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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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IN THE MATTER OF MAN TAI CHEUK

AND IN THE MATTER OF THE PROCEEDS OF CRIME ACT 2002

AND IN THE MATTER OF AN APPLICATION BY THE DIRECTOR OF PUBLIC PROSECUTIONS FOR NORTHERN IRELAND FOR AN ORDER OF COMMITTAL AGAINST MAN TAI CHEUK

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David McNeill (instructed by KRW Law, Solicitors) for the Applicant
Mark Mulholland KC (instructed by the Public Prosecution Service) for the Crown

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ROONEY J

Issue for Determination

[1] On 17 September 2019, McAlinden J made a Restraint Order under Section 190 of the Proceeds of Crime Act 2002 ("POCA") against Man Tai Cheuk ("the respondent") and Nadine Heather Cheuk prohibiting disposal of assets. In particular, the respondent and his wife, Nadine Heather Cheuk were ordered not to:

(i) remove from Northern Ireland any of their assets which are in Northern Ireland whether in their own name or not and whether solely or jointly owned; or

(ii) in any way dispose of, or deal with, or diminish the value of any of their assets whether in their own name or not and whether solely or jointly owned and wherever those assets may be situated.

[2] A notice attached to the said Restraint Order provided at paragraph 3 that if the alleged offenders or any person named in the order disobeyed the order, they would be guilty of contempt of court and may be sent to prison or fined or their assets may be seized.

[3] The Director of Public Prosecutions ("the applicant") now brings an application to the High Court for leave to apply for an Order of Committal to punish Mr Cheuk for contempt of court. The application is brought pursuant to Order 52, Rule 1 of the Rules of the Court of Judicature (Northern Ireland) 1978. Since this matter involves an alleged civil contempt of court, leave of the court is not necessarily required (see Order 52, Rule 2(1)).

[4] The grounds on which an Order of Committal is sought against Mr Cheuk are as follows:

(i) the defendant has removed from Northern Ireland, paid into his mother's Santander bank account, and subsequently dissipated, proceeds from his Jade House business amounting to £55,204.10 in breach of the said Restraint Order (First breach);

(ii) the defendant has removed from Northern Ireland, paid into his mother's Bank of Scotland bank account, and subsequently dissipated, a Covid-19 business grant payable to his Jade House business in the sum of £10,000 in breach of the said Restraint Order (Second breach); and

(iii) the defendant altered the receiving account for the proceeds of his Jade House business from a bank account permitted under the said Restraint Order to a bank account which was not so permitted and subsequently dealt with those proceeds (Third breach).

[5] The respondent, Mr Cheuk, admits the said breaches. The applicant urges the court to accept that the breaches were deliberate and, accordingly, the contempt proceedings should result in a custodial sentence. The respondent acknowledges that a breach of a court order can be met with a custodial sentence. However, the respondent asks the court to exercise leniency. By acknowledging his wrongdoing and by repatriating the dissipated funds into a joint account, it is argued that the respondent has sought to purge his contempt and for these reasons, in the exercise of its discretion, the court should not necessarily punish the respondent with a custodial sentence.

Factual Background Relating to the Breaches

First Breach

[6] In accordance with section 189(2)(a) of the Proceeds of Crime Act 2002, a criminal investigation commenced into the respondent and his wife's ("the respondents") conduct from 1 June 2015 onwards after police received information to the effect that the respondents were engaged in unlicensed money lending. On 16 August 2019 searches were conducted at their home and business addresses and a large volume of potential evidential documents, which appear to be loan agreements, were seized. Over £70,000 in cash was recovered from their home address. Further evidential material was obtained from bank accounts and their phones. Analysis of the bank accounts showed large volumes of money passing through the accounts

which was calculated in the region of £2,000,000. It is alleged that Mr Cheuk had not declared any income to HMRC. The source of funds used to provide the loans is unknown. There are no corresponding transactions in any business or personal accounts which apparently verify or substantiate the source of the funds.

[7] Mr Cheuk was interviewed under caution on 29 April 2021 on suspicion of unregulated money lending and money laundering contrary to section 23 of the Financial Service and Markets Act 2000 and of transferring criminal property, contrary to section 327 of the Proceeds of Crime Act 2002 arising from the product of a search of his premises on 16 August 2019.

[8] Mr Niall Murphy, KRW Solicitors, represented Mr Cheuk following his arrest and during the police interviews.

[9] In comprehensive written submissions prepared on behalf of Mr Cheuk with regard to the committal proceedings, at paragraph 10 thereof, it was estimated that, following the police interviews, the total capital loans in potential breach of section 23 of the Financial Services and Markets Act 2000 was £81,780 and further, the potential "realisable amount" was £28,920 (ie the interest alleged to have been charged on the unregulated lending of money).

[10] Paragraph 11 of the written submissions provides that when the communications grounding these loans are analysed, it can be seen that the loans were made to business people within the Chinese community who had asked for bridging finance to keep their businesses running.

[11] At the hearing, the court raised a query as to the potential benefit figure if confiscation proceedings were issued following conviction. In a letter from the PPS dated 26 October 2022 after the date of the hearing, the court was informed that the said figure of £28,920 represents the interest on only sample loans put to Mr Cheuk during police interviews. It is claimed that the PSNI seized records of similar loans and if Mr Cheuk is prosecuted and convicted for the offences recommended to the PPS by the PSNI, the estimate of the total interest paid on the loans would be £101,735. In addition, the PPS estimates money laundering charges at £469,350.

[12] In a letter dated 9 November 2022, Mr Murphy, Solicitor, responded to and took issue with the contents of the PPS letter dated 26 October 2022. In essence, by reference to pre-interview disclosure and his notes of the police interviews, Mr Murphy states that Mr Cheuk was questioned regarding unregulated money lending between 2014 to 2019 totalling £81,000. Mr Murphy disputes that he was made aware that only sample loans were put to Mr Cheuk during the course of the police interviews.

[13] Without the benefit of seeing all the relevant documentation relating to disclosure, hearing the recordings of the interviews and assessing the reliability of the witnesses, the court is plainly not in a position to make any determination of the issues raised and the potential benefit figures in confiscation proceedings following

conviction. For the purpose of this particular application, such a determination is not necessary.

[14] Paragraph 12 of the respondent's written submissions referred to a parallel investigation conducted by the HMRC in relation to unpaid taxes by Mr Cheuk regarding his restaurant business. To date no criminal proceedings have been instigated. In its letter dated 26 October 2022, the court was told that HMRC are no longer pursuing criminal proceedings. A civil investigation is continuing.

[15] At paragraph 13 of the written submissions it is stated that at the outset of the investigation suspicion arose regarding a large sum of money received by Mr Cheuk from Hong Kong. It is claimed that the money was received from Mr Cheuk's aunt, a highly successful bank trader. It is claimed that a payment of £230,000 was paid to Mr and Mrs Cheuk to allow them to pay off their mortgage, with an added condition that the house would be put into Mrs Cheuk's sole name. The rationale underpinning the money transfer from Mr Cheuk's aunt was related to concerns arising from his gambling addiction and the fear that this would result in the family becoming homeless.

[16] As stated above, the DPP made an application under section 190 of the Proceeds of Crime Act 2002 for an Order to restrain disposal of the respondents' assets. Under the heading "Exceptions to this Order", the Restraint Order did not prevent Mr Cheuk from using an Ulster Bank account to receive legitimate income held in the name of Man Tai Cheuk trading as Jade House. This bank account was registered by Mr Cheuk with Just Eat for the purpose of receiving payments from customers.

[17] It appears that a concurrent investigation was carried out in respect of Mr Cheuk's mother by the Civil Recovery Unit of Police in Scotland. During the course of this investigation it was discovered that a number of payments had been made from Mr Cheuk's Just Eat account into his mother's Santander bank account amounting to £55,204·10. From this Santander account £8,000 was paid into a Paddy Power account in Mr Cheuk's mother's name and a further £46,000 was transferred into a second Santander account, also in Mr Cheuk's mother's name.

[18] Both Santander accounts were set up in June 2020 after the Restraint Order had been in place for several months. The accounts had been used almost exclusively for the receipt and onward payment of funds from Mr Cheuk. Enquiries made with Just Eat reveal that Mr Cheuk had changed the nominated account with them for the Jade House business from the Ulster Bank account to the said Santander UK account held in the name of Mr Cheuk's mother.

[19] The PPS submit that it is clear from the above transfers that Mr Cheuk has deliberately attempted to conceal assets by transferring monies to accounts not permitted by the Restraint Order. In other words, the Santander accounts were opened by Mr Cheuk in his mother's name for the sole purpose of concealing his assets.

[20] When Mr Cheuk's solicitors were put on notice that the monies in question had been transferred out of the jurisdiction, efforts were made by KRW Law to seek repatriation of the money by engaging in correspondence with the PPS and a Scottish solicitor representing Mr Cheuk's mother. On 18 November 2021, Mr Cheuk's mother entered into a Minute of Agreement with the Scottish Ministers Civil Recovery Unit in respect of the two Santander accounts. The Minute of Agreement provided, inter alia, that a total of £61,771 contained in both accounts would be surrendered to the Scottish Ministers Civil Recovery Unit. As a consequence, the payments made by Mr Cheuk totalling £55,204·28 into the Santander accounts are not recoverable. Mr Cheuk is not able to repatriate the monies transferred and they have been effectively lost.

[21] In his affidavit dated 1 March 2022, Mr Cheuk candidly admits that he breached the Restraint Order. He states that the monies were transferred and used by him for gambling on-line. Mr Cheuk has a gambling addiction. In his affidavit, he indicated that he is now seeking professional support regarding his gambling addiction and assures the court that he will comply with the terms of the Restraint Order. Specifically, in an effort to purge his contempt, he stated that he wished to repay the monies totalling £55,204.

[22] On 29 March 2022, at the suggestion of the PPS, Mr Cheuk submitted a variation application consenting to the transfer of £78,144·39 from his mother's Paddy Power Betfair account to his restrained Bank of Ireland account in an effort to earnestly purge his contempt pending resolution of the criminal proceedings. The monies were transferred on 4 April 2022.

[23] At the present date, the total sums restrained in Mr Cheuk's Bank of Ireland account amounts to £78,144·39. In addition, a sum of £71,327 was seized from Mr Cheuk's home under Section 295(4) Proceeds of Crime Act 2002. Furthermore, as detailed above, Mr Cheuk has lost £55,204 which was transferred from his Just Eat account into his mother's Santander UK accounts.

Second Breach

[24] On 28 April 2020 a Covid business grant of £10,000 was paid by the Department for the Economy in respect of Jade House. The application was in the name of Mr Cheuk's mother, and the grant was paid into her Bank of Scotland account. Some of the money appears to have been spent on personal lifestyle expenditure, but at least £9,000 was debited to gambling companies on 21 June to 3 July 2020.

[25] In his affidavit at paragraphs 7 - 9 dated 1 March 2022, Mr Cheuk states that he believed the Covid grant was payable to the ratepayer of the Jade House premises who was his mother. Mr Cheuk now accepts that, as the business owner, the Covid business grants were specifically intended to assist businesses during the pandemic. Accordingly, he should have applied for the Covid business grant as a business owner and acknowledges that he breached the Restraint Order by transferring the funds to

his mother. Mr Cheuk states that this was a genuine mistake and apologises for the breach.

Third Breach

[26] This breach relates to the fact that on 29 November 2019, Mr Cheuk altered the receiving account for the proceeds of his Jade House business from the Ulster Bank account permitted under the Restraint Order to a Barclays bank account. In effect, it is alleged that Mr Cheuk should have applied to the PPS to vary the receiving account for the Jade House income from the permitted Ulster Bank account to the Barclays bank account. Provided a good reason had been given, the PPS stated that it is likely a variation would have been agreed.

[27] It appears that the monies paid into the Barclays bank account has been used solely to cover legitimate business expenses.

[28] During oral submissions, Mr Mulholland KC, on behalf of Mr Cheuk, told the court that on or about 1 November 2019, the Ulster Bank contacted Mr Cheuk to advise him that they were proposing to close the account. As a consequence, Mr Cheuk opened the said Barclays bank account. Therefore, it is submitted that the change of accounts was for a legitimate reason, albeit it is conceded that Mr Cheuk should have informed the PPS and sought their authorisation to seek a variation of the terms of the Restraint Order.

The Penalty

[29] The maximum penalty for contempt of court under the Contempt of Court Act 1981, Schedule 4, paragraph 14 is two years' imprisonment.

Legal Principles and Relevant Authorities

[30] I am grateful to Counsel for their comprehensive written submissions which I had the opportunity to consider in advance of the hearing. I am also grateful for Counsel's most helpful and succinct oral submissions which focused on the relevant facts, legal principles and legal authorities.

[31] The leading authorities in this jurisdiction are the decisions of the Divisional Court in *Re Harris and Hawthorne* [2018] NIQB 38 and *Re Michael Francis Doherty* [2018] NIQB 56. I have also been referred to the decision of Morgan J (as he then was) in the *Serious Organised Crime Agency v McKinney and MMK International Transport Limited* [2008] NIQB 111. These decisions will be considered in more detail below. For the sake of completeness, I have referred to the relevant, albeit persuasive only, English authorities.

[32] As stated by the Supreme Court in *R v O'Brien* [2014] UKSC 23, committal for contempt of a restraint order pursuant to section 190 of the Proceeds of Crime Act 2002 is a civil, not a criminal contempt. Further, as stated by Treacy LJ in *R v Harris and Hawthorne* [2018] NIQB 38 at paragraph [8]:

> "The Proceeds of Crime Act 2002 does not provide that it is an offence to disobey a restraint order, but the court has an inherent power to treat such behaviour as contempt of court, for which it may impose punishment. There is a recognised distinction between civil contempt, namely conduct which was not in itself a crime but which was punishable by the court in order to ensure that its orders were observed, and criminal contempt. Although the penalty for a civil contempt contains a punitive element, its primary purpose is to make the court's order effective. A person who committed that type of contempt does not acquire a criminal record."

[33] In *R v Doherty* [2018] NIQB 56, Deeny LJ stated at paragraph [7]:

> "It is a civil contempt it is agreed, but it is important that the orders of the High Court are obeyed and the available means of ensuring compliance with the orders of the court include the imposition of a custodial sentence. To do so has been regarded in some of the cases as a punishment for a past breach but it may also be regarded as a deterrent to others against thinking that they can evade orders of the court or simply not comply with them with impunity and so it has been the duty of the court to consider that in this regard."

[34] It is clear that where contempt is proved to the requisite standard, the court in its consideration of the appropriate punishment, will have regard to both the punitive element to punish deliberate breaches of the court order and the coercive element to ensure compliance with the court order. The requisite punishment will depend upon the circumstances of each particular case. Depending upon the nature of the breach and the attempts (if any) of the defendant to purge his contempt, it will be for the court to determine whether the threshold for a custodial sentence has been reached. If not, the court may consider alternative remedies, to include the imposition of a fine.

[35] In *Re Harris and Hawthorne* [2018] NIQB 38, the Divisional Court dealt with contempts by two defendants following the sale of a Fiat Ducato camper van for £30,000 in breach of a restraint order, and for failing to file affidavits setting out their assets in response to the restraint order. The proceeds of the sale of the camper van were not recovered and no restitution was proffered by *Harris.* For this contempt, the court imposed a three month prison sentence. In respect of *Hawthorne*, the court could not exclude the possibility that the asset was disposed of without her knowledge and without any involvement by her in its disposal. She was in contempt in failing to provide an affidavit and a fine of £500 was imposed.

[36] In *Re Doherty* [2018] NIQB 56 the defendant failed to comply with an order of the court to swear and file an affidavit. The defendant took what was described as a

calculated decision not to file an affidavit because to do so would have notified the PPS that he was a Danske Bank customer and that this would have impacted on his ability to obtain credit. In that case, the court concluded that the threshold for a custodial sentence had not been reached and, balancing the relevant factors, came to the conclusion that it was appropriate to impose a fine of £7,500.

[37] Turning to the English authorities, in *R v Adewunmi* [2008] EWCA Crim 71 the Court of Appeal held that the appropriate sentence for contempt was twelve months' imprisonment, imposed consecutive to terms of imprisonment for the offences on the indictment. The appellant had employed "cunning, sophisticated and sustained" tactics to deliberately circumvent a restraint order by refusing to repatriate funds held abroad and by transferring those funds between overseas jurisdictions. For obvious reasons, the total assets concealed abroad are not quantified in the judgment; however, it was noted that the original fraud was in the sum of £876,200 and the appellant had repatriated £100,000.

[38] In *R v Kirby* [2010] EWCA Crim 877, the Court of Appeal upheld a sentence of twelve weeks' immediate imprisonment where the appellant sold his BMW car for £3800. He had appealed on the ground that the sentence for the main offences under investigation was suspended and so the sentence for contempt also ought to have been suspended. The Court of Appeal disagreed, noting at paragraph [10] of the judgment, the importance of restraint orders under POCA and the fact that this was a deliberate breach.

[39] In *R v Roddy* [2010] EWCA Crim 671, the appellant sold a house for £79,804.35 six days after being served with a restraint order prohibiting him from doing so. He received a cheque for the house which he cashed at a pawn broker. The appellant then took the cash to the Republic of Ireland where he remained for a short period before returning to England under a false name. He was sentenced consecutively in respect of drugs offences which had given rise to the investigation and restraint order. The Court of Appeal, whilst recognising the need for deterrence, reduced his sentence from twenty to fifteen months' term of imprisonment.

[40] The appellant in *R v Baird* [2011] EWCA Crim 459 was sentenced for five contempts of court. The first of which was a failure to give full disclosure. The remaining four positive breaches were (a) opening a bank account with a false name and depositing £200; (b) converting €4000 into sterling and depositing it in an account; (c) being found in possession of £8000 worth of cash; and (d) paying £77.50 in an attempt to acquire a false passport. The Court of Appeal agreed with the submission put forward by the appellant's counsel at paragraphs [16] and [17] that "punitive" cases could be distinguished from "coercive" cases and that "the court should not be thinking primarily in terms of punishment in cases where the primary aim is to secure a full disclosure and thus compliance with the restraint order." However, the court also noted the repeated deceptions and attempts to use false identifies, and upheld sentences of eighteen months' imprisonment for a prolonged failure to give disclosure and a six months' concurrent sentence on each of the four positive breaches.

[41] In *R v Samra* [2011] EWCA Crim 2799, the appellant breached a restraint order on twenty-six occasions over a period of a year, by failing to disclose bank accounts in India, opening new accounts, transferring money, writing cheques and making deposits. He disclosed assets of just £5 in India, when in fact they were over £700,000. The Court of Appeal upheld concurrent sentences of twelve months' imprisonment for the breaches, consecutive to his sentence for the main offences on the indictment. The court stated at paragraph 14 -

> "…We take the view that once a suspect is served with an order restraining him from dealing with his assets, if he quite deliberately seeks to avoid the consequences of that order then a sentence of imprisonment — and immediate imprisonment — must follow. We have considered whether the sentence of twelve months was too long. Having considered all the circumstances here and including the number of breaches that there were and the amounts of money involved, we are satisfied that twelve months was the appropriate figure. As a matter of principle, any sentence for contempt in these circumstances must be made consecutive to the sentence for the indictable offences."

[42] In *R v Kalpesh Patel* [2017] EWCA Crim 820 the Court of Appeal upheld a total sentence of twelve months' imprisonment and a fine of £330,000 for breaches of a restraint order. As acknowledged by the prosecution in this case, the decision in Patel may be of limited assistance because of it concerns failures to disclose assets rather than positive breaches. In that case, the defendant was a man of considerable means. However, it is significant that the terms of imprisonment were upheld in this case despite a finding that there had been, in fact, been no dissipation of assets.

[43] In *R v Taktouk* [2020] EWCA Crim 1325 the appellant committed positive breaches of a restraint order, dealing with approximately £45,000 in funds. The appellant also breached the restraint order in a number of respects by failing to disclose assets. He was sentenced to two concurrent terms of seven months' imprisonment, with the judge finding that the gravamen of the contempt lay in the repeated failures to disclose assets rather than any positive dealing with assets. The Court of Appeal dismissed the appeal against sentence.

[44] Mr Mulholland KC, on behalf of Mr Cheuk, states that the relevant English authorities relied upon by the PPS are of limited assistance. Mr Mulholland submits that some of the cases relate to a "failure to disclose" which does not apply to the facts of this particular case. In other cases, such as *R v Roddy,* criminal proceedings were live and resulted in a conviction and the sentence was dealt with as part of the overall sentencing exercise. It is argued that this authority is of limited assistance since I am required to deal with a civil contempt. Furthermore, according to Mr Mulholland, the case of *R v Adewunmi* refers to a different type of breach in that the respondent committed a fraud totalling almost £900,000 which was accompanied by a refusal to

repatriate a significant amount of money from abroad. Such contempt clearly called for a deterrent sentence.

[45] With reference to the decisions in *R v Harris and Hawthorne* [2018] and *R v Doherty* [2018], Mr Mulholland KC states that both authorities involved flagrant breaches of restraint orders and a subsequent deliberate effort to frustrate the investigation into the breaches by refusing to file affidavit evidence.

[46] Turning to the relevant circumstances in this particular case, Mr Mulholland KC highlights the fact that to date no criminal proceedings have been instigated and obviously no criminal convictions have been obtained. In addition, considerable sums of money have been restrained which, he says, exceed the potential realisable amounts owed by Mr Cheuk. In other words, it is asserted that the PPS have the assets to satisfy any future order.

[47] Mr Mulholland KC seeks to place reliance upon the decision of Morgan J (as he then was) in *SOCA v Mark Niall McKinney & Anor* [2008] NIQB 111. In that case, the defendant received a tax cheque by way of refund in the sum of £22,931.94. At the same time he received a cheque from NIE in the sum of £1000. He lodged both cheques to an account held by him in the Portadown Credit Union. Some of that money was used to purchase a car for his daughter. The sum of £23,500 was forwarded to an individual in Spain for the purpose of effecting repairs to a villa owned there by the defendant. All this was done without the knowledge of the Interim Receiver.

[48] Morgan J stated that McKinney's admitted breach of the order went to the very heart of the purpose behind the Proceeds of Crime legislation. An Interim Receiving Order was designed to ensure that, where it is proportionate to do so, potential proceeds of crime should be preserved pending a determination of that issue. Even situations where the defendant is guilty of a gross lack of care, his conduct is worthy of a severe sanction. Taking all the factors into consideration, Morgan J imposed a sentence of three months' imprisonment, which he suspended for a period of twelve months due to mitigating circumstances as discussed below.

[49] Mr Mulholland KC urges the court to accept that there are aspects of the factual circumstances in *McKinney* which are comparable to this case by way of mitigation. In *McKinney,* at paragraph [15] Morgan J stated:

> "[15] By far the most significant matter in mitigation is that Mr McKinney has now indicated that with the assistance of a friend he will be able to reimburse the £15,000 which has been lost. I understand him to be giving an undertaking that the said monies should be held by the Interim Receiver in substitution for the monies lost and dealt with by the court on that basis and his counsel has now confirmed this.

> [16] Taking all these factors into account I consider that the appropriate sentence is one of three months' imprisonment. I consider, however, that the undertaking offered by the first named defendant coupled with his apology for his conduct represents an indication by him of an intention to abide by the Orders of the court in future. Taking into account the remedial as well as the punitive aspect of civil contempt I will suspend the sentence for a period of 12 months. I make no separate order in respect of the second named defendant."

Decision

[50] As stated by the Court of Appeal in *R v Adewunmi* [2008] EWCA Crim 71, paragraph 12:

> "12. Ordinarily there are two elements underpinning a committal for contempt in circumstances such as the present: first, a punitive element to punish the deliberate breaches of the court order; and secondly, a coercive element in order to require the contemnor to do what he is obliged to do under an existing court order."

[51] Both elements are present in this case. In breach of an order of McAlinden J, Mr Cheuk knowingly and deliberately dissipated proceeds amounting to £55,204 and a further sum totalling £10,000.

[52] The authorities considered above confirm that it is imperative that Orders of the court are obeyed and, in order to ensure compliance, a court should exercise its power to impose a custodial sentence for contempt, whether civil or criminal contempt.

[53] It is not inevitable that an Order for committal will lie to punish for contempt of court. Ultimately, in deciding whether the threshold for a custodial sentence has been reached, the court will consider all the circumstances of the case, to include the reasons advanced for the breach of the court Order, an acknowledgement of the breach, efforts made to purge the contempt, repatriation of the assets and other mitigating circumstances.

[54] Turning to the facts of this case, the respondent, from an early stage, acknowledged that he was in breach of the court Order. By so doing, the PPS have been relieved of proving contempt to the criminal standard and, by extension, the necessity of the court to expend valuable time and resources in reaching a determination.

[55] Furthermore, the respondent has sought to purge his contempt by repatriating the monies dissipated into an account by agreement with the PPS.

[56] By way of mitigation, the respondent is the sole provider for his family. The hardship endured by his family resulting from the criminal investigation is noted in the affidavit of his wife. Whilst the court accepts the hardship caused by limited resources, this is an inevitable consequence resulting from any freezing Order.

[57] The court has been advised that the respondent currently employs nineteen members of staff, comprising three chefs, three desk staff, two packers, five food preparation staff, and six drivers. The court was advised that a custodial sentence could potentially put at risk the respondent's business and the livelihood of his staff. I do not consider that this alleged mitigating factor tips the balance in favour of the respondent. The risk to his business is due to his own conduct. The respondent would have been aware of the consequences of breaching the court Order, particularly with regard to his business and his family. The excuse put forward that the respondent has a gambling addiction and that the funds were dissipated in order to feed that addiction is of little relevance in the court's determination of the contempt proceedings.

[58] Taking all the above factors into consideration, I consider that the appropriate sentence is one of two months' imprisonment. However, on the basis that the respondent has repatriated the monies dissipated, acknowledged the breach of the court Order and has expressed his remorse, I will suspend the sentence for a period of twelve months.