a pension which had not been disclosed. To that extent it is less well particularised but reference is made to Mrs. Taylor's employment and the nature of the allegation is clear.

ii) The allegation at (15) is of a diminution of assets in breach of the freezing orders. In the Support Document reference is made to the same schedules and copy statements as are relied upon as demonstrating the disposal of assets by Mr. Taylor. There appears only to be one bank statement in relation to Mrs. Taylor and if the matter proceeds it will be necessary for Mr. Robinson to identify which schedule and statements are said to relate to Mrs. Taylor but the allegation is sufficiently clear and sufficiently particularised for striking out to be inappropriate.

iii) At (21) a failure by Mrs. Taylor to disclose the location of her motor vehicle is alleged and the Support Document contains an extract from her statement of 14th August 2019 giving the registration number of a car but not disclosing its location. As with Mr. Taylor the allegation is clear although of limited gravity.

iv) Then at (22) a failure to provide details of the bank account into which Mrs. Taylor's wages were being paid is alleged. The Support Document contains extracts from statements by Mr. Taylor giving details of his wife's employment and place of work and the allegation that her wages were paid into an account which has not been disclosed is clear and adequately particularised.

v) The allegation at (23) is that there was a breach of paragraph 17A (c) of Judge Pearce's order in that it was there ordered that Mrs. Taylor disclose the account in her name which received a payment of £3,783 on 12th May 2018. In the Particulars it is said that although Mrs. Taylor disclosed the account from which the payment was made she did not, in her 14th August 2019 statement, disclose the account which received the payment. This is a clear and precise allegation and does not fall to be struck out as inadequately particularised.

vi) Finally at (24) it is said that Mrs. Taylor failed to provide receipts verifying the expenditure to which she had referred in a statement of 27th January 2019. The Support Document incorporates an extract from Mrs. Taylor's 14th August 2019 witness statement in which she says that she is unable to provide any such receipts because her "life has been in a terrible state of flux in the last few months due to ill health and having to vacate [the] family home … and therefore records are very hard for me to find." It is to be noted that paragraph 17B (b) of Judge Pearce's order required Mrs. Taylor to provide "such receipts as she may have" verifying the expenditure. For a breach of that order to be proved it would not be sufficient for it to be shown that Mrs. Taylor failed to provide receipts. A breach would only be established if it were to be shown if that Mrs. Taylor had receipts which she failed to disclose. For that allegation to be properly particularised and for reasonable grounds to be shown Mr. Robinson would have to set out and identify the receipts (or at least the categories of receipts) of which he alleges that Mrs. Taylor had possession contrary to the assertion in her 14th August 2019 witness statement together with prima facie grounds for a finding that Mrs. Taylor had such receipts. He has not done so and so that aspect of the committal application falls to be struck out by reason of inadequate particularisation.

55. It follows that with the exception of the allegation at paragraph 24 of the Particulars the committal application is not to be struck out by reason of any inadequacy of particularisation or of a failure to disclose reasonable grounds for seeking committal.

Abuse of Process.

56. Mr. Robinson issued his first committal application on 12th April 2019 alleging breach of the order of 14th February 2019. The second application was issued on 3rd February 2020 alleging breaches of the orders of 14th February and 11th June 2019. Finally, on 7th September 2020 (and so less than three weeks after the dismissal of the 3rd February application) Mr. Robinson issued the current application alleging breaches of Judge Davies's order of 26th July 2019 with those alleged breaches being said to have been committed on or before 16th August 2019.

57. The Taylors contend that it is an abuse of process by reference to the principle in *Henderson v Henderson* for Mr. Robinson to make this further committal application. They say that the current allegations could and should have been made as part of the application issued on 3rd February 2020 and that Mr.

Robinson not having done so it is an abuse for him to make a further committal application.

58. Mr. Robinson accepted that he could have included in the committal application of 3rd February 2020 allegations that the Taylors were in breach of the order of 26th July 2019. He does not, however, accept that he should have done so and denies that his actions are an abuse of process. In his oral submissions Mr. Robinson explained that he did not include allegations relating to the 26th July 2019 order in the earlier application because he wanted to avoid overcomplicating matters or overloading the committal application and because he did not regard it as necessary. He said that he believed that findings that the Taylors were in breach of Judge Pearce's orders would result in sufficient punishment of the Taylors. It follows that Mr. Robinson accepted that he made a deliberate decision choosing not to allege breaches of the July 2019 order in February 2020. I note that at points in the Support Document Mr. Robinson refers to information which he obtained after 3rd February 2020 and relies on this as evidence of the breaches alleged. I have reflected whether Mr. Robinson's concession that he could have included the current matters in the earlier application went too far and whether there were some aspects of the current application which could not have been included. That is not an argument advanced by Mr. Robinson and I am satisfied that he was in a position to make the current allegations in February 2020 and that the material which came to light in the course of 2020 took the form of confirming Mr. Robinson in his belief as to the breaches by the Taylors rather than of disclosing breaches of which he was previously unaware.

59. In addition Mr. Robinson disputes the applicability of the *Henderson v Henderson* principle to committal applications or at least to the current application. He says that the current application relates to breaches of a separate court order from that which was the subject matter of the 3rd February 2020 application and that it was neither necessary nor appropriate for him to have made reference to the current matters at that time. In support of his contentions Mr. Robinson places considerable emphasis on the decision of the Court of Appeal in *Re W* [2011] EWCA Civ 1196 [2012] 1 W.L.R. 1036 to which I will turn below.

60. The approach to be taken to applying the *Henderson v Henderson* principle to cases where a party is seeking to enforce private law rights is well-established. The fact that a claim could have been made in earlier proceedings but was not does not necessarily mean that it will be an abuse of process to make that claim in subsequent proceedings. The question of whether there is an abuse is to be determined on the basis of a "broad merits-based" assessment considering whether the claim not only could but should have been brought in the earlier proceedings and whether making it in the subsequent proceedings is "oppressive" and will amount to "unjust harassment" of the other party. In that regard see *Johnson v Gore Wood* per Lord Bingham at 30 H – 31F and *Aldi Stores Ltd v WSP Group plc* [2007] EWCA Civ 1260¸[2008] 1 WLR 748 at [6] per Thomas LJ adopting the summary of the *Johnson v Gore Wood* approach set out by Clarke LJ in *Dexter v Vlieland-Boddy* [2003] EWCA Civ 14 at [49] – [53].

61. To what extent, if at all, is the *Henderson v Henderson* principle applicable to committal applications?

62. In *Sectorguard plc v Dienne plc* the claimants brought applications to commit for contempts which had consisted of making of false statements in a witness statement and of the breach of an undertaking. The former application required permission under RSC Ord 32 Rule 14 (2)(b), a provision now contained in CPR Pt 81.3 (5)(b), and the application for permission was adjourned. Having adjourned the permission application Briggs J addressed the defendant's application to strike out the committal application in respect of the alleged breach of undertaking.

63. Briggs J rejected the argument that the committal application failed to show reasonable grounds for alleging contempt and then turned to the question of abuse of process. At [44] – [47] having considered factors of particular significance when a committal application is brought other than for a legitimate purpose and in particular where it relates to a purely technical contempt or where the application is otherwise wholly disproportionate to the conduct in question Briggs J concluded thus that such conduct was an abuse of process and such applications fell to be struck out:

> "44. It is now well established, in the light of the new culture introduced by the CPR, and in particular with the requirements of proportionality referred to in CPR 1.1(2) as part of the overriding objective, that it is an abuse of process to pursue litigation where the value to the litigant of a successful outcome is so small as to make the exercise pointless, viewed against the expenditure of court time and the parties' time and money engaged by the undertaking: see *Jameel v. Dow Jones & Co* [2005] QB 946 per Lord Phillips at paragraphs 54, 69 and 70 (conveniently extracted in note 3.4.3.4 on page 73 of the 2009 White Book).
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> 45. The concept that the disproportionate pursuit of pointless litigation is an abuse takes on added force in connection with committal applications. Such proceedings are a typical form of satellite litigation, and not infrequently give rise to a risk of the application of the parties' and the court's time and resources otherwise than for the purpose of the fair, expeditious and economic determination of the underlying dispute, and therefore contrary to the overriding objective as set out in CPR 1.1. The court's case management powers are to be exercised so as to give effect to the overriding objective and, by CPR 1.4(2)(h) the court is required to consider whether the likely benefit of taking a particular step justifies the cost of taking it. Furthermore, paragraph 5 of the Contempt Practice Direction makes express reference to the court's case management powers in the context of applications to strike out committal proceedings.
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> 46. It has long been recognised that the pursuit of committal proceedings which leads merely to the establishment of a purely technical contempt, rather than something of sufficient gravity to justify the imposition of a serious penalty, may lead to the applicant having to pay the respondent's costs: see *Adam Phones v. Goldschmidt* (supra) per Jacob J at 495 to 6, applying *Bhimji v. Chatwani* [1991] 1 All ER 705. Jacob J concluded, by reference to that case:

> `Since that judgment the Civil Procedure Rules have come into force. Their emphasis on proportionality and on looking at the overall conduct of the parties emphasises the point that applications for committal should not be seen as a way of causing costs when the defendant has honestly tried to obey the court's order.'
>
> 47. Committal proceedings are an appropriate way, albeit as a last resort, of seeking to obtain the compliance by a party with the court's order (including undertakings contained in orders), and they are also an appropriate means of bringing to the court's attention serious rather than technical, still less involuntary, breaches of them. In my judgment the court should, in the exercise of its case management powers be astute to detect cases in which contempt proceedings are not being pursued for those legitimate ends. Indications that contempt proceedings are not so being pursued include applications relating to purely technical contempt, applications not directed at the obtaining of compliance with the order in question, and applications which, on the face of the documentary evidence, have no real prospect of success. Committal proceedings of that type are properly to be regarded as an abuse of process, and the court should lose no time in putting an end to them, so that the parties may concentrate their time and resources on the resolution of the underlying dispute between them."

64. Briggs J concluded, at [48] and following, that the application there to commit for breach of an undertaking was such an abuse because it had no real prospects of success. However, he said that it was also abusive because it was being pursued "otherwise than for the legitimate motive of seeking enforcement of [the undertaking] or bringing to the court's attention a serious rather than a purely technical contempt" (see [53]) and that the applicant had "alighted upon the breach of [the undertaking] as a stick with which to beat its opponents… rather than as a genuine means of enforcing compliance" (see [54]).

65. Briggs J did not address abuse of process taking the form considered in *Johnson v Gore Wood* by reference to *Henderson v Henderson*. Nonetheless his exposition of the factors of particular note in relation to committal applications is relevant to such applications generally. It is not to be regarded as confined to cases where the committal application is abusive because it is brought for an improper purpose. In particular Briggs J's assessment that committal proceedings are a form of satellite litigation giving rise to a particular risk that the court's time and resources will be diverted from the fair and expeditious determination of the underlying dispute is of general applicability.

66. Although Briggs J was principally influenced by the risk of committal proceedings generating unproductive and costly satellite litigation he also, at [46], drew attention to the serious penalty which can result from a committal application. A person found to be in contempt is at risk of imprisonment and that is a highly relevant consideration when considering whether a committal application is abusive. It is because of the potential consequences of a committal application that the courts have been assiduous in requiring such applications to be properly particularised and that is why CPR Pt 81 now spells out in detail the matters which must be contained in such an application.

Those potential consequences are a further reason why the court should be alert to strike out abusive committal applications. Subject to the effect of *Re W* the court should be alert to protect its procedure from being abused so as to put a person unnecessarily or inappropriately at risk of imprisonment.

67. The Taylors contend that Mr. Robinson has not issued this third committal application for a legitimate motive. They assert that he has issued the application as a way of putting pressure on them to make payment of the sums due to him. Neither Mr. Cavanagh nor Mr. Flint were able to explain quite how such pressure would work in the circumstances of the Taylors' bankruptcies with the sums due to Mr. Robinson being debts provable in those bankruptcies. I am in any event satisfied that Mr. Robinson is not acting in bad faith. It was apparent from his evidence and from his submissions to me that Mr. Robinson genuinely believes that the Taylors had acted improperly and that they have deliberately sought to escape the consequences of the orders that have been made. Mr. Robinson is not simply using the contempt proceedings as a stick with which to beat the Taylors nor are the matters he alleges, if established, purely technical contempts. Mr. Robinson is putting before the court conduct which he asserts is a serious breach of the orders in his favour and is seeking redress for that conduct. However, neither the absence of bad faith on Mr. Robinson's part nor the gravity of the breaches alleged against the Taylors are determinative of the question of abuse of process. The question is whether the issuing of the third committal application is an abuse of process when seen in the context of the case as a whole and viewed objectively. If Mr. Robinson's motive for issuing the application had been illegitimate that would have been a distinct ground on which the application could have been characterised as an abuse of process but the legitimacy of his motive does not preclude the conclusion that there is abuse. In that regard it is to be remembered that cases where the *Henderson v Henderson* principle is invoked as the basis for striking out a claim of any kind will typically be cases where the claimant is acting in good faith and where the claim is a potentially sound one. If that were not so the claim in such a case would fall to be struck down on other grounds.

68. I have already noted that Mr. Robinson relied heavily on the decision of the Court of Appeal in *Re W*. However, before analysing the effect of that decision it is necessary to consider *Villiers v Villiers* [1994] 1 WLR 493 a decision which to a large extent informed the approach taken in *Re W.* In the earlier case the appellant had committed repeated breaches of non-molestation orders. In the order under appeal he had been sentenced to a total of 30 months' imprisonment through the combination of a 12 month sentence being imposed for a further breach and the activation, to run consecutively, of an 18 month suspended sentence imposed previously for a separate breach of the same order. The Court of Appeal was concerned with the question of whether that sentence was permissible in the light of the limit of two years on imprisonment for contempt set out in section 14 (1) of the Contempt of Court Act 1981. The Court concluded that the two year limit operated as the maximum cumulative total for all sentences imposed on the same occasion no matter how many separate contempts or separate applications were being dealt with on that occasion.

69. The substantive judgments were delivered by Sir Thomas Bingham MR and by Hoffmann LJ with Henry LJ agreeing with both judgments. The Master of the Rolls and Hoffmann LJ both considered what the position would be if different contempt applications were brought before the court on different occasions.

70. At 499F Sir Thomas Bingham MR said that it would be an abuse of process if the court timetable were to be manipulated so as to engineer a situation in which different contempts were brought before the court on different occasions so as to circumvent the two year limit on terms of imprisonment. However, he clearly envisaged circumstances in which it would not be abusive for there to be a series of committal applications brought at different times saying:

> "On the other hand, where, in the ordinary course, different contempts came before the court on different occasions and without any manipulation of the timetable it may be that cumulative sentences of more than two years could be justified."

71. At 500D Hoffmann LJ said:

> "I agree with Sir Thomas Bingham M.R. that the "occasion" in section 14(1) is the hearing at which the sentence is imposed or a suspended sentence is activated, irrespective of the number of contempts or applications with which the court is dealing. In order to make this principle work it is necessary to try to ensure that all the allegations of contempt which could at any time be brought before the court, are so far as possible, considered on a single occasion. Otherwise the maximum sentence will depend on the choice of the applicant as to whether to make a single application or multiple applications and the vagaries of the listing system as to when those applications are heard. This means that it may, for example, be prudent for a defendant charged with contempt to invite the applicant to move at the same time or not at all in respect of any other contempt which he thinks that he may have committed. The application of the principle will be very much a matter for the discretion of the judge at the hearing; but I have no doubt that, with common sense, it should be possible to give effect to the general intention."

72. It is to be remembered that Hoffmann LJ was not addressing the question of abuse under the principle of *Henderson v Henderson* and was concerned with the rather different question of the impact of the maximum sentence provision on multiple actions. It is, however, of note that Hoffmann LJ envisaged a potential defendant calling on an applicant to bring all the latter's contempt allegations at the same time or not at all. It is also significant that Hoffmann LJ and the Master of the Rolls both envisaged the court taking an active role in controlling the listing of multiple contempt applications and that they also envisaged circumstances in which the determination of applications on different occasions could be the result of an abuse of process albeit while making it clear that the making of multiple committal applications was potentially legitimate.

73. In *Re W* the appellant had been committed on 8th April 2011 for breach of an order made on 15th March 2011 requiring him to disclose the whereabouts of his child. That order had been preceded by the appellant's committal on 11th June 2010 for his failure to cause the return of his abducted child in breach of

orders made by Hogg and Mostyn JJ. On 11th June 2020 the appellant had also been ordered to disclose the whereabouts of the child. That order had been followed by the order of 15th March 2011 and the subsequent committal.

74. The appellant contended that a committal order should not have been made because it amounted to punishing him twice for a single course of conduct. McFarlane LJ noted that the contempt for which the appellant had been punished in June 2010, namely the failure to return the child, was different from that for which he had been punished in 2011, namely the refusal to provide information as to the child's whereabouts. However, he explained that he would address the question as if the position were that precisely the same breach had been alleged "namely a failure to disclose information when before Mostyn J and then a continued failure to disclose information when subject to a further order in front of Baker J" (see [33]). On that footing McFarlane LJ explained at [34] that each further breach was a separate contempt and could justify separate committal orders in these terms:

> "Whilst the father's mindset is a dogged and dishonest one, set upon maintaining his daughter out of the jurisdiction and apart from her mother, and his behaviour from day to day may be a manifest of that mindset, that behaviour is nevertheless in my view fresh and further behaviour on each occasion he is required to undertake an act and fails to do it. A man who is the subject of an injunctive prohibition not to molest, assault or interfere with, his former partner may be of a mindset which drives him to be in contact with her over and over again in a manner which breaches the injunction. Each such contact, if proved, would be a fresh breach of the order and might justify committal orders which, cumulatively, over time, if imposed on separate occasions, would result in him spending more than two years in prison. The lawfulness of such an outcome was expressly contemplated by Sir Thomas Bingham MR in *Villiers v Villers* [1994] 1WLR 493."

75. Having considered the decision in *Kumari v Jalal* [1997] 1 WLR 97 McFarlane LJ said at [37]:

> "In a more tangential way, I regard that too as authority for the process of repeat resort to the court, despite failures positively to take action which is required by court orders. As in the case of prohibitive injunctions, it must in my view be permissible as a matter of law for the court to make successive mandatory injunctions requiring positive action, such as the disclosure of information, notwithstanding a past failure to comply with an identical request. A failure to comply with any fresh order would properly expose the defaulter to fresh contempt proceedings and the possibility of a further term of imprisonment."

76. Then he added at [38]:

> "While such a course is legally permissible, the question of whether it is justified in a particular case will turn on the facts that are then in play. It will be for the court on each occasion to determine whether a further term of imprisonment is both necessary and proportionate."

77. Tomlinson LJ agreed and then Hughes LJ delivered a short concurring judgment the relevant passage for present purposes being that at [50] – [52] saying:

> "50. I also agree. Some of the relevant principles applicable to repeated or successive contempts applicable to this case include these. First, if the timetable is manipulated with a view to avoiding the two-year maximum sentence imposed by section 14 of the Contempt of Court Act 1981 by bringing separate contempts before courts on two or more occasions when they could be brought before it on a single occasion, it will very likely be right simply to refuse to impose a consecutive sentence on a subsequent occasion; see *Villiers v Villiers* [1994] 1WLR 493.
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> "51 Second, there is no doubt that there may be successive or repeated contempts of court constituted by positive acts disobeying an order not to do them. For my part, I am quite satisfied that there may also be consecutive or successive contempts of court constituted by repeated omissions to comply with a mandatory order positively to do something. However, where the latter is in question, it is plain that there may well come a time when further punishment will be excessive. When that will be is a matter of fact for each case.
>
> "52 Thirdly, the mechanism when either there has been manipulation of the timetable or the point has been arrived at when further punishment would be wrong is as it seems to me likely to be simply to refuse to make any further order. It seems to me unlikely that the concept of abuse of process adds anything of significance to that simple power in cases of this kind."

78. Mr. Robinson relies on that decision as demonstrating that successive breaches of different orders requiring substantially the same action by a party are separate contempts which can be punishable separately and in respect of which successive committal applications can be appropriate. He points out that McFarlane and Hughes LJJ each envisaged, at [38] and [51] respectively, the appropriateness of repeated applications and in particular of punishment for the repeated contempts being considered at the stage of sentencing and not before. In that regard it is said to be significant that Hughes LJ expressly stated that the concept of abuse of process did not add anything of significance to the court's power to decline to make a committal order after an application has been heard. In addition Mr. Robinson relies on the similarity between the breaches in *Re W* and the breaches he alleges in this case. In each there was (if Mr. Robinson's contention as to the Taylors' actions is correct) a repeated failure to provide information notwithstanding repeated orders directing the provision of that information.

79. It is important to remember that the Court of Appeal was addressing an appeal against sentence and that in that case there had been no application at an earlier stage to strike out the committal application. The propositions of law set out by McFarlane and Hughes LJJ have to be seen in that context. In particular it is to be noted that Hughes LJ's reference to abuse of process was made in a case of a particular kind and at a particular stage. That reference was moreover made in carefully guarded terms. I do not understand either *Re W* read as a whole or Hughes LJ's judgment in particular as being authority for the proposition that there is no scope for striking out a committal application on the ground of abuse of process. Such a proposition would be inconsistent with the reference to such a power in the Practice Direction to RSC Order 52 at the time of the decision in *Re W* let alone the repetition of that reference in the Practice Direction to CPR Pt 81 introduced the year following *Re W*. It is

to be noted that the Court of Appeal had not been referred to the approach adopted by Briggs J in *Sectorguard* nor to Mummery LJ's words in *Taylor v Ribby Hall Leisure Ltd*. That is unsurprising given that the question before the Court was an appeal against sentence in a case where the issue of striking out had not arisen.

80. The effect of *Villiers v Villeirs* and *Re W* is that there can be successive separate committal applications for successive separate breaches of the same order and separate committal orders can result. It is not necessarily an abuse of process for such successive applications to be made although there will be an abuse if the applications are in reality an attempt to manipulate the court process so as to circumvent the statutory maximum sentence. All the more it follows that it can be permissible for a party to bring successive committal applications for separate breaches of different court orders even where those orders relate to the same subject matter and where the breaches consist of essentially the same default.

81. However, the fact that such applications are permissible and are not necessarily an abuse of process does not mean that they are incapable of being an abuse of process in a particular instance. The former Practice Directions expressly envisaged committal applications being struck out on the ground of abuse of process and that power was exercised by Briggs J in *Sectorguard.* Moreover, in *Taylor v Ribby Hall Leisure Ltd* the Court of Appeal invoked the court's inherent power to strike out a committal application on the ground of abuse of process. Abuse of process can take many forms and very often will not involve a breach of the *Henderson v Henderson* principle. There is, however, no basis in principle or in authority for excluding the operation of the *Henderson v Henderson* principle from cases where a party seeks to commit another for an alleged contempt. To do so would be to say that there is a form of abuse of process which the court cannot control in the context of committal proceedings. In that regard I have already explained my analysis of *Taylor v Ribby Hall Leisure Ltd* as authority for the proposition that the court's power to strike out committal proceedings as an abuse of process derives from an inherent power to prevent its process being abused. Absent authority there is no basis for saying that the power is only capable of being exercised in respect of some forms of abuse and as just explained *Re* W is not authority for such a restriction. The public interest in the finality of litigation and the principle that parties should not be vexed twice in the same matter are as relevant to committal applications as to other types of proceedings. The latter principle might, indeed, be said to have added force in the case of committal applications where the defendant is at risk of imprisonment and where the wrong in question is the breach of a court order rather than a breach of a private law right.

82. It follows that there is a power to strike out a committal application by reference to the *Henderson v Henderson* principle. In considering whether to exercise that power the broad merits-based assessment set out in *Johnson v Gore Wood* is to be undertaken with the court having regard to whether the application in question amounts to unjust harassment of the potential

defendant though noting, where applicable, the context of separate breaches of separate court orders being distinct acts of contempt punishable separately.

83. Before engaging in that assessment I must consider the two additional arguments which Mr. Robinson advanced in his further written submissions and which he derived from Mr. Ascroft's article.

84. The first is an argument by reference to alleged prematurity. Mr. Robinson relies on paragraph 31 of Mr. Ascroft's article where he said:

> "Although it has been suggested that complaints of abuse arising out of delay etc are generally best made at the substantive hearing of any committal application rather than by way of pre-emptive strike-out (*Taylor and anr v Ribby Hall Leisure Ltd and anr* (supra) at 409 H – 410 A), more recent authority encourages targeted strike-out applications (as least where the alleged abuse of process is said to arise because the committal application is alleged to be pursued for ulterior or improper purposes or where the alleged contempt is technical rather than serious): see *Sectorguard plc v Dienne* [2009] EWHC 2693 (Ch) at [44]-[47], endorsed by Hamblen J (as he then was) in *Public Joint Stock Company Vseukrainsky Aktsionernyi Bank v Maksimov* [2014] EWHC 4370 (Comm) at [22]; see also *Navigator Equities Ltd and anr v Deripaska* [2020] EWHC 1798 (Comm) at [139]."

85. In the passage in *Taylor v Ribby Hall Leisure Ltd* to which Mr. Ascroft referred Mummery LJ said:

> "In our judgment it is, in general, preferable to make submissions on delay, prejudice, potential injustice and other factors relevant to the court's discretion in its contempt and supervisory powers at the substantive hearing rather than by a preliminary pre-emptive move to strike out. That procedure may be open to the objection that it increases the costs and delay that preliminary procedures are intended to avoid."

86. Mr. Robinson says that the application here is not being pursued for improper or ulterior motives and so the court should be wary of acceding to a pre-emptive strike out application. It is true that in the cases cited by Mr. Ascroft Briggs, Hamblen, and Andrew Baker JJ were addressing committal applications which were potentially being brought for improper purposes but it is not only in those cases that it can be appropriate to strike out a committal application in advance of trial. Indeed Mr. Ascroft was not suggesting that but was pointing to a more general move away from the note of caution sounded by Mummery LJ. Moreover, it is to be noted that the order striking out a committal application in advance of the trial was upheld in *Taylor v Ribby Hall Leisure Ltd.*

87. In my judgement the appropriate approach is as follows. The court should be conscious that a committal application is typically a form of satellite litigation. It should, accordingly, be wary of encouraging further satellite litigation within that satellite litigation which could have the effect of increasing delay and costs still further and diverting even more time and resources from the main dispute between the parties. Moreover, there will be some cases where

the question of abuse will depend on or be influenced by the conclusions reached on contested questions of fact. Thus there may be cases where it is only after findings of fact have been made that it will be possible to assess the gravity of the contempt in question and so consider whether committal proceedings were or were not disproportionate. In such cases it may not be possible properly to determine the question of abuse before the substantive hearing of the committal application or it may be that to do so would give rise to a particular risk of generating additional expense. Nonetheless there will be cases where it will be appropriate to strike out a committal application at an early stage and those cases are not confined to instances where the application is brought for an improper purpose. Cases where the committal application is not adequately particularised or where no tenable grounds for committal are shown are obvious instances where an early strike out application would be merited. That is also the position where a committal application is potentially abusive by reference to the principle in *Henderson v Henderson.* The abuse in such a case consists of bringing the committal application in circumstances when to do so amounts to an unjust harassment of the respondent because the matters relied upon should properly have been advanced in an earlier application. If in such circumstances the court were to decline to consider striking out the application on the grounds of abuse of process until the substantive hearing then to a large extent the abuse against which the principle is directed would already have occurred by the time striking out was considered. In such circumstances the respondent would by having to contest the application to a substantive hearing have suffered the unjust harassment against which he is to be protected. It follows that the current strike out application does not fail on the ground of prematurity and if the committal application is an abuse of process by reference to the *Henderson v Henderson* principle it is to be struck out now.

88. Mr. Robinson derives his second additional argument from paragraph 37 of Mr. Ascroft's article which said:

> "Where the alleged contempt is a failure to comply with a court order, the scope for striking out the committal application as an abuse may be reduced, at least where the non-compliance has not been remedied: see *Absolute Living Developments Ltd v DS7 Ltd and ors* [2018] EWHC 1717 (Ch) at [36]."

89. Mr. Robinson contends that the Taylors have still not complied with the orders and that this means that "there is no scope for striking out the application." It will immediately be noted that Mr. Ascroft puts the matter rather more tentatively in his article.

90. In *Absolute Living Developments Ltd v DS7 Ltd* Marcus Smith J was considering an application to commit the defendant for breaches of a freezing order which had required him to provide information as to his assets and bank accounts. Thus there were similarities in that regard to the current case. The learned judge adjourned two alleged breaches which were contested. However, there were five breaches which were admitted but which the defendant argued were so trivial that the application to commit in respect of them should never have been made and which meant the application was abusive by reference to the approach set out by Briggs J in *Sectorguard*.

Marcus Smith J struck out one of the alleged breaches where there had been compliance albeit late with the order. However, he declined to strike out the others. It was in that context that he said at [36]:

> "When considering whether an allegation of contempt, which is accepted as factually well-founded, should nevertheless be struck out as an abuse of process, it is necessary to bear in mind the following:
>
> > (1) The contempt jurisdiction exists generally only in relation to orders that have a penal notice and that have been personally served on the defendant. The public interest in seeing such orders obeyed is, inevitably, a strong one. Since a court can be presumed not to make unnecessary orders, where an order of the court remains uncomplied with, it seems to me extremely difficult to say that contempt proceedings in relation to such a contempt can ever be said to be an abuse of process. (emphasis in original)
> >
> > (2) Where the defendant – albeit in past breach of the order – has now complied with the order or has taken steps to regularise his breach (for instance, by seeking an extension of time for compliance, and apologising for the past non-compliance), that is a factor suggesting that contempt proceedings may not be necessary.
> >
> > (3) Whether that factor is determinative depends upon the seriousness of the breach. Seriousness has two aspects to it:
> >
> > > (a) *Deliberation.* In [47] of *Sectorguard*, Briggs J. classified breaches of order into *(i)* serious, *(ii) technical* or *(iii)* involuntary. "Technical" breaches are breaches where the defendant's conduct was intentional and where he knew of all the facts which made that conduct a breach of the order, but where the defendant did not appreciate that his conduct did breach the order. "Involuntary" breaches are those cases where even this element of deliberation is absent. "Serious" or "contumelious" breaches are those going beyond the technical, generally because the defendant has deliberately breached the order.
> > >
> > > (b) *The importance of the order in question.* Some orders are more important than others. Although, of course, all orders of the court must and should be obeyed, breach of some orders can have more serious consequences than breaches of other orders. In *JSC BTA Bank v. Solodchenko (No. 2)* [2011] EWCA Civ 1241 at [55], Jackson L.J. emphasised the fact that any substantial breach of a freezing order was a serious matter.
> >
> > (4) The number of breaches of an order are a relevant factor. As I have noted, CPR 81.10(3)(a) requires each act of contempt to be separately enumerated. That, however, does not mean that where there are a series of breaches, the court should not take this fact into account when considering whether the contempt application is an abuse of process."

91. It will immediately be seen that the proposition at sub-para (1) is stated in strong terms and that the emphasis was in the original. The words used must nonetheless be seen in the context of the particular matters which were before Marcus Smith J where the breaches were undisputed and where there was no

question of an invocation of the *Henderson v Henderson* principle. In the present case the breaches are disputed and that principle is invoked by reference to previous committal proceedings which were brought after the breaches had allegedly taken place. The question of outstanding non-compliance with an order will be of relevance, potentially of great relevance, when deciding if a committal application is or is not an abuse of process. Nonetheless the proposition set out by Marcus Smith J in the particular circumstances of the *Absolute Living Developments* case does not invalidate nor directly contradict either the reasoning set out above or the approach I have identified as applicable. Even in a case where it is said that there has not yet been compliance with the underlying order that proposition does not prevent the *Henderson v Henderson* principle operating to cause a committal application to be struck out as an abuse of process in a case where the alleged breach is disputed and where the court is satisfied that the application could or should have been made previously.

92. I turn now to the assessment required by *Johnson v Gore Wood*. There are a number of factors which support Mr. Robinson's contention that his current application is not an abuse of process. Thus:

i) The breaches of which Mr. Robinson now complains and in respect of which he seeks committal are breaches of a different court order from those to which the 3rd February 2020 application related. Moreover, it is Mr. Robinson's contention that the breaches have not been remedied in that he contends that the Taylors have still not complied with the July 2019 order.

ii) Mr. Robinson had taken the view it had not been necessary at the time of the 3rd February 2020 application to seek the Taylors' committal for breach of the 26th July 2019 order because a committal for breach of the earlier orders would have been sufficient to vindicate his position and to mark the misconduct of the Taylors. Such a committal would, moreover, have been likely to have had a sufficient coercive effect in bringing about compliance. Mr. Robinson was accordingly seeking to avoid overburdening or overcomplicating the proceedings.

iii) There has been no substantive determination of the merits of the contention that there were breaches of the 26th July 2019 order. Indeed, the substantive merits of the previously alleged breaches of other orders have not been determined. The committal application of 12th April 2019 was struck out because Mr. Robinson had not shown personal service of the relevant orders and because the application was in any event inadequately particularised. The application of 3rd February 2020 was also dismissed without consideration of the adequacy or otherwise of the information provided by the Taylors with the dismissal being because the relevant orders had not been served until after the dates for compliance. This is not a case where Mr. Robinson is seeking to revive claims the merits of which have previously been adjudicated upon and there has not yet been a finding as to whether the information supplied by the Taylors at any stage fulfilled the requirements of the orders to which they were subject.

iv) As I have noted above Mr. Robinson is not acting in bad faith nor by reason of an illegitimate motive. This point, however, has very limited force. I must look to the objective effect of Mr. Robinson's application and not primarily to the intention with which it was issued. An illegitimate motive can mean an application is abusive but the crucial question is not Mr. Robinson's subjective intent but the effect of his actions. In that regard it is of particular note that this is the third occasion on which the Taylors have been confronted with a possible loss of their liberty.

v) The application is potentially meritorious. Moreover, although some of the breaches alleged (such as the failures to state the locations of the motor vehicles) are comparatively minor there are others (such as the failure to disclose all the relevant bank statements) which are serious matters. However, neither the potential merits nor the gravity of the conduct alleged can be determinative given that, as explained above, most claims of any kind which are liable to be treated as abusive by reason of the *Henderson v Henderson* principle will be potentially meritorious because otherwise there would be no need to invoke that principle.

93. The following matters can be said to be indicative that the latest committal application is an abuse of process:

i) The breaches of the 26th July 2019 order on which Mr. Robinson now relies all predated the committal application of 3rd February 2020. They were known about at that time and could have been included in that application. Indeed reference was made in the February 2020 application to the July 2019 order and to the statements of 14th August 2019 which are now said to have been deficient.

ii) The decision not to include the current breaches in the February 2020 application was a deliberate one with Mr. Robinson choosing to base his application solely on the breaches of the other orders.

iii) The current application was issued within days of Judge Halliwell's dismissal of the February 2020 application.

iv) The fact that the February 2020 application failed primarily because of Judge Halliwell's conclusion that the orders of 14th February 2019 and 11th June 2019 were not served until after the dates for compliance with them had passed rather than because of a finding on the substantive merits is of very limited weight in Mr. Robinson's favour. That is because attention is to be focused on 3rd February 2020 and an assessment made as to whether at that date Mr. Robinson not only could but should have included the alleged breaches of the July 2019 order as matters in respect of which committal was sought. The reason why the application alleging breaches of the other orders was subsequently dismissed does not assist in considering whether Mr. Robinson should have included the current matters in that application at the outset.

v) The effect of Mr. Robinson's actions is that the Taylors who are private individuals are now facing proceedings which put their liberty in question for the third time in circumstances where the conduct in issue occurred in August 2019.

94. Mr. Robinson was in a difficult position and was seeking to address what he saw as persistent and deliberate misconduct aimed at thwarting the court orders he had obtained in his favour. Moreover, that characterisation of the Taylors' conduct is at least potentially justified. I accept that Mr. Robinson was not deliberately seeking to keep the possibility of a committal application in relation to the July 2019 order in reserve as a card up his sleeve to be used if the February 2020 application did not succeed. That, however, was the effect of his actions. I conclude that Mr. Robinson not only could but should have included the current allegations in the February 2020 application so that all matters could be brought before the court at the same time. His issuing of a fresh committal application founded on those matters is an abuse of process. The effect of his actions was that there was unjust harassment of the Taylors the threat to whose liberty was revived within days of the dismissal of the earlier application. Moreover, if the current matters had been included in the February 2020 application rather than in the current application the costs involved would have been likely to be less; the amount of court time occupied by the matter would also have been likely to be less; and the questions as to the Taylors' actions in August 2019 would have been determined sooner than would be case if the current committal application were to proceed to trial. It follows that the issuing of the current committal application in those circumstances was an abuse of process. The committal application is to be struck out on that ground and the Taylors' application accordingly succeeds.