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Case No: CL-2019-000562

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2023

Before :

MR JUSTICE FOXTON

- -

Between :

OLYMPIC COUNCIL OF ASIA	**Claimant**
- and -	
(1) NOVANS JETS LLP	
(2) NOVANS INVESTMENT LTD	
(3) JULY GRINGUZ	**Defendants**

- -
- -

Michael McLaren KC and **Deborah Horowitz** (instructed by **The Air Law Firm LLP**) for **the Claimant**
John Kimbell KC and **Vincent Scully** (instructed by **Bargate Murray Ltd**) for **the Third Defendant**
The Second Defendant did not appear.

Hearing dates: 30-31 January 2023.
Further written submissions: 1, 2 and 3 February 2023.

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE FOXTON

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be Friday 10 February 2023 at 10:15am.

The Honourable Mr Justice Foxton:

1. This is the hearing of the Claimant's (**OCA**'s) application for the committal of the Second Defendant (**Investments**) and the Third Defendant (**Mr Gringuz**) for contempt of court.

The Background

2. These proceedings stem from an "Aircraft Lease to Purchase Agreement" (**"ALPA"**) dated 31 August 2018 by which OCA agreed to charter an aircraft (**"Aircraft"**) from the First Defendant (**Jets**). The ALPA provided for a substantial upfront payment by OCA to Jets, a prescribed number of "block" hours for OCA's use, and a profit share agreement in relation to the use of the Aircraft by third parties outside of those "blocked" hours.

3. Following a dispute as to whether certain amounts were due from OCA to Jets, Jets purported to terminate the ALPA. OCA brought proceedings against Jets. There was a trial before Moulder J, and in January 2022 OCA obtained judgment for about US$7m, an order for costs of £350,000, and directions were given for the determination of the profit share claim. The order made following the trial (**the January Order**) is important and it is necessary to say a little more about it:

    i) Judgment was entered for OCA for damages in the amount of US$7,079,084.50, to be paid in 14 days.

    ii) Judgment was also entered "for damages, alternatively an account" for payment of OCA's profit share. However, the material was not available at the trial to quantify this claim, with the result that the judgment was effectively one for damages to be assessed.

    iii) Directions were provided for that assessment, which involved sequential submissions by OCA and Jets as to what the appropriate percentage share was, disclosure, the service of statements of case and, if necessary, a further hearing. In the usual way, the order provided for "Liberty to either party to apply to the Court to vary these directions and/or for further directions".

    iv) The disclosure directions were divided into disclosure of material relating to the period up to 31 December 2021, and disclosure of material relating to the period from 1 January 2022 to 31 December 2022.

    v) Paragraph 2(b) provided:

> "In relation to the period from 1 September 2018 to 31 December 2021, the Defendant do disclose to the Claimant within 21 days of the date of this order:
>
> i) a consolidated flight report of all flights operated by the Aircraft for that period, to be categorised by: flight date, departure airport, arrival airport and block hours for each sector;

ii) a copy of the Aircraft logbook showing every flight operated during that period, including positioning flights or other non-revenue/private flights;

iii) the proposed net profit margin of each flight operated by the Aircraft during that period, with supporting documentation evidencing such profits."

vi) Paragraph 2(e) provided:

"In relation to subsequent periods within 2022:

i) The Defendant to provide to the Claimant, on 28 July 2022 and 30 January 2023, the classes of documents set out in 2(b) above for the respective periods 20 January 2022 to 30 June 2022 and 1 July 2022 to 31 December 2022."

vii) Provision was made for costs and interest.

4. Unsurprisingly, there was no penal notice on the January Order. This would have been wholly inappropriate.

5. Jets sought permission to appeal against the January Order, which was refused by Carr LJ. No amounts have been paid pursuant to the January Order, and in 7 July 2022 Jets went into liquidation.

6. On 18 March 2022 (**the March Order**), Moulder J granted a worldwide freezing order against Jets. The March Order contained a penal notice stating:

> "IF YOU, NOVANS JETS LLP, DISOBEY THIS ORDER YOU (AND MR JULY GRINGUZ, A DIRECTOR OF THE SAID NOVANS JETS LLP) MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED."

7. Paragraph 2 of the March Order contained the usual ancillary order requiring Jets to disclose its assets, and Mr Gringuz filed an affidavit in response to that order on 1 April 2022. That affidavit suggested that Jets had sold the Aircraft to one of its corporate members, Investments (I should record that the validity and efficacy of that transfer is disputed, but that is not a matter which arises for determination at this hearing). The return date for the worldwide freezing injunction granted by the March Order was 1 April 2022. At that hearing, Mrs Justice Moulder joined Investments to the proceedings. In addition to continuing the worldwide freezing order against Jets, she also made the order (on a without notice basis) against Investments (**the April Order**).

8. The April Order also included an order for the provision of information as follows:

> "(1) Unless paragraph 8(2) applies, the following must by 4.00pm (GMT) on Friday the 15th of April 2022 be provided to the Applicant's solicitors, from the First Respondent [Jets]:
>
> i. an electronic copy of the final draft of the Asset Purchase Agreement dated 27 November 2020 between the First and Second Respondents ("APA") with metadata, and any documents referred to in the APA;
>
> ii. any information about any entity or entities which have been involved in chartering out the Aircraft for use since the ALPA was suspended, and the terms of such chartering including to which entity or entities the income from chartering has been paid or is payable;
>
> iii. details of all directors, officers and shareholders of, and those with a controlling interest in, and the UBO of, the Respondents, Novans Aviation Ltd, Novans Jets OU, as well as a copy of all of those entities' most recent accounts;
>
> iv. all of the information that was required to be provided under paragraph (2)(b) of the order of Moulder J dated 19 January 2022.
>
> (2) If the provision of any of this information is likely to incriminate the First Respondent, he or it may be entitled to refuse to provide it but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of Court and may render the Respondent liable to be imprisoned, fined or have his or its assets seized."

9. Pausing there, it will be noted that the information order in the April order addressed two distinct issues:

i) First, information relating to the validity of the sale transfer to Investments, and as to whether there had been any change in the beneficial ownership of the Aircraft, which bore directly on the issue of whether the Aircraft was an asset against which the judgment could be enforced: (i) and (iii).

ii) Second, information relevant to the profit share assessment which had been ordered by the January Order: (ii) and (iv) (albeit such information was also material which was relevant to the assets of Jets against which judgment could be enforced).

10. In seeking that disclosure order, Mr McLaren KC submitted:

> "Then, at 26(e)(iii), my Lady will recall that you ordered disclosure to be provided in relation to third-party charters, including documentation and detail of profits. We would like that information to be provided under the ADO because the advantage is that it will come with a penal notice attached to it, assuming you extend the penal

> notice which is already applying to Mr Gringuz. That penal notice, if the information sought is extended, will apply to this information, and then noncompliance with that information of which they should be giving disclosure already could give rise to contempt proceedings. So, my Lady, that is para.26(e). I should point out that on that last point we suspect the only way we are ever going to get disclosure is under a penal notice carrying with it the threat of an application for contempt of court against Gringuz, because a conventional 'unless' order has simply no teeth or leverage in circumstances where the offending defendant already has an unappealable judgment against it."

He repeated that submission in reply ("the advantage being … that it will be covered by a penal notice and that may well be the only leverage to get the defendant to respond").

11. Those submissions recognised, in my assessment correctly, that breach of the obligations in the January Order were not capable, as matters stood, of supporting a committal application. The proposed order was resisted by Mr Ben Joseph for Jets, who submitted that "the WFO is not the proper forum for that request, still less in circumstances when that order was made on 19 January".

12. Mrs Justice Moulder upheld Mr McLaren KC's submissions, for the following reasons:

> "So dealing now with the Disclosure Order which is sought, and looking at the form of the draft order in para.7, the purpose of disclosure orders is to assist in the identification of the location of assets potentially subject to a Freezing Order, and also to assist the judgment creditor to locate assets against which enforcement can be sought.
>
> As far as para.1 of the draft order is concerned it appears as though an executed copy of the APA has been provided, but I agree that an electronic copy with metadata and any documents referred to in the APA should also be provided.
>
> In relation to sub para.2 of the draft order, information about entities which have been involved in chartering out the Aircraft, the terms of the chartering and the entities to which the income has been paid … I am therefore persuaded, given the current order for damages to be assessed by reference to profits earned on the Aircraft, that this sub para.2 is necessary in order to locate assets against which enforcement can be sought.
>
> Given the events which have unfolded recently in terms of ownership of the First Defendant and the apparent transfer of the Aircraft some time ago in November 2020, I accept the submission that OCA needs to understand the company's structure as it now is and that, unless it has an understanding of the structure, it will not be able to identify assets of the First Defendant against which enforcement can be sought. In addition it will enable the Freezing Order to be properly policed.
>
> In relation to sub para.4, which repeats the obligation on Novans to provide the information that was to be provided under para.2(b) of my order of 19 March 2022,

> it was submitted for Novans that this should be the subject of a separate application and that this was not the appropriate place for such an obligation to be included.
>
> It seems to me that it would not in furtherance of the overriding objective to require OCA to make a separate application in order to enforce compliance with an order, which has now been outstanding for some time. Novans is in no way prejudiced in terms of having notice of the obligations with which it should have complied. It will be given a further short period as provided in the draft order, within which it is required to comply, and should Novans fail to comply it will now be at risk of contempt proceedings being brought."

13. The penal notice on the April Order provided as follows:

> "IF YOU, NOVANS JETS LLP OR NOVANS INVESTMENTS LTD DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED."

14. The absence of any specific reference to Mr Gringuz in this notice was not an accident. It reflected the fact that the evidence he had filed before the hearing was that he was not in fact a director of Jets, but of one of its corporate members (having been a director of both members until March 2021).

15. The injunctions came back before Mrs Justice Moulder on 5 May 2022 to continue the March and April Orders. A single order (**the May Order**) was made. The May Order required the provision of information by Investments as follows:

> "Unless paragraph 7 applies, the following must by 4:00pm (GMT) on Friday the 20th of May 2022 be provided to the Applicant's solicitors, from the Second Respondent (to the extent that the following documents are within the possession or control of the Second Respondent and to the extent that the following information is within the knowledge of the Second Respondent):
>
> (1) an electronic copy of those documents referred to in the Asset Purchase Agreement dated 27 November 2020 between the First and Second Respondents ("APA") with metadata, but not the APA itself;
>
> (2) any information about any entity or entities which have been involved in chartering out the Aircraft for use since the ALPA was suspended, and the terms of such chartering including to which entity or entities the income from chartering has been paid or is payable;
>
> (3) details of all directors, officers and shareholders of, and those with a controlling interest in, and the UBO of, the Respondents, Novans Aviation

Ltd, Novans Jets OU, as well as a copy of all of those entities' most recent accounts;

(4) all of the information that was required to be provided under paragraph (2)(b) of the order of Moulder J dated 19 January 2022;

(5) any documents, as defined within civil procedure rule 31.4, relating to either the Second Respondent's intention or the Respondents' common intention as to the purpose of the Asset Purchase Agreement dated 27 November 2020 (the 'APA') and/or the rights and obligations the Respondents intended to create through the APA. Such documents may include (without limitation):

i. Documents passing between the First and Second Respondent in relation to the APA and/or their respective intentions or motivations for entering into the APA.

ii. Documents passing between Mr July Gringuz and Ms. Ilana Avramenko in relation to the APA and/or the Respondents' respective intentions or motivations for entering into the APA.

iii. Documents relating to the 'restructuring activities to ensure the flexibility in operations' that are referenced in the members resolution dated 27 November 2020 and in particular, any documents identifying precisely what those restructuring activities were and why they were deemed necessary."

16. The May Order also extended the time for the provision of the information required by the April Order.

17. The penal notice on the May Order provided:

> "IF YOU, NOVANS JETS LLP OR NOVANS INVESTMENTS LTD (AND MR JULY GRINGUZ, A DIRECTOR OF THE SAID NOVANS INVESTMENTS LTD) DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED."

18. Mr Gringuz was specifically identified as someone against whom committal proceedings might be brought in relation to any breach of the May Order by Investments but not Jets. The reasons for this are not clear.

The Alleged Breaches

19. The first allegation is that Jets failed to disclose its proposed profit margin for each flight operated by the Aircraft from 29 November 2020 to 31 December 2021 with supporting documents evidencing such profits in breach of:

    i) Paragraph 2(b)(ii) of the January Order.

    ii) Paragraph 8(1)(iv) of the April Order (requiring Jets to provide "all of the information that was required to be provided under paragraph (2)(b) of [the January Order]").

    iii) Paragraph 9 of the May Order (extending the time for compliance with paragraph 8(1)(iv) of the April Order).

20. The second allegation is that Jets failed to disclose any information about any entity or entities which have been involved in chartering out the Aircraft for use since the ALPA was suspended, and the terms of such chartering including to what entity or entities the income from chartering has been paid or is payable for the period from 11 March 2019 up to 31 December 2021 in breach of:

    i) Paragraph 8(1)(ii) of the April Order.

    ii) Paragraph 9 of the May Order which extended the time for compliance with that order.

21. The final allegation is Jets' failure to disclose a consolidated flight report of all flights operated by the Aircraft between 30 November 2020 and 31 December 2021 categorised by flight date, departure airport, arrival airport and block hours for each sector for that period in breach of

    i) Paragraph (2)(b)(i) of the January Order.

    ii) Paragraph 8(1)(iv) of the April Order (requiring Jets to provide "all of the information that was required to be provided under paragraph (2)(b) of [the January Order]").

    iii) Paragraph 9 of the May Order (extending the time for compliance with paragraph 8(1)(iv) of the April Order).

Can an Application for Committal be Brought Against Mr Gringuz for Any Breach of the Orders Made Against Jets?

Has the power of committal of directors or other officers of a body corporate for breach of an order made against the body corporate been removed?

22. Until 1 October 2020, when the amended form of CPR 81 came into force, r.81.4 provided:

    "(1) If a person-

> (a) required by a judgment or order to do an act does not do it within the time fixed by the judgment or order; or
>
> (b) disobeys a judgment or order not to do an act,
>
> then, subject to the Debtors Acts 1869 and 1878 and to the provisions of these Rules, the judgment or order may be enforced by an order for committal.
>
> …
>
> (3) If the person referred to in paragraph (1) is a company or other corporation, the committal order may be made against any director or other officer of that company or corporation."

23. In the version of CPR 81 which came into effect on 1 October 2020 (**the October 2020 Version**), there is no such provision. It is common ground that there was no intention to effect any alteration in the substantive law of committal, including as it applied to corporate respondents, and there is no hint of any such change in the consultation paper issued by the Civil Procedure Rules Committee, *Proposed rule changes relating to contempt of court: redraft of CPR Part 81* issued in March 2020 (**the Consultation Paper**).

24. There are also numerous cases making it clear that the October 2020 Version was not intended to change the substantive law of contempt. Mr McLaren KC cited six cases which contain statements along these lines, including *BMF4 PLC and ors v Rizwan Hussain* [2022] EWHC 449 (Ch), [49(vi)], [2022] EWCA Civ 1264, [70]-[72] and *Deutsche Bank AG v Sebastian Holdings Inc* [20202] EWHC 3536 (Comm), [7], [96]).

25. Finally, CPR 81.1(2) provides:

> "This Part does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law".

CPR 81.1(3) further provides that "this Part has effect subject to and to the extent that it is consistent with the substantive law of contempt".

26. The difficulty with these last provisions, however, is that one thing which the October 2020 Version was intended to alter was the previous version of CPR 81, and it was here that the law relating to the committal of directors or officers for breaches of orders by body corporate respondents was to be found.

27. The law of contempt distinguishes in a number of respects between those against whom orders are made, and third parties who act in such a way as to interfere with compliance with such orders. The distinction is explained in *Arlidge, Eady & Smith on Contempt* (5th, 2017), [12-124]:

> "Were it not for specific provisions in the CPR, there would be no need to separate consideration arising purely from their status as directors. Where a director is not a

> party to the litigation himself, and is thus not directly bound by an order against the company, he could be personally liable for a criminal contempt, at common law, but only on the same basis as anyone else; that is to say, if he 'aided and abetted' or did an act intending thereby to subvert the effect of the order."

The authors refer to Finn J in *Australian Competition and Consumer Commission v Dynacast (Int) Pty Ltd* [2007] FCA 429, [74], the judge finding that the respondent, although a shadow director of the company against which the order was made, was not a party to the order, and could only be liable for the common law contempt of aiding and abetting the breach. Mr Kimbell KC also referred to the Hong Kong Court of Appeal decision in *Pappadis v Cris Chiu-Yin Yip* [1989] HKCA 229, to similar effect.

28. The "specific provisions in the CPR" referred to in *Arlidge* is what was r.81.4(3). That provision can be traced back to s.33 of the Common Law Procedure Act 1860, which provided:

> "Writs of Injunction against a Corporation may be enforced either by Attachment against the Directors or other Officers thereof, as in the Case of a Mandamus, or by Writ of Sequestration against their Property and Effects, to be issued in such Form and tested and returnable in like Manner as Writs of Execution, and to be proceeded upon and executed in like Manner as Writs of Sequestration issuing out of the Court of Chancery."

29. The immediate origins of s.33 are unclear. James Stephen, *The Common Law Procedure Act 1860*, 35 noted that while many of the provisions of the Act resulted from the work of the Common Law Commission 1850, s.33 was "not traceable to any recommendations contained in the report". In *Dar Al Arkan Real Estate Development Co and another v Refai and others* [2014] EWCA Civ 715, [33], Beatson LJ noted:

> "It was because, absent a power over the directors and officers of companies which disobey orders of the court, the court's disciplinary powers over them would be significantly weakened, that a policy decision was taken to, in the words of *Arlidge, Eady & Smith on Contempt* , 4th ed (2011), para 12-116, 'exert pressure' on those who have accepted responsibility by virtue of their offices in the company."

30. Section 33 was repealed by the Statute Law Revision Act 1950, Schedule 1 paragraph 1. By that point, a provision to similar effect had been incorporated into the Rules of Supreme Court 1883, (Order 42 rule 31). This was in due course replaced by the Rules of the Supreme Court 1965, Order 45 rule 5, which finally gave way to CPR 82.4(3). Until the October 2020 Version, therefore, there had always been a statutory or delegated legislation foundation for committal proceedings against directors in respect of breaches of court orders made against companies.

31. Turning to the October 2020 Version:

i) As noted above, r.81.1(2) and (3) provide that the October 2020 Version does not alter the scope and extent of the jurisdiction of court determining contempt proceedings, and has effect subject to and to the extent that it is consistent with the

substantive law of contempt. There is some scope for argument as to whether the rule that was CPR 81.2(3) was part of "the substantive law of contempt", or a procedural provision addressing how an order is to be enforced. In my assessment, the better view is that it is a legal principle which was substantive in content, but one which took effect via procedural statutes and rules.

ii) CPR 81.2 defines "penal notice" as follows:

> "A prominent notice on the front of an order warning that if the person against whom the order is made (and in the case of a corporate body, a director or officer of that body) disobeys the court's order, the person (or director or officer) may be held in contempt of court and punished by a fine, imprisonment, confiscation of assets or other punishment under the law".

This pre-supposes that the previous principle relating to the position of the directors or officers of bodies corporate remains part of the law of contempt. However, it could be argued that the provision only provides that directors or officers "may be held liable", leaving open whether the test to be applied in determining whether there is such a liability is that arising under the "special provision" which preceded the October 2020 Version, or the more exacting "wilful interference" basis for contempt which applies to non-parties at common law. The Consultation Paper (at p.9) stated that "this definition is an amalgam covering as succinctly as possible all bases (prominence, corporate bodies and types of punishment)".

iii) The effect of CPR 81.4(2)(e), taken together with CPR 81.2, is that there is a requirement that an order made against a body corporate includes a penal notice in these terms, if an application for committal is to be made.

iv) Rule 81x.20, which remains in force alongside the October 2020 Version, prescribes the contents of a writ of sequestration to enforce a judgment, order or undertaking. Rule 81.x.20(1) provides that "if a person required by a judgment or order to do an act or does not do it within the time fixed by the judgment or order … the judgment or order may be enforced by a writ of sequestration against the property of that person". Rule 81x.(3) provides:

> "If the person referred to in paragraph (1) is a company or other corporation, the writ of sequestration may in addition be issued against the property or any director or other officer of that company".

v) These provisions have led the editors of *White Book 2022*, Vol 2, [3C-24.1] to conclude that "the contempt jurisdiction over directors of a corporate party (recited by the old CPR r.81.4(3)), [is] implicit in the new CPR r.81.2 and the retention of r.81x.20 for the purposes of enforcing writs of sequestration)."

32. Clearly, the position under the October 2020 Version in relation to committal applications against the directors or officers of a body corporate which has not complied with a court order requiring it to do (or abstain from doing) something is not as clear as it could be. Mr Kimbell KC understandably, and very properly, pointed to the seriousness of the

committal jurisdiction, the potentially highly adverse consequences it can have for a director or officer of a company who is the subject of such an application, and the clarity which is generally required of statutes or delegated legislation which are alleged to have made particular individuals susceptible to criminal punishment: *Bennion, Bailey and Norbury on Statutory Interpretation* (8th), section 26.4 ("the principle against doubtful penalisation").

33. Nonetheless, I am satisfied that the intention in the October 2020 Version to preserve the existing law as to the circumstances in which a director or officer may be subject to a committal application in relation to the breach of an order made against a company is sufficiently clear:

i) Specific provision is made in CPR 81.2 for committal applications against, or the imposition of a sanction for contempt on, the directors or officers of a body corporate, who are clearly being treated in a different category from other non-parties to a court order.

ii) CPR 81.1(2) and (3) make it clear that the October 2020 Version is not intended to alter the substantive law of contempt.

iii) That reference to substantive law is, in my assessment, in this context to be read as including the principles and case law which determine the circumstances in which an application for committal may be made against a director or officer in respect of a breach of a court order by a body corporate.

34. In this regard, I note that both parties before Mrs Justice Cockerill in *ADM International SARL v Grain House International SA* [2023] EWHC 135 (Comm) proceeded on the basis that the October 2020 Version had not altered the law so far as the directors and officers of body corporates who breached court orders was concerned (see [97]-[98]).

35. In the remainder of this judgment I will refer to the rule that was embodied in CPR 81.4(3) and the associated case law, and which I have held remains part of the substantive law of contempt of court, as the **Body Corporate Provision**.

36. Given this conclusion, it is not necessary to determine whether there is any special rule of liability of the directors of corporations for contempt at common law, which would exist independently of the Body Corporate Provision. I would note, however, that Stephen's commentary on s.33 of the 1860 Act states at p.68:

> "With respect to enforcing a peremptory mandamus against a corporation aggregate, the law seems to be to the following effect. Where the corporation at large have the power and duty to perform the act in question, the writ is directed against the corporation by its name of incorporation, and may be enforced by attachment against those members who actually, at a corporate meeting, voted against obeying the writ; or, who having been duly summoned, stayed away from such meeting without adequate excuse."

I have struggled to identify any clear statement of principle in the cases Stephen cites in support of this summary, and perhaps their true significance is hidden from the 21st century legal mind. Nonetheless, it cannot be assumed that, prior to the Common Law Procedure Act 1860, the courts lacked means to commit those natural persons who were responsible for the non-compliance by a corporation with an injunction.

Does the Body Corporate Provision apply to a Limited Liability Partnership?

37. Jets is an English Limited Liability Partnership (**LLP**). I am satisfied that an LLP falls within the term "body corporate" in the Body Corporation Provision for the following reasons:

i) First, it is clear that the concept of "body corporate" in the Body Corporation Provision applies not simply to English companies, but to legal persons established under the laws of other countries: *Dar Al Arkan v Real Estate Development Co v Refai* [2014] EWCA Civ 715. Similarly, s.1173 of the Companies Act 2006 defines "body corporate" as including "a body incorporated outside the United Kingdom". This indicates that the expression is used to capture legal persons, who must act through the agency or instrumentality of the natural persons in control of them, as a general category, rather than merely specific types of legal person.

ii) Second, it is clear that an LLP is a "body corporate" under English law. Section 1(2) of the Limited Liability Partnership Act 2000 (the Act which governs LLPs in this jurisdiction) provides:

> "A limited liability partnership is a body corporate (with legal personality separate from that of its members) which is formed by being incorporated under this Act".

Further, the definition of "body corporate" in s.1173 of the Companies Act 2006 applies to LLPs (by virtue of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009/1804, Regulation 79).

iii) It is clear that the Body Corporate Provision is to be interpreted with regard to "the need to ensure that the courts have ability to control proceedings which are properly brought in this jurisdiction", and to avoid "the anomalies that would result if the provision designed to provide such control for a corporation in contempt [did] not apply" to particular types of body corporate (*Dar Al Arkan*, [37]). If Mr Kimbell KC's submission was correct, there would be a considerable anomaly in the court's ability to control its proceedings and ensure that its orders were complied with so far as LLPs are concerned.

iv) As I explain at [40] below, when dealing with the question of who constitutes a "director or other officer" for the purposes of the Body Corporate Provision, the approach adopted at first instance has been functional rather than technical. I am satisfied that the same approach should be adopted when determining what constitutes a "body corporate", and that, adopting that approach, any entity which has a distinct legal personality separate from that of its members or those in control

of it, but who can only act through the decisions of natural persons, falls within the definition.

38. It is fair to acknowledge that, when considering whether the special supervisory and disciplinary jurisdiction of the court over its officers of the court extends to LLPs providing the services of solicitors, the Supreme Court in *Harcus Sinclair LLP v Your Lawyers Ltd* [2021] UKSC 32, observed at [142]-[143]:

> "142. We recognise that there are powerful arguments both ways on this question, with different force in relation to different types of incorporated law firms. The strongest argument in favour seems to us to be that the court's buttressing of professional undertakings within the provision of 'solicitor services' ought fairly to be equally available across all types of provider: i e that the jurisdiction should now be applied along functional lines, to all authorised providers of solicitor services, rather than continue to be status-based. There is in that respect an analogy with the way in which, for certain purposes, the Civil Procedure Rules treat as a solicitor any person (individual or incorporated) authorised to conduct litigation under the LSA 2007: see CPR rr 6.2(d) and 42.1. This functional approach is of particular force in relation to a solicitors' LLP which, although a separate legal person from the solicitors who own and manage it, is the vehicle by which they provide solicitor services, and on behalf of which they continue to give solicitors' undertakings. The strongest argument against is that, from 2007, incorporated law firms need no longer be owned, controlled or even managed by solicitors, and that conveyancing services have been available from 1985 from licensed conveyancers, who have apparently been able to provide satisfactory undertakings without the court's backing in terms of summary enforcement.
>
> 143. However, with considerable reluctance, we do not consider that this case is an appropriate occasion for making a decision whether, and if so how far, to extend that inherent jurisdiction. This is for three main reasons. First, our views would only have the force of obiter dicta, for the reasons already explained. This is not, as it turns out, a case about a solicitor's undertaking at all. It would not therefore bind lower courts. Secondly, we consider that a properly informed decision would much better be made with the assistance of submissions from the Law Society, and from any other professional or regulatory body with a legitimate interest such as, for example, the Council of Licensed Conveyancers or the Solicitors' Regulation Authority. Thirdly, although this continues to be an inherent jurisdiction, this question is probably better dealt with by legislation than by the courts, because of the availability of procedures for consultation which the court lacks. In the context of this case, we have not been provided with much of the evidence and information about the operation and structure of today's law firms that we would need to develop the law properly in this area."

39. In the present context, however, the issue of how the court's committal jurisdiction is to be applied when orders are made against legal persons has long been settled, by the

Body Corporate Provision and its predecessors, and the importance of a functional approach to the application of the Body Corporate Provision is well-established by case law.

Is Mr Gringuz a "director or other officer" for the purpose of the Body Corporation Provision?

40. At first instance, it has been held that these words embrace a de facto as well as a de jure director: *Touton Far East Pte Ltd v Shri Lal Mahal Ltd* [2017] EWHC 621 (Comm), [5], *Integral Petroleum S v Petrogat FZE* [2018] EWHC 2686 (Comm), [66]-[68] (the latter case rejecting the argument that the Body Corporate Provision extended to shadow directors) and *Akhmedova v Akhmedov* [2019] EWHC 1705 (Fam), [45].

41. Mr Kimbell KC did not seek to challenge that interpretation before me, while reserving his position on any appeal. However, he did argue that the Body Corporate Provision could not extend to Mr Gringuz for the following reasons:

i) LLPs do not have de jure directors, and therefore they cannot have de facto directors.

ii) The position was that Mr Gringuz was a de jure director of one of the corporate members of Jets (Novans Aviation Limited). He argued that someone at such a corporate remove from the respondent to the order cannot constitute a "director or other officer" of Jets for the purposes of the Body Corporation Provision, relying in this regard on the conclusion reached by Clarke LJ in *Masri v Consolidated Contractors International (UK) Ltd and others (No 4)* [2008] EWCA Civ 876, [19]-[20].

42. As to the first of these points, the expression "director or other officer" has not been specifically defined in relation to the court's committal jurisdiction, but I accept Mr McLaren KC's submission that the proper interpretation of that expression is informed by the Companies Act 2006 and associated legislation, which illustrates the ordinary meaning and effect of the terms "director" and "officer" in the context of bodies corporate, and reflects the functional (rather than formal) nature of those terms:

i) Section 1173 of the Companies Act 2006 (which applies to LLPs by virtue of the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009/1804, Regulation 79) defines an officer "in relation to a body corporate" as including "a director, manager or secretary". The non-exhaustive nature of that definition suggests that the definition is not simply concerned with those who formally hold particular types of office, but embraces those who perform the executive or managerial functions associated with such offices. That interpretation receives support from s.250 of the Companies Act 2006, which defines a director as including "any person occupying the position of director, by whatever name called."

ii) Sections 1121 and 1122 of the Companies Act 2006, dealing with the liability of officers in default, applies to other bodies corporate (s.1123), in which context s.1123(2) and (3) provide:

"(2) As it applies in relation to a body corporate other than a company–

(a) the reference to a director of the company shall be read as referring–

(i) where the body's affairs are managed by its members, to a member of the body,

(ii) in any other case, to any corresponding officer of the body, and

(b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the body.

(3) As it applies in relation to a partnership–

(a) the reference to a director of the company shall be read as referring to a member of the partnership, and

(b) the reference to a manager or secretary of the company shall be read as referring to any manager, secretary or similar officer of the partnership."

Section 1123(2) and (3) are noteworthy in contemplating that there will be officers of LLPs who are similar to the managers or secretaries of companies.

iii) As I have stated, the Body Corporate Provision will apply to legal persons incorporated under the laws of other jurisdictions. These may adopt different structures of corporate governance, and different titles for their corporate governors, such that identifying their "directors or other officers" will necessarily involve a functional analysis.

iv) As I have noted at [40] above. it has been held at first instance that the Body Corporate Proviso extends to de facto as well as de jure directors.

43. It is worth exploring the basis for that last conclusion at slightly greater length. As I have noted (at [27]), the law of contempt distinguishes between the liability in contempt of a respondent who breaches an order made against them, and that of third parties who interfere with the performance of the order. The Body Corporate Provision is intended to place the "insiders" who manage or control the activities of a corporate respondent in the first camp because (adopting the language of Leggatt J in *Touton*, [5]-[7]) they are "responsible" for the corporate respondent's conduct, or have "primary control" of it. By contrast, "shadow directors" are not "insiders" or those with "primary control", but "outsiders" who are dealt with in the same way as other non-parties.

44. In my determination, it is clear that those who have similar responsibilities and primary control, in relation to an LLP, as the directors or other officers have for a company, constitute "directors or other officers" for the purposes of the Body Corporate Provision.

They are "insiders", performing the same functions in relation to the LLP respondent as "directors or other officers" perform for a company respondent.

45. Turning to the second point, *Masri (No 4)* was concerned with CPR 71.2, which provides that a judgment debtor may seek an order requiring:

> "if a judgment debtor is a company or other corporation, an officer of that body to attend court to provide information about—(i) the judgment debtor's means; or (ii) any other matter about which information is needed to enforce a judgment or order".

46. In addition to the issue of whether such an order could be served out of the jurisdiction (the House of Lords, reversing the Court of Appeal, held that it could not: [2010] 1 AC 90), the Court of Appeal had to consider whether a natural person who was a director of a corporate director of the judgment debtor fell within the scope of the rule. At [19]-[20], Clarke LJ held:

> "19. In my opinion the answer to that question is 'no'. The reference to 'that body' is a reference to the company which is the judgment debtor. The question then becomes whether SK is, or more accurately was at the relevant time, an officer of the judgment debtor. He was not a director of CCIC or CCOG but of a corporate director of CCOG. He was an officer of the corporate director but not of CCOG itself, and not therefore an officer of the judgment debtor, at any rate if the language of the rule is given its natural and ordinary meaning.
>
> 20. Mr Salzedo submits that the purpose of the rule is to allow a judgment creditor to identify a natural person who can stand in the shoes of a corporate judgment debtor and be asked questions as to the whereabouts of its assets. He submits that, unless "officer" is construed as including a director of a corporate director of the judgment debtor, companies will ensure that, so far as possible, they have corporate entities and not natural persons as directors. I very much doubt whether such a construction would be likely to have that effect. In any event, although I can see that it might be desirable for the rule to be widened to include such a case, I am not persuaded that 'officer' of the judgment debtor in the rule in its present form can properly be construed so as to include an officer of a corporate director of the judgment debtor. Moreover that is so notwithstanding the fact that SK is referred to in the order of Gloster J, who was not considering the true construction of that rule."

47. The Court of Appeal in *Dar Al Arkan Real Estate Development Co v Refai* [2004] WCA Civ 715 cautioned against reasoning from the position under CPR 71 (a provision concerned with the principally private interest of judgment creditors being able to enforce their judgments) to that under CPR 81, Beatson LJ observing at [42]:

> "In my judgment, the nature of committal proceedings is very different from the nature of the power of the court under Part 71 to obtain information from judgment debtors. The rationales for the two procedures are also very different. Mr Béar's submissions underplay the public interest element underlying the modern law of

> civil contempt. The twofold character of civil contempt in modern law is well established … It is thus clear that it is for the public good that the order of the court should not be disregarded."

48. However, there is a more fundamental difficulty with Mr Kimbell KC's reliance on *Masri* here. Mr McLaren is not contending that Mr Gringuz falls within the Body Corporate Provision because he is a de jure director of one of Jets' corporate members. He contends that Mr Gringuz falls within the Body Corporate Provision because he is the de facto functional equivalent of a director or other officer *of Jets*. If he is right about that, in my view the Body Corporate Provision applies, and it does not cease to apply simply because Mr Gringuz also holds some other de jure office in the ownership structure of Jets.

49. There was no serious challenge to Mr McLaren KC's submission that Mr Gringuz was and is the functional equivalent of a director or other officer of Jets, and I am satisfied beyond reasonable doubt that he is:

i) It is Jets' pleaded case, at paragraph 10 of its Amended Defence and Counterclaim, that Mr Gringuz is its managing director, supported by a Statement of Truth which Mr Gringuz must have approved.

ii) In his Witness Statement for trial, Mr Gringuz described himself as the UBO and Managing Director of Jets, and Jets' case at trial was advanced on that basis.

iii) A 6 July 2022 search of the Companies House website confirmed that Mr. Gringuz was the sole person with significant control of Jets as from 19 September 2019.

iv) Mr Gringuz's conduct pre-, during and post- the trial confirms this picture. Indeed, it is telling that no other candidate for the functional equivalent of a director or other officer of Jets emerges from the evidence in this case, and none has been identified.

Can the January Order be the Subject of a Committal Application?

50. CPR 81.4(2) provides that "a contempt application must include all of the following … (e) confirmation that any order allegedly breached included a penal notice". Mr McLaren KC accepts that the January Order did not bear a penal notice, and asks the court to dispense with the requirement for such a notice. It is accepted that there is jurisdiction to do so in an appropriate case, and I return to this issue at [60]-[61] below.

51. In relation to the January Order, however, an anterior question arises as to whether it is appropriate for an order of this kind to be subject to the committal process at all. The January Order was made against a party to the proceedings for the purposes of the court's adjudicative jurisdiction – its jurisdiction to determine an issue in dispute between the parties - as part of the process of ensuring that the appropriate evidence is available fairly to determine that dispute. In this case, the issue to be determined was the amount OCA's loss under the profit share provision. The usual sanctions where a party declines to comply with such an obligation are orders which prevent the party from advancing or defending the particular part of the dispute to which the absent disclosure relates, or, in an

appropriate case, the entirety of the case, and the drawing of adverse inferences against the defaulting party (see generally Charles Hollander KC, *Documentary Evidence* (14th) chapter 11). The adjudicative basis for the order for production of disclosure provides an obvious remedy for non-compliance, by restricting or negating the breaching party's participation in the adjudicative process. It is not surprising, therefore, that the only express provision for contempt in the CPR in relation to disclosure concerns the making of a false disclosure statement (CPR 31.23).

52. Disclosure is sometimes ordered for reasons other than to assist the exercise of the court's adjudicative jurisdiction. It is very frequently ordered as an ancillary measure when the court grants injunctive relief to enable the claimant to find and/or preserve evidence or to prevent the unjustified dissipation of assets against which a judgment could be enforced. In this context, the disclosure order is inherently coercive in nature, just like the injunction in support of which it is made, and failure to comply with disclosure orders of this kind is frequently the subject of committal orders: e.g. *LTE Scientific Ltd v Thomas* [2005] EWHC 7 (QB) (a search order) and *JSC Mezhdunarodniy Promyshelnniy Bank v Pugachev* [2016] EWHC 192 (Ch) (a freezing injunction). Disclosure can also be ordered as to the whereabouts of assets which are in dispute, for the purposes of enabling the claimant to lay claim to those assets, sometimes as an adjunct to a proprietary freezing order, or sometimes as a standalone order. An order of the former kind was the subject of a committal application in *Bird v Hadkinson* [2000] CP Rep 21, and one of the latter kind in *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch). In such cases, and in contrast to disclosure ordered for the purpose of enabling the court to exercise its adjudicative jurisdiction, the court cannot (through mechanisms such as curtailing the right of participation in the proceedings or drawing adverse inferences) address the prejudice caused by the respondent's failure to reveal the location of the assets. The lack of disclosure will mean that the claimant does not know, and the court cannot fill the gap.

53. Disclosure may also be ordered for the purposes of the court's enforcement jurisdiction, as a means of ensuring that judgments of the court (which can include arbitration awards when permission has been given to enforce an award as a judgment under s.66 of the Arbitration Act 1996) are satisfied. The asset disclosure order made in support of the enforcement of an arbitration award which had been the subject of a s.66 order considered in *Ifaco Feed Company SA v Société De Distribution Nouvelle D'Afrique (SODINAF) SARL* [2019] EWHC 3715 (Comm), to which Mr McLaren KC referred me, was an order of this type, in which the breach of the order was the basis of committal for contempt of court. Similarly, an order under CPR 71 requiring a judgment debtor to provide information or produce documents needed for the purpose of enforcing a judgment is capable of supporting an application for committal if not complied with (CPR 71.2(3) and 71.8(2)).

54. Finally, orders for the production of documents are made against non-parties (orders under CPR 31.17, *Norwich Pharmacal* orders and witness summonses requiring the production of documents). As a respondent to such an orders is not a party to the dispute which the court is being asked to adjudicate, it is not possible to address non-compliance by limiting the respondent's ability to participate in the proceedings or drawing an adverse inference against it. In such circumstances, there is likely to be scope for

enforcement by way of committal in an appropriate case: e.g., *Tajik Aluminium Plant v Hydro Aluminium AS* [2005] EWCA Civ 1218 (although the statement at [25] that a penal order will only be attached to an order under CPR 31.17 in the case of a "contumacious refusal to obey", reflecting the onerous obligations which such an order may involve for an innocent third party with no connection to the dispute.

55. Mr McLaren KC submitted that there was no reason why a disclosure order made for the purposes of the court's adjudicative jurisdiction could not be the subject of an order for committal, referring me the following passage in the judgment of Nugee LJ in *Kea Investments*, [53]-[54]:

> "Mr Grant also referred to the fact that committal is not the usual response to a failure to comply with disclosure obligations. He accepted that there were cases such as *Pugachev* where respondents had been committed for failing to comply with orders for disclosure, but said that that was in the context of disclosure orders ancillary to freezing injunctions, which was not the case here, and that the repeated references in the cases to how serious such breaches can be was not appropriate to the present case. He pointed out that whereas under the RSC there was an express provision that a party who failed to comply with an order for discovery or production of documents was liable to committal, that had not been reproduced in the CPR, and referred to *Matthews & Malek, Disclosure* (5th edn, 2017) at §17-33 where the authors say that contempt applications for breaches of a disclosure order will rarely be appropriate or necessary.
>
> It is worth however setting out the relevant paragraph in full, as follows:
>
> > 'Ordinarily, the appropriate sanction for a failure to comply with a disclosure order will be to strike out a statement of case together with an adverse costs order. Hence contempt applications will rarely be appropriate or necessary. However, in certain cases a contempt application may be the appropriate route. These may include cases where a party has failed to provide information in response to an order in aid of a freezing injunction, search order or tracing relief, or where there has been a deliberate destruction of documents.'
>
> Read as a whole, this passage does not to my mind suggest that breaches of disclosure orders and orders to provide information are not punishable as contempts, or that there is anything wrong with an applicant pursuing an application for committal; rather the point the authors are making are that other sanctions, in particular the power to strike out a claim or defence, may make it unnecessary. It is noticeable that the present case, although not a case of a freezing or search order, is a case where information was sought in aid of tracing relief, and the need for a claimant who is asserting a proprietary claim to obtain information as to what has become of what he claims to be his money, is just as strong as the need of a claimant to police a freezing injunction (where of course he usually has no proprietary claim to the assets)."

56. As I have stated, *Kea* was not a case concerned with documents whose production had been ordered for the purpose of the court's adjudicative jurisdiction. I accept that there may be circumstances, although they are likely to be rare, in which the court would make a coercive order amenable to the contempt jurisdiction in relation to an order for disclosure made for the purposes of the court's adjudicative jurisdiction. However, such an order would clearly be conceived and "badged" as such. I do not accept that a standard order for disclosure has, on an inchoate basis, the potential to form the basis of an order for committal simply by asking the court to waive the requirement for a penal notice. It is possible to test this conclusion by considering directions for disclosure under CPR Part 31 made against a state party to proceedings. Section 13(2)(a) of the State Immunity Act 1978 provides that "subject to subsections (3) and (4) below … relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property …". If Mr McLaren KC is correct, every directions order in proceedings involving a state would, or at least could, involve just such an order. In *Ukraine v PAO Tatneft* [2019] EWCA Civ 763, the Court of Appeal considered (and rejected) an argument that an order for security for costs against a state contravened this section, Flaux LJ stating at [15]:

> "If an order for security for costs were an injunction, by parity of reasoning so would be any order of the court requiring a foreign State which is a party to the proceedings to comply with a particular provision of the CPR, for example, in relation to service of pleadings by a particular time or disclosure. Clearly, State immunity cannot and does not extend that far."

57. It this case, as I have explained at [10] above, Mr McLaren KC recognised that the January Order was not susceptible to an application for committal, and for that reason asked (and persuaded) Mrs Justice Moulder to include some of the disclosure obligations it had imposed within the April and May Orders, which were conceived, and were clearly "badged", as coercive orders of the kind amenable to the committal jurisdiction. In my determination, he was right to recognise that a further order of this kind was necessary before the committal jurisdiction could potentially be brought into play in respect of any failure to provide the disclosure ordered.

58. For essentially these reasons, if the issue of waving the requirement for a penal notice had arisen in relation to the January Order, I would have refused to do so. On this hypothesis, that would have involved a fundamental change in the nature of the January Order, and in the anticipated consequences of any breach of the January Order.

Can the April and May Orders be the Subject of a Committal Application Against Mr Gringuz?

59. Mr Kimbell KC contends that no committal application can be brought against Mr Gringuz in relation to the April and May Orders because they do not contain a penal notice in an appropriate form. In particular:

i) the April Order does not contain a penal notice warning "a director of officer" of Jets that they may held in contempt of court and punished, nor does it mention Mr Gringuz; and

ii) the penal notice on the May Order includes such language in respect of Investments only, whereas this application is only concerned with breaches by Jets, and the penal notice is split across two pages, whereas CPR 81.2 defines a penal notice as "a prominent notice on the front of an order".

60. Before the October 2020 Version came into force:

i) CPR 81.9(1) expressly provided that including a penal notice in the required terms on the front of the order was a pre-condition to a committal application. While that provision is not replicated in terms, it is common ground that such a requirement is implicit in CPR 81.4(2)(e) of the October 2020 Version.

ii) PD 81 para. 16.2 provided that "the court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect". There is no equivalent provision in the October 2020 Version, but it is clear that the court has such a power (as confirmed in *BMF4 PLC and ors v Rizwan Hussain* [2022] EWHC 449 (Ch), [49] and *Deutsche Bank AG v Sebastian Holdings Inc* [2022] EWHC 3536 (Comm), [148]).

61. It is common ground that the test I should apply is that which appeared in PD para 16.2, and before that in RSC Order 4.7(7) as applied in *Serious Organised Crime Agency v Hymans* [2011] EWHC 3599 (QB)), namely whether I am satisfied that no injustice has been caused to Mr Gringuz by the failure to include a penal notice in the stipulated terms.

62. Taking the April Order first, it was made after an inter partes hearing at which Jets was represented. By the date of that hearing, it had been clarified that Mr Gringuz was not actually a director of Jets, as his evidence at the trial had suggested, but a director of one of its corporate members. Mr McLaren KC's skeleton for the hearing submitted at para. 26(a) that "the penal notice should remain, but with the removal of the words 'a director of the said Novans Jets LLP'" (an amendment which would have continued to name Mr Gringuz as someone who could be subject to an order for committal if Jets did not comply with the April Order, but without describing him as holding any particular position).

63. In the course of argument, Mrs Justice Moulder raised the issue of whether Mr Gringuz should be named at all, given that he was now known not to be a director of Jets. It is apparent at the hearing that reference was made to the decision of Mr Justice Phillips in *Ifaco Feed Company SA v Société de Distribution Nouvelle d'Afrique (SODINAF) SARL and Siaka* [2019] EWHC 3715 (Comm), [12] in which an alternative finding was made of contempt on the "wilful interference" basis (which I return to at [70]-[72] below and which I will refer to as the ***Seaward* jurisdiction**, by reference to *Seaward v Paterson* [1897] 1 Ch 545, 551). However, there was no express reference at the hearing to the issue of whether Mr Gringuz might be a de facto "director or other officer" of Jets. Later

in the hearing, Mrs Justice Moulder made a comment which suggested that she thought the wording on the draft order addressing the *Seaward* jurisdiction would suffice:

> "I want to be a bit cautious here, Mr McLaren because this is an order with a penal notice attached. I think I would suggest that it should be any other entity which has an interest …. No I am not happy with this Mr McLaren. I mean, I think we all know that Mr Gringuz is behind all these companies. There are the normal provisions about other people who know of the order and helps or permits the respondent to breach the terms. I think we should rely on that."

It is right to note the reference to "permitting" in this paragraph, which echoes language in the *Ifaco* case (but as to which see [72]-[73] below).

64. Mrs Justice Moulder did not issue a ruling on this issue at the hearing. When OCA's solicitors submitted a draft order, they did so including a penal notice in wide terms, which referred to other Novans companies and to Mr Gringuz. However, the reference to Mr Gringuz was expressly stated not to extend to paragraphs 8 and 9 of the draft April Order. These are the paragraphs now relied upon as the grounds for committal.

65. Mrs Justice Moulder struck out the reference to Mr Gringuz altogether, stating:

> "The reference to Mr Gringuz in the penal notice should be deleted in its entirety - as discussed during the hearing he is not an officer of Novans Jets LLP and therefore does not fall within the CPR 81.2 definition of 'penal notice'."

If the possibility had been raised with Mrs Justice Moulder that, although Mr Gringuz did not fall within the terms of the CPR 81.2 definition of "penal notice" merely by being a director of one of its corporate members, he might do so as a de facto director, or other officer then Mrs Justice Moulder might have approved an amended penal notice, or qualified her observations on the submitted draft to allow for that possibility. However, the possibility was not raised. In these circumstances, there must be a real apprehension that the terms of the April Order, when construed against the surrounding circumstances as outlined above – OCA's submissions, OCA's draft order, the Judge's response and the final April Order - may have been interpreted as qualifying the terms of the April Order so that Mr Gringuz could only be liable under the *Seaward* jurisdiction.

66. Even allowing for the fact that Mr Gringuz has not given evidence, as he might have done, to explain his understanding (as to which see [74]-[75] below), I do not feel able to "waive" the absence of a penal notice in this case, not because of its absence *per se*, but because the circumstances of its absence provide a reasonable basis for concluding that the court had determined that the Body Corporate Provision could not be engaged in relation to Mr Gringuz. I cannot be satisfied that reversing that position now would not involve an injustice to Mr Gringuz. That conclusion is not, in my assessment, changed by the observation by Mrs Justice Moulder in argument about the provisions of the order applying to someone who "permits the respondent to breach the terms", because it is not clear that Mrs Justice Moulder was purporting to enlarge the provision of the penal notice addressing non-parties beyond its normal scope.

67. The May Order extended time for Jets' compliance with the disclosure orders made by the April Order, but did not otherwise change the position. So far as any application to commit on the basis of the Body Corporate Provision is concerned, it stands in the same position.

68. However, in respect of both orders, the application to commit on the basis of the *Seaward* jurisdiction remains available. An appropriate form of penal notice addressing this issue was present on both Orders, and while it did not entirely appear on the front of the April Order, it was in bold, and clear, and followed a hearing at which Jets was represented, and of the outcome of which Mr Gringuz was made aware. I am willing to waive this wholly technical issue, which cannot conceivably have caused Mr Gringuz any prejudice.

The Applicable Legal Principles

69. The parties were content to adopt the summary I gave in *Integral Petroleum SA v Petrogat FZE* [2020] EWHC 558 (Comm), [28]-[33] as to the applicable legal principles so far as an application for committal for breach of an order by a body corporate is concerned. I will not repeat that summary here.

70. However, it is necessary to amplify it to address the circumstances in which a non-party to the court order can be found liable for contempt in relation to a breach of a court order. This is a species of criminal contempt, in contrast to the position of the respondent to the order (and those within the Body Corporate Provision) which involves a civil contempt (*Arlidge, Eady & Smith on Contempt* (5th), [3-130]). It is necessary in a non-party case to meet the more onerous test in *Seaward v Paterson* [1897] 1 Ch 545, 551: "that a person knowingly assists another who is restrained by an injunction in doing acts in breach of the injunction". In *Z Ltd v AZ and AA-LL* [1982] 1 WLR 558, 580, Eveleigh LJ explained:

> "A third party with notice of the terms of an injunction should only be liable when he knows that what he is doing is a breach of the terms of the injunction."

71. These cases speak in terms of the *acts* of the third party, and in *Seaward* itself it is clear that mere presence as a spectator at a boxing match held on premises in breach of an injunction would not have been enough, as opposed to the positive acts of the master of ceremonies, who was "actively assisting" the breach.

72. Attempts to apply the *Seaward* jurisdiction to those who might be thought to fall within the spirit of the Body Corporate Provision, but not its letter (shadow directors being a possible example), are likely to run into the difficulty that, where the breach by the corporate respondent involves the failure to comply with a mandatory order (as here), all that the non-party may have done is omit to take the steps within its power to cause the body corporate respondent to comply. In *Ifaco Feed Company SA v Société de Distribution Nouvelle d'Afrique and Siaka* [2019] EWHC 3715 (Comm), an asset disclosure order in aid of support of the execution of a judgment had been made against SODINAF. No disclosure was provided, and a committal application was brought against Mr Siaka. An order for committal was made on the basis that Mr Siaka was a director of

SODINAF. However, at [16], Phillips J made an alternative finding on the basis of the *Seaward* jurisdiction on which Mr McLaren KC relied before me:

> "In that regard it is pertinent to note that Mr. Siaka was SODINAF's signatory to the underlying contracts, was its negotiator thereafter, authorised SODINAF's representatives for and was a recipient of communications in the arbitration, negotiated SODINAF's multimillion-euro acquisition of forestry companies and continued to negotiate on SODINAF's behalf. In all the circumstances, I am satisfied so that I am sure that Mr. Siaka, as a director or officer of SODINAF, procured that the order was breached. *But even if he was not technically a director, he wilfully interfered with the administration of justice by permitting SODINAF to act in contempt.* I therefore find that Mr. Siaka is also in breach of the court's order and is in contempt of court."

(emphasis added).

73. For my part, I am unpersuaded that a mere failure to cause a respondent to comply with an order is sufficient to amount to contempt under the *Seaward* principle (in contrast to the Body Corporate Provision.) However, a purposive and functional interpretation of the concept of "directors or other officers" in the Body Corporate Provision should ensure that in the vast majority of cases, individuals in control of bodies corporate will fall on the right side of the civil/criminal contempt divide.

Adverse Inferences

74. It was accepted that, in relation to the allegation of civil contempt, the law of adverse inferences as applied in civil proceedings was engaged, in circumstances in which Mr Gringuz had supplied an account on affidavit but not made himself available for cross-examination (and offered no explanation for not having done so). I was referred to the judgment of Mrs Justice Whipple in *VIS Trading Co Ltd v Nazarov* [2015] EWHC 3327 (QB), [31]:

> "The fact that the First Defendant has produced some documents, in purported compliance with the 21 May 2015 Order, does not determine the compliance issue in the First Defendant's favour; nor does it require the Claimant to make any application for cross-examination. Rather, the First Defendant is on notice of the Claimant's case that the Defendants have failed to comply with the 21 May 2015 Order, and the Claimant is entitled to continue to advance that case, even in the face of purported compliance by the First Defendant since the date of the application. The burden of proof remains on the Claimant throughout, to the criminal standard, and the Claimant can invite the Court to conclude, on the basis of all the evidence in the case, that the Defendants have not yet complied with the 21 May 2015 Order. If the contemnor chooses to remain silent in the face of that dispute, the Court can draw an adverse inference against him, if the Court considers that to be appropriate and fair, and recalling that silence alone cannot prove guilt."

The same conclusion was reached by Mr Justice Henry Carr in *Discovery Land Company LLP v Jirehouse* [2019] EWHC 1663 (Ch), [28]-[29].

75. In relation to criminal contempt on the basis of the *Seaward* jurisdiction, it was suggested that the principles which determine whether silence in the face of a criminal charge can be the basis of an adverse inference should apply (by reference to *Arlidge, Eady and Smith*, [3-65]). There was no time to explore this issue at any length, and it is not determinative of my conclusions in this case. In a case in which the burden of proof is that of beyond reasonable doubt, and in which the respondent has a right to silence which modifies the conventional rules of civil procedure in important respects (e.g. *Moutreuil v Andreewitch* [2020] EWCA Civ 382), I would be surprised if there was any practical difference in effect between the application of the ordinary civil principles adapted to the committal context, and the approach to the right to silence in criminal cases.

The Contempt Allegations

The failure to provide the proposed net profit margin of each flight operated by the Aircraft, with supporting documentation.

76. There is no dispute that Mr Gringuz was aware of the terms of the April and May Orders at all material times. The April and May Orders were both made following inter partes hearings, and there was no suggestion that Mr Gringuz was not made aware of the orders by Bargate Murray, instructed by Jets and Investments for those hearings. Indeed Mr Kimbell KC positively invited me to infer that this was the position. Further, the April and May Orders were served on Mr Gringuz's personal email address.

77. On 7 December 2022, Mr Gringuz's fourth affidavit attached a table said to show profits and interest on flights of the Aircraft up to 29 November 2020, but not for the period to 31 December 2021 (**the Schedule**). It is Mr Gringuz's evidence that he does not have access to information after that date because Jets sold the aircraft on 29 November 2020, and that he does not have access to Investment's files since selling the company in March 2021. The table purports to show profit before tax. In his fifth affidavit, Mr Gringuz said that the table had been prepared by Jets' Financial Director, Viktoriia Khyzha. Some supporting documentation has been filed, but by no means a complete set.

78. In addition to the late service of this document, it is said by OCA that information as to certain flights is missing or inaccurate:

i) 28 flights shown in the Aircraft's Flight Log disclosed at trial do not appear in the Schedule.

ii) No supporting material has been provided including as to alleged charges and expenses.

iii) The suggestion that some flights shown in the Schedule were not profit earning flights is said to be improbable.

79. In his fifth affidavit served very shortly before the hearing, Mr Gringuz said that :

i) The flights said to be missing had inspectors on board or were demonstration flights, and in neither case would they have been profit-making.

ii) He does not know what documents Ms Khyzha used to prepare the Schedule. He has also stated that he is a poor keeper of records, and that he cannot locate any more documents, that there is no central server of electronic documents and that it is not realistic in the conditions which have prevailed in Ukraine since the Russian invasion to obtain more documents.

iii) He also says that since 7 July 2022, Jets has been in liquidation and that he does not have standing to request documents on its behalf.

80. It has not been suggested at this hearing that I am able to decide whether or not the purported sale of the Aircraft or the shareholding in Investments was genuine.

81. Had I concluded that it was open to OCA to rely on the Body Corporate Provision, then:

i) While dissatisfied by Mr Gringuz's explanations of the inconsistency between the Flight Log and the Schedule, and by the fact that the Schedule was provided very late, I have not been able to conclude to the criminal standard that this explanations offered by Mr Gringuz are false, even allowing for the adverse inferences which can be drawn from Mr Gringuz's failure to give evidence. Nor would I be willing to make a finding of contempt on the basis of the late provision of the Schedule alone.

ii) I am satisfied beyond reasonable doubt that Mr Gringuz failed to take reasonable steps to provide supporting documents, on the basis that there can be no reason why he could not have at least sent written communications to Ms Khyzha, Jet's accountants and other third parties asking for information, and done so by 20 May 2022 (the deadline for compliance). There is almost no explanation of what attempts were made to search for or procure searches for responsive documents.

iii) However, given the turmoil in Ukraine from February 2022 onwards, I am not satisfied beyond reasonable doubt that, had reasonable steps been taken, they would have led to the production of supporting documents, save for the invoices or at least information as to amounts paid and where they were paid. I address these when considering the second head of contempt below.

iv) As Mr Kimbell KC notes, it is non-compliance by 20 May 2022, the date for compliance with the order, and the reasons for that, which are key in the absence of any further order being made with an extended deadline, albeit in the committal context, the sting of a breach of the order can to a significant extent be drawn by late compliance (see *In the matter of an application by Her Majesty's Solicitor General for committal of Jennifer Marie Jones* [2013] EWHC 2579 (Fam), [20]-[23] and *Integral Petroleum SA v Petrogat FZE* [2020] EWHC 558 (Comm), [148]-[150]).

82. Further, I am satisfied that it is open to OCA to quantify its profit share claim with the benefit of the material it does have, publicly available material such as flight path

information, expert evidence of charter rates and expenses, and the tools open to the court when there has been a breach of a disclosure order made for the purposes of the court's adjudicative jurisdiction (see [51] above and *Armory v Delamire* 1 Strange 506). There is no reason why it cannot quantify that claim, either through a judgment or on the basis of its own assessment and evidence, for the purpose of submitting a claim in Jets' insolvency. Accordingly, had the issue arisen, I would not have felt it appropriate to make a finding of contempt of court in relation to this complaint. As noted in *Arlidge, Eady & Smith on Contempt* (5th), [12-20], committal is "the court's ultimate weapon in securing compliance with its orders", which should only be invoked where it is "truly needed." This particular breach is not such a case.

83. So far as the application on the basis of the *Seaward* jurisdiction is concerned, I am not persuaded that the evidence establishes anything other than an omission to take steps to procure compliance, which for the reasons set out at [72]-[73] above, I am not persuaded is enough. While I can see that there might well be grounds for this jurisdiction to be invoked if I was satisfied to the criminal standard that Mr Gringuz had procured the submission of a schedule which he knew was incomplete and inaccurate, I am not able to make such a finding to the criminal standard of proof.

The failure to furnish information about entities involved in chartering the Aircraft since the ALPA was suspended, the terms of such chartering and to what entities income has been paid or is payable.

84. As I have stated, it is Mr Gringuz's evidence that he is only able to provide information in relation to the period up to 29 November 2020, and OCA does not seek to suggest that the court can reach a contrary conclusion at this hearing to the criminal standard. Mr Gringuz says that he has provided the full flight log to December 2019. He has also provided what are said to be the charter agreements relating to the Aircraft up to 29 November 2020 and denied that there are further agreements with Sparfell, the operator, or quotes. I am not able to find to the criminal standard that these other documents are available.

85. However, conspicuously, Mr Gringuz has never said anything about where the charter hire was paid, nor has Mr Kimbell KC on his behalf. The following things are to be noted:

i) The charters permit payment of the hire to "the supplier *or the entity provided for payment*" (emphasis added) by "bank transfer to the advised account". They therefore contemplate payment elsewhere than to Jets' bank account.

ii) The charters refer to attached invoices which would show the account to which payment is to be made. These have not been produced. In any event it is obvious that those chartering the aircraft will have received documents telling them how much they had to pay, and where to pay it.

iii) The failure to provide the invoices and "information about the entity or entities to which the income from chartering has been paid or is payable" was very clearly flagged in Mr Blumire's third witness statement of 29 December 2022.

iv) When I asked Mr Kimbell KC to show me Mr Gringuz's response in his fifth affidavit (an affidavit said specifically to have been prepared to respond to the points made in Blumire 3), he pointed to two paragraphs stating:

> "The charter contracts confirm the amount payable for each charter, so I did not consider it necessary to provide evidence of the same in the form of bank account statements, which I do not believe Jets was ordered to disclose.
>
> In any event, I can no longer access the bank account into which the charter payments (which consisted of electronic transfers and/or cash) were deposited, so it is impossible for me to download any bank statements."

v) This statement says nothing about the entities to whom hire was paid or the details of the bank account into which the payments were made. Mr Gringuz must know this information. He has clearly chosen not to provide it, and offered no explanation for that failure.

86. Had I concluded that it was open to OCA to seek to commit Mr Gringuz on the basis of the Body Corporate Provision, then:

i) I am not satisfied beyond reasonable doubt that information relating to the identity or (save as set out in the invoices) terms of charters in the period up to 29 November 2020 have been deliberately withheld.

ii) I am satisfied beyond reasonable doubt that Mr Gringuz has failed to take reasonable steps to provide this material on the basis that there can be no reason why he could not have at least sent written communications to Ms Khyzha, Jet's accountants and other third parties asking for information.

iii) However, given the turmoil in Ukraine from February 2022 onwards, I am not satisfied beyond reasonable doubt that, had reasonable steps been taken, they would have led to the production of supporting documents, save for the invoices as to which see v) below.

iv) To the extent that this material is sought for the purpose of enabling OCA to quantify its profit share claim, the position is as per [82] above.

v) I am satisfied beyond reasonable doubt that Mr Gringuz has deliberately withheld information as to where these payments were made. He must know whether these amounts were paid into Jets' account or elsewhere. I am also satisfied beyond reasonable doubt that he has withheld the invoices, or at least information which would have been contained on them as to where payments were made. That conclusion is reinforced by inferences it is appropriate to draw from Mr Gringuz's failure to give evidence, and from his failure directly to address this issue in his affidavits.

vi) This order is a classic freezing injunction disclosure order, made for the purposes of enabling OCA to locate assets against which to enforce the judgment they have

obtained. Had it been open to OCA to pursue a committal application on this basis, then I would have made a finding of contempt against Mr Gringuz in this respect.

87. So far as the application on the basis of the *Seaward* jurisdiction is concerned, I am not persuaded that the evidence establishes anything other than an omission to take steps to procure compliance, which for the reasons set out at [75] above, I am not persuaded is enough.

88. However, I made it clear to Mr Kimbell KC that Mr Gringuz should think carefully about providing the information as to where the hire payments were paid, in the period between the hearing and judgment. If that is not done, it will be open to OCA to seek a further order at the hand-down for the production of this information which, if granted, would be endorsed with a penal notice reflecting my conclusions in this judgment.

The failure to provide a consolidated flight report of all flights operated for that period with flight date, departure and arrival airport and block hours

89. It is Mr Gringuz's evidence that full flight logs have been provided for the period to 29 November 2020, and that he is unable to provide the information for the subsequent period. I am unable to conclude to the criminal standard that this is not the case.

The Committal Application Against Investments

90. I can deal with this application shortly.

91. The May Order against Investments required it to disclose the same documents as Jets had been provided to disclose. In so far as the order was made as a means of ensuring that the documents were available for the purposes of the quantification of the amounts recoverable from Jets, then there are obvious difficulties with such an order being made against a non-party outside the jurisdiction in respect of documents outside the jurisdiction (see *Gorbachev v Guriev* [2022] EWCA Civ 1270). However, it is clear that Mrs Justice Moulder also made the orders against Investments as a non-cause of action defendant who might be holding legal title to assets against which the judgment against Jets could be enforced, and in aid of the freezing injunction also granted against Investments. Orders of that kind do not raise the same concerns as to extra-territoriality.

92. I accept that Investments has been effectively served pursuant to the order of Mr Justice Butcher of 5 October 2022 and that it is aware of the orders (whoever may currently be in control of the company). I also accept that it is implicit in Mr Justice Butcher's order of 15 November 2022 that the stay which he ordered in the 5 October order of the committal proceedings against Investments was being lifted, the 15 November 2022 order expressly providing for service of evidence by Investments in advance of this hearing. I also accept that the penal notices on the April and May Orders are adequate so far as Investments is concerned.

93. Finally, under CPR 81.4(2)(o), OCA was required to and did state in the application notice that the court might proceed in the absence of the defendant if the defendant did not attend. I have had regard to the principles that engage the court when considering whether

to proceed in the absence of a defendant as summarised by Cockerill J in *XL Insurance Company SE v IPORS Underwriting Limited* [2021] EWHC 1407 (Comm), [43] to [46]. I am satisfied that Investments had had ample opportunity to participate effectively in this hearing, but has deliberately chosen not to engage. Its absence alone, therefore, constitutes no sufficient reason not to proceed with the application.

94. However, there are three difficulties with the committal application:

i) The revised particulars of contempt only address the case against Jets.

ii) The application is advanced on a conditional basis, in circumstances in which it appears to be OCA's case that the condition is not satisfied, and when it is accepted that the court cannot determine whether it is satisfied or not.

iii) The purpose of the proposed committal as identified by Mr McLaren KC has the potential to conflict with administration of the insolvency of Jets and/or OCA's attempt to enforce its judgment.

95. The first point is self-evident. The particulars of contempt given in Box 12 of the Application Notice – the only place where the case against Investments is set out – plead a compendious case of breach of the January, April and May Orders against both Jets and Investments, and does so very briefly. However, only the May Order imposes a disclosure obligation on Investments. There is no attempt to address the specific requirements of that order so far as Investments is concerned.

96. As to the second point, OCA's skeleton says:

> "Investments, too, is liable for contempt, if it is true (as Mr Gringuz asserts) that the Aircraft was sold to it on 29 November 2020.* Investments has remained completely silent in the proceedings, despite having been served with the Orders and the contempt application."

97. There is a footnote at * which states:

> "There is an outstanding issue (being considered by the liquidators) as to whether that sale was genuine or e.g., a transaction at an undervalue. For the sentencing of Investments, we invite the court to proceed on the basis that the APA was effective to transfer title in the Aircraft to Investments, at least until that transfer of title has been challenged – and therefore that is an ostensible asset of Investments which could be the subject of sanctions. But the court should know that the liquidator is understood to be considering whether to challenge the transfer of title to the Aircraft."

98. The basis on which the allegations of breach are then put are as follows:

i) Reference is made to the order that Investments provide information.

ii) It is then said, "all available evidence indicates that it could have complied, given (*according to Mr Gringuz's testimony*) that it owns the Aircraft and must therefore have had access to associated profit, logbook and chartering information." (emphasis added).

iii) However, Mr Gringuz's evidence is not accepted.

99. I am not persuaded that I can approach the issue of breach of the May Order for committal purposes on the basis of a disputed factual premise. It may be that there has been no production because there has not in fact been a transfer (cf *In re Bramblevale Ltd* [1970] Ch 128, 137).

100. As to the final issue, which would not have been decisive on its own, when I asked Mr McLaren KC what the practical consequence would be of a finding of committal against Investments, a Belizean company which has not engaged with the proceedings at all, he suggested that it would be possible to sequestrate the Aircraft if it ever came to this jurisdiction, as it might well do, given that one of the few approved maintenance operations for the Aircraft is here.

101. However, the only asset of Jets (which is in liquidation and against which OCA has a substantial judgment debt) is either the Aircraft, if the transfer to Investments is not valid or can be set aside, or a receivable due from Investments, whose only known asset (on this basis) is the Aircraft. If, therefore, the Aircraft came to this jurisdiction, eventuality, the liquidators might well wish to obtain a freezing order over the Aircraft (for the purposes of any claim to the Aircraft or under the receivable) and OCA might well wish to seek a freezing order on the basis that there is a good arguable case that the Aircraft can be rendered an asset against which OCA's judgment could be enforced (on the basis that the APA could be set aside). Each of those outcomes would be inconsistent with sequestration of the Aircraft as an asset of Investments. Any writ of sequestration might well cut across the legitimate interests of the liquidators and OCA in pursuing these courses, or at least complicate steps taken to vindicate them. While this would not have precluded me making a finding of contempt, taken together with the other matters I have identified, they provide a further reason why I am not persuaded that it would be appropriate to determine the committal application against Investments at this time.

Concluding Observations

102. Committal applications are becoming an increasingly common feature of litigation in the Commercial Court (an observation which is even more true now than three years ago when I made a statement to similar effect in *Integral Petroleum SA v Petrogat FZE* [2020] EWHC 558 (Comm), [26]). This case demonstrates the complexities which invoking the committal jurisdiction can entail, and the risks of missteps. Clearly court orders are made to be complied with and the committal jurisdiction remains a very important tool in vindicating the public interest ensuring that they are. However, a litigant considering whether to embark on this complicated and onerous process may want to first consider whether there might be other means of giving effect to the court's order, or achieving the

purpose which the order was intended to serve, and what the practical consequences of a successful committal application against any particular respondent are likely to be.

Post-script

103. Between the circulation of a draft of the judgment, and handing down, the court was provided with a further affidavit from Mr Gringuz (initially in draft, and then sworn) to which he said he had exhibited the invoices relating to the chartering of the Aircraft and which identified the bank account into which payment of the charter hire was made. The court has not heard submissions on this material. However, [85(ii)] and [85(v)] should be read subject to this post-script.