Neutral Citation Number: [2022] EWHC 2043 (Ch)

BL-2019-001328

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

29 July 2022

Before:

MR JUSTICE LEECH

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B E T W E E N:

(1) MR RIYADH NASSER ALOKAILI **Claimants**
(2) MR NASSIR ABDULLAH ALOKAILI

- and –

(1) MR BALJINDER CHOHAN **Defendants**
(a.k.a. Bally Chohan)
(2) MR BHUPINDER CHOHAN
(3) SLOANE INTERNATIONAL DEVELOPMENTS 1 LIMITED
(a company registered in the British Virgin Islands)
(4) HILL & STANDARD DEVELOPMENTS
(a company registered in the British Virgin Islands)
(5) HS1 PROPERTIES LIMITED
(6) SLOANE 1 DEVELOPMENTS LIMITED

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MR MARK SIMEON JONES (instructed by **Amanah Solicitors**) appeared on behalf of the Claimants.

MR JAMES RAMSDEN QC (instructed by **Astraea Group Limited**) appeared on behalf of the Second Defendant.

Hearing date: 26 July 2022

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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

I. Background

1. On 11 May 2022 His Honour Judge Keyser QC (sitting as a Judge of the High Court) made an order for committal against the Second Defendant, Mr Chohan, sentencing him to an immediate custodial sentence of 32 weeks imprisonment for contempt of Court, the sentence to commence on 11 July 2022. I will refer to the order dated 11 May 2022 as the "**Order**".

2. On 16 May 2022 the judge handed down a reserved judgment in which he gave his reasons for finding the Second Defendant in contempt: see [2022] EWHC 1126 (Ch). He recorded in [10] that following an application for default judgment, the Claimants obtained the following judgment against the Defendants:

> "The application for default judgment was eventually heard on 6 February 2020 by Deputy Master Arkush, who gave a number of judgments for the respective claimants against the various defendants. The total sum of the judgments entered against Mr Chohan personally was £1,645,707.33, excluding accrued interest. The total sums of the judgments entered against the fifth and sixth defendants were respectively £721,801.23 and £923,906.10, excluding accrued interest. The judgments were not formally entered by consent, but the defendants' solicitors had signified by email their agreement to the entry of the judgments."

3. The judge continued with the history and then recorded that on 22 September 2021 the Deputy Master made five orders indorsed with a penal notice requiring the Second Defendant to attend before the Master for questioning about the means of the judgment debtors specifying classes of documents which the Second Defendant was required to disclose: see [19]. He also recorded that on 9 November 2021 Master Clark made a further order for disclosure indorsed with a penal notice: see [20]. The Claimants applied to commit the Second Defendant and the judge found that he had deliberately failed to comply with his disclosure obligations and was deliberately attempting to prevent the Claimants from obtaining the information which they sought with a view to enforcing their judgments: see [47].

4. In relation to the sentence, the Judge took account of various considerations before imposing a custodial sentence of 32 weeks: see [54]. He also stated that he had not found any sufficient reason to suspend the sentence. However, he gave the following explanation for the time at which the sentence was to commence at [56]:

> "However, as I indicated at the hearing when pronouncing the sentence, I direct that the term of custody shall commence on 11 July 2022. This is because I have made a further order for focused and specific disclosure, with which Mr Chohan is to comply by 10 June 2022. Compliance will be more likely if Mr Chohan is not in prison in the interim. I have directed that Mr Chohan attend at court to surrender to custody at 10.30 a.m. on 11 July 2022, when there will be a further mention in this matter. The court can then consider whether Mr Chohan's compliance with the further disclosure order I have made ought properly to be treated as sufficient to purge his contempt and, if so, to what degree. Any decision on that occasion will be entirely a matter for the judge who hears the mention. It might, however, be helpful if I indicate, as I did when pronouncing sentence, that, although the sentence I have passed is single and undivided, I had in mind periods of 20 weeks for the punitive element and 12 weeks for the coercive element."

5. Paragraphs 1 and 2 of the Order which the judge made dealt with the sentence. Paragraphs 3 to 5 contained the orders for disclosure which the judge referred to in his judgment. I will set out those paragraphs in full when I come to consider compliance later in this judgment. For present purposes, it is enough to note that the judge ordered the Second Defendant to serve an affidavit providing the relevant information by 10 June 2022.

6. On 11 July 2022 the "mention", as the judge described it, was listed before me. Unfortunately, I was unable to hear it because I came down with a variant of Covid 19 and by Order dated 11 July 2022 I extended the time at which the sentence was to commence until 26 July 2022, when the mention was re-listed before me. I heard evidence and argument on Tuesday 26 July 2022 and I indicated that I would hand down a reserved judgment today, Friday 29 July 2022. I also extended the time at which the sentence was to commence from 26 July 2022 to 29 July.

7. I should record my thanks to Mr Mark Simeon Jones, who appeared for the Claimants, and his solicitor, Mr Wakil Ahmed, who appears at the hand down of the judgment today, for their flexibility and patience. I also extend the same thanks to Mr James Ramsden QC and his solicitors, Astraea Group Ltd, who appeared for the Second Defendant and express my regret to the Second Defendant that the disposal of this matter had to be delayed. Finally, I should record that Mr Ramsden and Astraea Group Ltd did not appear for the Second Defendant before the judge on 11 May 2022.

8. On 10 June 2022 the Second Defendant made and served the affidavit which the judge had ordered and he exhibited documents which ran to 10 lever arch files. In the affidavit

he claimed to have complied with the Order. On 4 July 2022 Mr Ahmed made a witness statement in which he contested the Second Defendant's evidence that he had complied with the Order. On 8 July 2022 the Second Defendant made an affidavit in reply. He also gave evidence about his personal circumstances and the consequences for him and his family of a custodial sentence.

9. Mr Ahmed exhibited to his witness statement dated 4 July 2022 a report prepared by Mr Mohammed Miajee, an expert accountant, dated 5 July 2022 in which he had carried out an analysis of the financial statements and related documents which the Second Defendant had produced and exhibited to his first affidavit. Mr Ramsden made a number of criticisms of Mr Miajee's report and submitted that it did not comply with CPR Part 35. But he did not submit that it was inadmissible or that I could not rely on its contents. I therefore permitted the Claimants to rely on it.

10. Mr Ramsden tendered the Second Defendant for cross-examination and he gave oral evidence before me. He confirmed the contents of his affidavits and in examination in chief Mr Ramsden put a number of the criticisms to him which Mr Ahmed had raised in his evidence and Mr Miajee had made in his report. He was then cross-examined by Mr Jones.

II. Approach

11. CPR Part 81.10(1) provides that a defendant against whom a committal order has been made may apply to discharge it. CPR Part 81.10(2) provides that such an application must be made by Application Notice under CPR Part 23 and CPR Part 81.10(3) provides that the court hearing the application shall consider all the circumstances and make such order under the law as it thinks fit. Mr Ramsden drew my attention to the decision of His Honour Judge Simon Barker QC in *Re Ravinder Balli* [2011] EWHC 1865 (Ch) in which he set out the principles relating an application by a contemnor to purge contempt. He stated this at [12] to [17]:

> "12. A committal order is an order of last resort; in the context of civil proceedings, it is also draconian. It should only be made where, having regard to all the circumstances, it is absolutely necessary. 13. By way of temper, a contemnor has an unqualified right to apply to the court to purge his/her contempt and seek an order for immediate release. This is not a 'once only' right, rather it is a continuing right running throughout the duration of the sentence. 14. The origins of this right appear to be twofold

> : (1) being rooted in the quasi-religious concepts of purification, expiation and atonement (*Harris v Harris* [2002] Fam 253, Thorpe LJ at paragraph 21); and, (2) prior to the coming into force of s. 14 of the Contempt of Court Act 1981, being the means by which release from prison was secured following committal to prison for an unspecified period under common law (the 'price' of release being, as part of the purging, compliance with a mandatory order or a credible promise not to disobey a prohibitive order in the future). 15. With these considerations in mind, a contemnor's right to apply to purge his/her contempt became enshrined in a procedural rule, currently RSC Ord 52 Rule 8(1), now in the CPR Sch 1, which provides: "The court may, on the application of any person committed to prison for any contempt of court, discharge him". 16. There are only three possible outcomes of an application to purge and obtain release: (1) immediate release, (2) deferred release at a stated future date, or (3) refusal of the application (*Harris*, Thorpe LJ at paragraph 21, after citing at paragraph 17 and following *Delaney v Delaney* [1996] QB 387, Sir Thomas Bingham MR at pages 400-1). 17. Although the court may impose a suspended order of committal (see RSC Ord. 52 Rule 7(1)), on an application to purge it may not vary its sentence so as to suspend, for any period, the unexpired term of the sentence. There are two principal reasons for this: (1) clarity and certainty as to the powers of the court and the rights of contemnors, and (2) overarching this, such a variation is more accurately characterised as the imposition of a fresh penalty, which is not lawful, rather than amelioration of the original penalty (*Harris*, Thorpe LJ at paragraphs 21-2)."

12. It was common ground that I should treat the "mention" before me as an application by the Second Defendant to purge his contempt under CPR Part 81.10. This is plainly what the judge had in mind in his judgment at [56] (above). Moreover, Mr Jones did not submit that the Second Defendant should have issued an Application Notice under CPR Part 81.10(2). Again, if the judge had required this before the Court could consider whether the Second Defendant had purged his contempt, he would have surely said so. I was therefore content to treat the hearing as an application by the Second Defendant under CPR Part 81.10(1).

13. The parties did not agree, however, on the approach which I should adopt. Mr Ramsden submitted that the Second Defendant had served an affidavit complying with the Order and that if the Claimants disputed this, the burden remained on them to prove to a criminal standard that he had not complied with the Order since they were in substance arguing that he remained in contempt of Court. Nevertheless, he accepted that there was an evidential burden on the Second Defendant. Mr Jones submitted that the burden was on the Second Defendant to prove by credible evidence that he had fully complied with the

Order.

14. Neither counsel drew my attention to any authority on this point. In the absence of authority, I prefer Mr Ramsden's submissions on this point. The Claimants' case was in substance not only that the Second Defendant had failed to comply with the Order but also that he was continuing to mislead the Court. In his Skeleton Argument Mr Jones made the following submission:

> "44. Having been afforded the opportunity to purge or mitigate his contempt by providing a full and frank picture of his asset base, D2 has instead elected to provide a superficially compendious bundle of papers deliberately designed to obfuscate, and to create the impression that the millions of pounds passing through his companies' and his solicitors' hands have resulted in the acquisition of nothing at all. This simply cannot be true, as revealed by Mr Ahmed's and Mr Maijee's necessarily partial analysis (given the restrictions of non-disclosure, and time) of such documents as have been provided.
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> 45. The irresistible inference is that D2 has continued deliberately and wilfully to refuse to comply with his disclosure obligations, which in turn must be contingent upon a desire to evade disclosure and frustrate enforcement of Cs' judgment against him, D5 and D6."

15. I accept Mr Ramsden's submission, therefore, that it was the Claimants' case that the Second Defendant remained in contempt of Court and that he was continuing to commit deliberate breaches of the Order. I also accept his submission that in those circumstances it was for the Claimants to prove to the requisite standard that he remained in contempt. I, therefore, directed Mr Jones to open the "charges" or "counts" upon which he relied to substantiate his case, Mr Ramsden made some brief submissions and then called the Second Defendant to give oral evidence. He then made his submissions in answer to those charges and Mr Jones made closing submissions.

16. Mr Ramsden also submitted that I should only draw inferences on the basis of solid evidence and that I could not be satisfied that the Second Defendant remained in contempt purely on the basis of the implausibility of his evidence. I accept of course that I must be satisfied to the criminal standard that the Second Defendant remains in contempt and that I should be careful before drawing inferences either from the implausibility of oral evidence given by a witness or their credibility more generally. However, there is no principle of law that the Court cannot draw inferences to make findings of fact to the criminal standard or make such findings on the basis of

circumstantial evidence.

17. The authorities show that where the Claimants' case is based wholly or primarily on circumstantial evidence the Court must assess it cumulatively. It is also open to the Court to draw inferences from primary facts although it may not infer the existence of a fact which constitutes an element of the case unless that inference is a compelling one. Likewise, where the evidence is circumstantial, the court must be satisfied that the facts are inconsistent with any conclusion other than the contempt has been committed (or is, in the present case, continuing). Finally, it is not necessary for the Court to be sure on every item of evidence which it relies upon in reaching the conclusion that a contempt has been committed (or, in this case, is continuing). But it must be sure of the essential facts which are necessary to prove the contempt or are necessary steps to that conclusion. I therefore proceed on that basis.

III. The Evidence

18. The Second Defendant exhibited as BC1 to his first affidavit a table of 19 companies incorporated in the United Kingdom and 39 companies incorporated in the Seychelles or the British Virgin Islands in which he either had or has an interest. The table recorded that none of those companies had any assets and that, apart from one company, all of the companies registered in the Seychelles or the British Virgin Islands had been struck off. In his first affidavit the Second Defendant also confirmed that none of these companies hold any property assets. In relation to his own assets his evidence was as follows:

> "I jointly own one property in the UK, 56 Keats Way, West Drayton UB7 9DU. It is jointly owned with two others, Kulvinder Nagha and Jaswant Mohindra (my siblings). The property is a 3-bedroom, 1-bathroom semi-detached property and I own the freehold title. A copy of the register is at Exhibit BC4/10-13. I am registered as the sole owner on the Title register but I hold the property on trust for myself and my siblings in equal shares. A copy of the Trust Declaration is at Exhibit BC4/3-8. We purchased the property on 20 October 2005 with a mortgage. The amount currently owed under the mortgage is £83,615.42. The most recent mortgage statement is at Exhibit BC4/14-15. The Property is currently worth approximately £443,000. An estimated valuation is at Exhibit BC4/16-17."

19. Gordons LLP ("**Gordons**") had acted for the Second Fifth and Sixth Defendants and other companies which the Second Defendant had disclosed in the table exhibited at BC1. The Second Defendant had been ordered to produce its ledgers and Mr Ahmed and Mr

Miajee had carried out an analysis of them. They calculated that over a period of three years the Second Defendant had transferred approximately £6.5 million from the Fifth Defendant's bank account and approximately £4.9 million from the Sixth Defendant's bank account to Gordons' client account. Those transfers totalled £11.4m. In examination in chief the Second Defendant confirmed that he had no assets to show for this money and when he was asked where it all went, he said that it passed through the UK bank accounts of his various companies and that it was all shown in the bank statements which he had exhibited.

20. The Second Defendant also gave evidence that he had no secret accounts, that he had provided all business and bank account statements relating to these funds and that his investments had started to go bad in 2013. He said that he had provided evidence of where the money was lost and that it was also spent on overheads such as staff, office rentals and keeping his business afloat. In his second affidavit he also gave the following evidence about the failure of a project relating to Columbus House, 10 Edridge Road, Croydon CR10 1EE ("**Columbus House**") which is directly relevant to the findings of fact which I must make:

> "38. Approximately £1,500,000 was invested in this project. Roughly, 30-45 units were sold in this project and funds were sent across to the vendor. During this time, the company also invested significant sums into the planning applications for the site and associated professional and legal fees. In the lead up to the completion deadline, the intention was to use the funds from the sale of another site, Staines Road West to complete on the Edridge Road site. At the last moment, the buyer chose not to proceed with Staines Road West which caused the company to lose the Edridge Road contract. A short extension for completion was requested from the vendor but this was rejected and the deposits/funds were forfeited. 39. This project failed in about 2015-2016."

21. In evidence in chief the Second Defendant confirmed this evidence. He also gave evidence that when the vendor pulled the plug on this project, he lost millions of pounds and that he was firefighting to keep his business afloat. He said that from the moment that he lost the Edridge Tower, his business was over. He also said that he had been portrayed as a scamster by the Claimants' solicitors but that he had been attempting to deal with the legal problems since he had lost the project and had managed to raise £860,000 to pay investor Claimants in another case (whom Amanah Solicitors also represented) and £180,000 in the present case. Against this background I now consider

the individual charges or complaints which Mr Jones put to the Second Defendant.

(1) Croydon Tower 1 Ltd

22. I begin with a company called Croydon Tower 1 Ltd ("**Croydon Tower**"). It is a company incorporated in the United Kingdom and registered at the Companies House under company registration no. 10695139. Its two directors are Mr Ashok Kumar and the Second Defendant's sister, Ms Kulvinder Nagha. The persons registered with significant control of the company are Ms Nagha and another UK registered company, The Bullion Store Property Ltd (the "**Bullion Store**"). Ms Nagha's correspondence address is given at Companies House as 56 Keats Way West Drayton England UB7 9DU. This is also the personal address which the Second Defendant gave in his affidavits and the one property asset which he disclosed in his first affidavit.

23. By a transfer dated 26 June 2017 an entity called Edridge Road BV transferred Columbus House to Croydon Tower. The transfer recorded the purchase price as £7m plus VAT of £1.4m and on 20 July 2017 Croydon Tower was registered as the legal proprietor of the property under title no. SGL 573075. There are two charges recorded in the charges register. The first is dated 12 December 2018 and was granted to the vendor, Edridge Road BV. The second is also dated 12 December 2018 and was granted to a lender, Together Commercial Finance Ltd. Mr Ahmed exhibited a copy of this charge but not the facility letter. Mr Miajee also annexed to his report the unaudited financial statements of Croydon Tower for the year ended 31 March 2021 which stated that the company had net assets of £3,410,554.

24. Mr Ahmed also exhibited Gordons' client account ledger for a client named Sloane Luton Dunstable Ltd ("**SLD**") which is a company registered in the British Virgin Islands. The Second Defendant included this company in his table of companies and the information which he gave about it was that it was struck off the register on 1 May 2018 and that it had no assets and no bank account. The Gordons' ledger records that on 23 June 2017 the firm made a payment of £958,871.89 to Howard Kennedy LLP ("**Howard Kennedy**") on behalf of SLD. The form AP1 which a firm of solicitor called Seddons submitted to the Land Registry, presumably on behalf of the lender, shows that Howard Kennedy were acting for Croydon Tower on the purchase of Columbus House.

25. The Second Defendant has produced the unaudited and abridged financial statements of

a number of companies which include both the Fifth and Sixth Defendants and B&M Properties 1 Ltd ("**B&M**"). The Second Defendant is the sole director and shareholder of B&M and he gave evidence before the judge in May that it was his employer. Paragraph 5.8 of the Order required the Second Defendant to give specific disclosure of B&M's financial records (to which I return below). For present purposes, the financial statements of the Fifth and Sixth Defendants and B&M contained the following information:

(1) Note 6 to the financial statements of the Fifth Defendant for the year ended 31 August 2018 record that during that year it made an interest free loan of £119,059 to SLD and an interest free loan of £10,875 to Croydon Tower (which was described as an associated company).

(2) Note 6 to the financial statements of the Fifth Defendant for the year ended 31 August 2019 record that the interest free loan of £119,059 to SLD remained outstanding as at the balance sheet date.

(3) Note 6 to the financial statements of the Sixth Defendant for the year ended 31 March 2019 record that it had made an interest free loan to SLD of £800,000 in 2018 but that the loan had been reduced to nil as at the balance sheet date.

(4) Note 6 to the financial statements of the Sixth Defendant for the year ended 31 March 2020 record that included in debtors was an interest-bearing loan of 2.5% per annum to SLD and that the balance due at the year-end was £1,060,447 including accrued interest of £93,548.

(5) Note 6 to the financial statements of B&M for the year ended 30 April 2019 record that it had made an interest free loan of £247,183 to Croydon Tower in 2018 and that the amount of the loan was £328,528 at the balance sheet date.

(6) Finally, note 6 to the financial statements of B&M for the year ended 30 April 2020 record that the loan to Croydon Tower had increased during that year from £328,528 to £389,028 at the balance sheet date.

26. The Second Defendant made no mention of Croydon Tower's purchase of Columbus House in either of his affidavits. In evidence in chief he gave evidence that his sister also

did real estate and that she approached him to help with the acquisition on the basis that there would be a quick turnaround of two years to obtain planning permission and that he would get a share of the profits. He also said that with increasing costs and the pandemic, the project took five years and incurred spiralling interest payments of £50,000 per month, that there was no way that Croydon Tower could repay the loan and that he had "wrote it off since 30 April 2019". He also said that there were no documents to evidence the loan because this was a family transaction. In cross-examination the Second Defendant accepted that he had made interest free loans of £1.287 million to his sister's company to help her out. But he repeated that if the project had been successful, he would have received a percentage of the profits.

27. The Second Defendant was also taken to a bank statement for the business account of B&M which showed that on 30 July 2020 it had made a payment of £10,000 to the Bullion Store. His evidence was that Mr Kumar controlled the Bullion Store and that he had no interest in the company. He said that he made the payment to help him out because the company was struggling. He was asked why he made the payment after he had written off a loan of over £320,000 to his sister's company if it had to meet interest payments of £50,000 per month. He said that it was to help keep the company afloat and that he had to take a "punt" to try get a return on his investment.

28. Finally, I asked the Second Defendant during his cross-examination where he got the money from to make the payment of £958,871.89 to Howard Kennedy. He was unable to answer this question. He said in evidence: "I would have to check. I don't want to say something if it is wrong. I still say I need to check it." He did not volunteer the information that the Fifth and Sixth Defendants had made interest free loans to SLD or that the Sixth Defendant had made an interest-bearing loan to SLD or identify either company as the source of the funds. But he was not taken to the relevant financial statements in either cross-examination or re-examination.

(2) Go Estates

29. Note 6 to the unaudited financial statements of the Fifth Defendant for the year ended 31 August 2019 also records that in 2018 the company had made an interest free loan of £100,000 to a company called Go Estates Ltd ("**Go Estates**") and that the loan remained outstanding as at the balance sheet date. The note described Go Estates as a company in

which the Second Defendant had either close family members or business associates who were both director and shareholder. Mr Miajee annexed to his report the abridged financial statements of Go Estates for the year ended 31 May 2018 which identified Mr Yoel Orlinski as its sole director and controlling party. Those statements also recorded that the total liabilities of the company were £71,852.

(3) Data Sciences House

30. Note 6 to the unaudited financial statements of B&M for the year ended 30 April 2019 records that in 2018 the company made an interest free loan of £219,150 to a company called Data Sciences House Ltd ("**Data Sciences House**") and that the loan remained outstanding as at the balance sheet date. Mr Miajee also annexed to his report the abridged financial statements of Data Sciences House for the year ended 31 August 2018. Those statements identified Mr H Bondi, Mr P Heitner and Mr Orlinski as its directors and stated that the ultimate controlling party was Mr Orlinski.

(4) Hull Accommodation

31. Note 6 to the unaudited financial statements of B&M for the year ended 30 April 2020 records that in 2019 the company had made a loan of £517,652 to a company called Hull Accommodation Ltd ("**Hull Accommodation**") and that the loan remained outstanding as at the balance sheet date. This loan was not, however, recorded in the corresponding note to the 2019 financial statements (a point to which I return). Mr Miajee annexed to his report information from Companies House which showed that Mr Orlinski had been appointed a director on 3 May 2017 and had resigned on 4 January 2019. It also showed that on 19 August 2019 a petition had been presented to wind up Hull Accommodation and that on 19 November 2019 winding up had commenced and the Official Receiver had been appointed as liquidator.

(5) Slough Housing

32. Note 6 to the unaudited financial statements of B&M for the year ended 30 April 2019 also records that in 2018 the company had made an interest free loan of £517,652 to a company called Slough Housing Ltd ("**Slough Housing**") and that the loan remained outstanding as at the balance sheet date. Mr Miajee also annexed to his report the abridged financial statements of Slough Housing for the year ended 29 February 2020.

Those statements identified Mr Orlinski as the sole director and ultimate controlling party. They also recorded that the company had net current liabilities of £70,610 as at the balance sheet date and net current liabilities of £67,820 the previous year.

33. I deal with the evidence which the Second Defendant gave about Go Estates, Data Sciences House, Hull Accommodation and Slough Housing together because they were closely related companies. In examination in chief the Second Defendant was taken to the note referring to the loan to Go Estates and he gave evidence that he was not a director or shareholder of Go Estates and not responsible for its management or accounts. In cross-examination, he also said that Mr Orlinski and Mr Morton Gold, his business partner, were its directors.

34. In examination in chief the Second Defendant gave evidence that Data Sciences House, Hull Accommodation and Slough Housing were controlled by Mr Orlinski and Mr Gold (and in cross-examination he also accepted that the description given in the notes to the financial statements that they were business associates of his was fair). It was also his evidence in chief that these companies were the owners of student accommodation which he managed on their behalf and that a third-party lender or lenders had made loans of £517,652 to each of Hull Accommodation and Slough Housing. It was also his evidence that the funds were paid directly to Mr Orlinski's account by solicitors and did not pass through his own bank account.

35. When he was asked by Mr Ramsden why the loans appeared in the financial statements, the Second Defendant said that he thought that this was the best way to protect himself. When he was asked whether he had falsely represented in B&M's accounts that he had lent money which he had not lent, he repeated this explanation and said that he thought that it was the best way to protect himself, that he had bills to pay and that if rental income dried up, he could rely on the loans of £517,000 and keep the sites going.

36. In cross-examination the Second Defendant confirmed that Hull Accommodation and another company were being wound up. He was asked whether he had proved in the liquidation and he confirmed that he had. When he was asked whether he had given disclosure of the relevant documents, he said that the process (which he described as an administration) was ongoing, the implication being that he had no documents. He also said that there was no way to get the money back. Mr Jones also asked the Second

Defendant why he had made loans which were interest free. His evidence was that he offered interest free loans to establish the business relationship.

(6) Estate Advisory

37. Estate Advisory Ltd ("**Estate Advisory**") is another company registered in the United Kingdom under company registration no. 08604243. The information filed at Companies House shows that the directors are Mr Ahmed Dahir and Ms Noor Majid and that Ms Majid has significant control of the company. The analysis which Mr Ahmed and Mr Miajee had carried out of the bank statements disclosed by the Second Defendant shows that the Second Defendant had made regular payments to Estate Advisory through various companies during 2020 and 2021 and, in particular, that on 17 January 2022 CE Estates Ltd ("**CE Estates**") made two payments to Estate Advisory totalling £57,500.

38. In cross-examination the Second Defendant accepted that Ms Majid was a saleswoman and a member of his staff. He explained that the payments made to Estate Advisory were for salary and commission. When he was asked why he was paying commission to her when he was not doing any business and he was doing so badly, his evidence was that these payments were for negotiating with investors and looking at bringing projects into the business. He also explained that he only had two members of staff and that the other staff member was paid through the payroll of B&M.

39. The Second Defendant was then asked why he had made a payment of £50,000 to Ms Majid in 2022. He said that she wanted her commission payments, that she had introduced business to the group as a whole and that this business consisted of various investors. He was asked where the invoices were for the commission payments, he said that he had provided everything. When Mr Jones put it to him that he had not disclosed the relevant invoices, he said that he had asked his accountant. He also gave evidence that investments to which these consultancy payments related all pre-dated the payment by two years.

(7) Bounce Back Loans

40. Mr Ahmed also exhibited an analysis of the bank statements of four of the Second Defendant's companies which appear in the table which he exhibited at BC1: B&M, IPC Legal Consultants ("**IPC**"), The ERP Properties Ltd ("**ERP**") and Hill & Standard The

City Park Ltd ("**City Park**"). Those bank statements show that each of these four companies received a loan of £50,000 under the UK government's "**Bounce Back**" loan scheme. Mr Ahmed gave evidence that the scheme helped small business to borrow between £2,000 and up to 25% of their turnover to a maximum of £50,000 by quoting the relevant guidance on the government's website.

41. In opening submissions Mr Ramsden submitted that the Bounce Back loan scheme was self-certifying and in examination in chief, the Second Defendant admitted that he had made the applications for the four loans. He also admitted that the four companies did not have turnover of £200,000 in their last accounting period. His evidence was that he did not understand that it was necessary to show that the borrower had turnover of £200,000 in the last accounting period before it could take advantage of the scheme and that all four companies had had turnover of £200,000 historically. He also said that the banks could always check. He also confirmed that none of the four companies had any assets now.

42. In cross-examination the Second Defendant was asked whether he considered it acceptable to apply for these loans of £50,000 when these four companies had no assets and no turnover of £200,000 in the last accounting period. He said that he did consider it acceptable and he repeated his evidence that he did not understand that the relevant turnover had to be in the last year.

(8) HMRC CJRS Grants

43. Mr Ahmed also produced an analysis of B&M's bank statements showing that the Second Defendant claimed and received £40,000 through the Coronavirus Job Retention Scheme for the Second Defendant's wages or salary as an employee. Mr Ahmed gave evidence that an employer could apply for a grant of 80% of a furloughed employee's pay up to a maximum of £2,500 per calendar month and that the maximum amount available was gradually reduced over time. On this basis, his evidence was that the Second Defendant had claimed the maximum available grant even though his evidence to the Court (and recorded by the judge) was that he had not drawn a salary at all during the Covid-19 period.

(9) Other Payments

44. Finally, Mr Ahmed also gave evidence that the Second Defendant's companies had paid £200,840 to various firms of solicitors, regular payments of £6,000 per month to Knight Frank as rental payments, £54,703.50 to a number of different private schools and sums to the Second Defendant's wife in breach of a freezing injunction. The Second Defendant was not cross-examined about any of these payments.

IV. Credibility

45. I deal now with the credibility of the Second Defendant. Mr Ramsden accepted that the business practices of the Second Defendant were unconventional (to use his word) and even informal or chaotic. But he submitted that I should be slow to draw inferences except on the basis of solid evidence. He also reminded me that the complaints which the Claimants had made were only available to them because the Second Defendant had made wide disclosure in order to comply with the Order. He described this as a "jury" point but it was still a good one and worth making.

46. I return to the question whether I should draw adverse inferences against the Second Defendant in greater detail below. But insofar as Mr Ramsden was making submissions about the general credibility of the Second Defendant, I was unable to accept those submissions. I did not consider him to be an honest or reliable witness and I did not accept his evidence on the two key issues which I had to decide for the purposes of this judgment. I deal with my reasons for doing so below. But I found him to be a dishonest witness more generally for the following reasons:

    (1) As Mr Jones reminded me, the judge found that the Second Defendant did not comply with his disclosure obligations and that he was deliberately attempting to prevent the Claimants from obtaining information: see [2022] EWHC 1126 (Ch) at [47]. There was no appeal against that finding and no attempt to challenge it before me.

    (2) I found the Second Defendant's explanation for the funds which he advanced to Croydon Tower to be wholly implausible. In his evidence in chief he gave a vivid description of the difficulties which he encountered following the collapse of the original project in 2015 or 2016 explaining how he was firefighting to save the business. Within a matter of minutes he was explaining how his sister also did real estate and how she had approached him to invest in the new project on the basis of

a quick turnaround of two years and a share of the profits. He did not explain how he was able to raise £1.287m (the figure which he accepted in cross-examination) to take advantage of this investment. Nor did the apparent inconsistency in his evidence occur to him.

(3) The Second Defendant accepted in evidence that he made four applications for loans of £50,000 under the Bounce Back loan scheme on behalf of four companies which had no assets and no turnover of £200,000 in the previous accounting period. His explanation was that they all had turnover of £200,000 historically and that he did not appreciate that the turnover requirement of £200,000 related to the previous accounting year. I did not accept that evidence. He produced no evidence to show that IPC, ERP and City Park had ever achieved historic turnover of £200,000 and the profit and loss account of IPC (which was put to the Second Defendant in evidence) showed that it had no income at all for the last three years. I am satisfied that the Second Defendant completed false and dishonest applications to the government for Bounce Back loans on behalf of B&M, IPC, ERP and City Park.

(4) I might have been prepared to give the Second Defendant the benefit of the doubt in relation to the four Bounce Back loans if he had not also applied for furlough payments for himself during a period when he had told the judge (and the judge recorded) that he had not drawn any salary over the Covid-19 period. He was not cross-examined on the furlough payments (or not at length) and I do not attribute any independent weight to them. But they provide corroboration for my conclusion that the Second Defendant made four false and dishonest applications under the Bounce Back loan scheme.

V. Findings of Fact

47. I turn next to my findings of fact. The two principal issues which I had to decide were whether to accept the Second Defendant's explanations for the sums advanced to Croydon Tower and to the four companies controlled by Mr Orlinski and Mr Gold and if I did not accept his explanations, what inferences I should draw from his evidence and the documents which the Claimants put before the Court. I begin with Croydon Tower.

(1) Croydon Tower

48. I reject the Second Defendant's evidence that his sister approached him to help with the acquisition of Columbus Tower, that he lent her £1.287 million interest free and that he wrote off the loan or loans on or after 30 April 2019. I reject that evidence for the following reasons:

    (1) The loan made by B&M to Croydon Tower was recorded in its accounts for the year ended 30 April 2019 and 30 April 2020. Indeed, it increased from £328,028 to £389,028 during that year. If the Second Defendant had written off that loan, I have no doubt that he would have instructed his accountant to that effect and produced some evidence to verify this claim. It was not in his interests to record that this loan remained outstanding.

    (2) The loan made by the Sixth Defendant to SLD was recorded in its accounts for the year ended 31 March 2019 and the year ended 31 March 2020. Indeed, that loan had increased from £800,000 to £1,060,447 during that year and had become interest-bearing.

    (3) I do not accept the Second Defendant's evidence that Croydon Tower was in financial difficulty or that it was necessary to write off the loan. He produced no documents to support his evidence and its accounts for the year ended 31 March 2021 showed that the company had investment property valued at £15,273,391 and net assets of £3,410,554.

    (4) On 30 July 2020 B&M made a payment to Bullion Store. Although the payment was not a large one, it is improbable that the Second Defendant would have continued to provide financial support to Croydon Tower or its shareholders if it had written of the loan. Moreover, I found the Second Defendant's evidence on this point wholly implausible. His evidence was that although Croydon Tower was in financial trouble and he had written off the loan, he was prepared to take a "punt" to help keep it afloat and realise his investment. If Croydon Tower had been in trouble, £10,000 would have made little difference and I have no doubt that the Second Defendant would have made no effort to assist it to repay its creditors.

49. Having rejected the Second Defendant's evidence, I consider that the probable explanation and the inference which I draw is that the Second Defendant is either the ultimate beneficial owner of Croydon Tower or that he is the ultimate beneficial owner

of a substantial interest in that company. I draw that inference for the following reasons:

(1) Mr Jones submitted (and I accept) that Gordons paid the sum of £958,571.89 to Kennedys on 23 June 2017 as a contribution to the purchase price of the Columbus House. No other explanation was offered by the Second Defendant in his second affidavit or in evidence in chief.

(2) The obvious explanation for the source of that payment and the inference which I draw is that it was funded by the Fifth and Sixth Defendant and that the Second Defendant routed the payment through SLD in order to hide or disguise its source. I draw this inference from the accounts of the Fifth and Sixth Defendant and the fact that SLD was struck off the register within 10 months on 1 May 2018.

(3) Moreover, I draw the inference that SLD was no more than a conduit or nominee because the accounts of both the Fifth and Sixth Defendants continue to record the loans as outstanding after the company had been struck off. If SLD had been a genuine debtor, it is unlikely that the Second Defendant or his accountants would have overlooked this fact.

(4) I also note that the funds passed through Gordons' client account very quickly. On 16 June 2017 the sum of £1,674,202.56 was paid into Gordons' client account and after the payment to Howard Kennedy and certain other payments £300,000 was paid out to B&M on 21 July 2017. By 18 October 2017 the balance on the account was nil.

(5) The Second Defendant did not explain the payment to B&M in either of his affidavits. Indeed, in his first affidavit he stated that the only sums which B&M received were from rental income. Again, the inference I draw is that the Second Defendant routed funds through SLD and Gordons' client account to disguise both the source and the recipients before having the company struck off.

(6) In cross-examination the Second Defendant gave evidence that Mr Kumar controlled Bullion Store and he denied that he had any interest in the company. I do not accept that evidence either. He did not explain how his sister and Bullion Properties were able to raise £8.4m to acquire Columbus House apart from the interest free loans which he himself or his companies had made. Moreover, note 10

to the unaudited financial statements of Croydon Tower for the year ended 31 March 2021 records a loan of £1,710,409 to its parent company and that the loan was interest free.

(7) The inferences which I draw from these documents is that Ms Nagha holds her shares in Croydon Towers as a nominee for the Second Defendant (and possibly others including the First Defendant, his brother) and that Bullion Properties is beneficially owned by him (or them) and that the loans advanced by SLD and B&M to acquire Columbus Towers have either been assigned to Bullion Properties or treated as owing to that company. This conclusion is supported by the fact that B&M has made at least one payment to Bullion Store.

(8) Finally, these inferences are consistent with the Second Defendant's pattern of conduct and, in particular, his conduct in forming or acquiring companies both offshore and onshore to disguise his activities and then having those companies struck off or dissolved. Moreover, the Second Defendant had a strong motive to disguise his interest in Croydon Towers from the Claimants and other investors to whom he had originally sold units off plan in relation to the original project.

(2) The Company Loans

50. I can deal with the loans made to Go Estates, Data Sciences House, Hull Accommodation and Slough Housing (together the "**Company Loans**") more briefly. I reject the Second Defendant's evidence that the loans made by B&M to Hull Accommodation and Slough Housing of £517,652 each were never made. His explanation made no sense and my appreciation of his evidence was that he made up that explanation because he began to appreciate that he would be pressed to explain where the money came from to make those loans and he did not want to provide that information. Moreover, he could not give a sensible explanation for the false statements in the accounts of B&M and the Fifth Defendants.

51. Mr Jones submitted in closing argument that the Second Defendant used the Company Loans as a means of sheltering or "warehousing" funds in other companies. In my judgment, that is the obvious inference to draw and I draw that inference for a number of reasons:

(1) There was no commercial reason for the Second Defendant's companies to make interest free loans to third parties especially if some or all of those companies were in the kind of financial difficulty which the Second Defendant described.

(2) Moreover, even though he claimed that the loans to Hull Accommodation and Thames Housing were never made, the Second Defendant elected to give a commercial rationale for these loans, namely, that he offered interest free loans to Mr Orlinski and Mr Gold to build a business relationship with them. I also found this explanation highly improbable. Mr Orlinski and Mr Gold were business associates and the Second Defendant claimed to have been managing substantial student housing properties on their behalf. It is highly improbable that this business relationship came into being because the Second Defendant offered them interest free loans.

(3) The loan to Hull Accommodation was not recorded in note 6 to B&M's accounts for the year ended 30 April 2019 but it was recorded as having been made in that year in note 6 to its accounts for the year ended 30 April 2020. If the loan had been a commercial loan at arm's length, one would have expected the Second Defendant to inform his accountants of this fact when they were preparing the accounts for the year ended 30 April 2019 and to provide them with the relevant accounting information. Further, by 30 April 2020 Hull Accommodation had been wound up. Again, one would have expected the Second Defendant to inform his accountants about the insolvency of Hull Accommodation and to ask them to write off the loan.

(4) The loans to Slough Housing and Go Estates are not recorded in the accounts of those companies. The unaudited financial statements of Slough Housing for the year ended 29 February 2020 only records that it had liabilities of £67,820 as at 29 February 2019. Again, the unaudited financial statements of Go Estates for the year ended 31 May 2018 only records that it had creditors of £71,852.

(5) I might have been prepared to accept that all of these entries could be explained as "chaotic" business practices (to use Mr Ramsden's word) if the Second Defendant had produced any loan documentation or records or correspondence or emails with the accountants who prepared these financial statements to explain these entries and their inconsistency. But he did not do so. Moreover, he did not address any of

these loans in his second affidavit despite Mr Miajee raising them in his report.

(6) Finally, I place some reliance on the unexplained payments to which Mr Ahmed and Mr Miajee drew my attention. It is difficult to see how the Second Defendant could have made those payments without access to substantial funds to which his creditors did not have access. The inference which I draw is that he has sheltered or warehoused substantial funds in companies including Go Estates, Data Science House, Hull Accommodation and Slough Housing and that he retains ready access to those funds.

VI. Compliance

(1) Paragraph 3

52. Although I have drawn adverse inferences against the Second Defendant, it does not follow that he has failed to comply with the Order. I therefore turn to consider whether in the light of those inferences he has complied, or substantially complied, with the disclosure obligations imposed in the Order. I begin with paragraph 3 and I set it out with paragraph 4 immediately below:

> "3. The Second Defendant shall by not later than 10 June 2022 file and serve upon the Claimants' solicitors Amanah Solicitors, Tower Bridge Business Centre, 46-8 East Smithfield, London E1W 1AW, an affidavit setting out details of all assets worldwide in which he and/or the Fifth and Sixth Defendants ("the Corporate Judgment Debtors") and each of them has a legal beneficial or other interest, whether held in his or their own name(s) or otherwise and whether solely or jointly owned, giving the value, location and details of all such assets.
>
> 4. The information provided by the Second Defendant in accordance with paragraph 3 of this Order shall include but shall not be limited to provision of the information and of such documents as are in his control as are set out in sub-paragraphs 5.1 to 5.13 of this Order. In the event that the Second Defendant is unable to provide any document mentioned in Paragraph 5 of this order because that document is not in his control and/or because it is not in existence, the Second Defendant shall attest to that fact in his affidavit and, if the document is not in his control, he shall give a full explanation as to why any such document is not in his control."

53. I begin my analysis by making a number of preliminary observations. First, Mr Ramsden emphasised that the Order imposed specific disclosure obligations. He submitted that I should not fall into the trap of treating it as a freezing injunction or the application before

me as an attempt to police it. He also submitted that I should not fall into the trap of asking myself whether the Second Defendant had provided an adequate explanation for what he or his companies had done with the £11.4m received from investors.

54. I accept that the Second Defendant was not ordered to explain what he did with the £11.4m of investor funds. I also accept that the decision which I have to make is not whether the Second Defendant has complied with a freezing injunction. However, Mr Jones reminded me that although paragraph 5 set out the detailed information which the Second Defendant was ordered to provide, paragraph 4 expressly stated that the information which the Second Defendant had to provide under paragraph 3 was not limited to the information in paragraph 5. I must, therefore, decide whether the Second Defendant has complied with paragraph 3 even if I am satisfied that he has provided the information set out in paragraph 5.

55. Secondly, Mr Ramsden accepted that the words "or otherwise" in paragraph 5.1 (below) carried a wide reach and that I was not constrained to adopt a narrow interpretation of the word "interest" for the purposes of that paragraph. That was a realistic concession and I accept it. By parity of reasoning, I am not constrained to construe paragraph 3 in a narrow or artificial way. The words in that paragraph are plainly modelled on the standard form freezing injunction and, although I accept that I must not fall into the trap of treating my decision as the return date of a freezing injunction, I am clearly entitled to interpret or construe paragraph 3 in the same way.

56. Thirdly, and finally, Mr Ramsden criticised the stridency of the Claimants' evidence and reminded me that their function on a committal application was that of a quasi-prosecutor and not a litigant. He relied on the very recent decision in *Ahmed v Khan* [2022] EWHC 1748 (Fam) where Mostyn J described this role (albeit in a very different context) at [95]:

> "I agree with Mr Spencer that when pursuing committal proceedings the father must act as a quasi-prosecutor serving the public interest as much as he is pursuing his own interests as a private litigant. That requires the father to act generally dispassionately, to present the facts fairly and with balance and then let those facts speak for themselves, assisting the court to make a fair quasi-criminal judgment: *Navigator Equities Ltd v Deripaska* [2020] EWHC 1798 (Comm) at [143]). I suggest that this degree of impartiality will be very difficult for a litigant in person to achieve."

57. I turn therefore to my findings in relation to paragraph 3 and I begin with Croydon Tower.

For the reasons which I have given, I have drawn the inference that the Second Defendant is either the ultimate beneficial owner of Croydon Tower or that he is the ultimate beneficial owner of a substantial interest in that company together with others. I have also drawn the inference that Ms Kumar holds her shares in Croydon Towers as a nominee for the Second Defendant (and possibly others) and that he is the beneficial owner of Bullion Properties either alone or possibly with others.

58. I am satisfied that no other reasonable inference is possible. I have reached this conclusion after assessing the evidence cumulatively. In particular, I have reached this conclusion on the basis that the Second Defendant's evidence in relation to Croydon Tower was wholly implausible, my conclusion that he warehoused funds in other companies through the Company Loans, the circumstantial evidence contained in the documents relating to the acquisition of Croydon Tower and the accounts of the Second Defendant's companies and, finally, my conclusion that the Second Defendant was not an honest and reasonable witness (for the reasons which I have given). In my judgment, this evidence when assessed cumulatively is compelling. I therefore find beyond a reasonable doubt that the Second Defendant is either the ultimate beneficial owner of Croydon Tower or that he is the ultimate beneficial owner of a substantial interest in that company.

59. I accept that it is not possible for me to decide with certainty what interest the Second Defendant has in Croydon Tower or precisely how it is held. But I am satisfied beyond a reasonable doubt that he has such an interest and I also observe that the reason why I am unable to go further and make detailed findings of fact is because the Second Defendant did not address Croydon Tower in either of his affidavits or disclose any documents relating to it and continued to assert up to and during his cross-examination that he had no assets against which the Claimants could enforce.

60. I turn now to the Company Loans. Paragraph 3 required the Second Defendant to give details of all assets worldwide in which he or the Fifth and Sixth Defendants had an interest (as defined). It did not require him to disclose the worldwide assets of B&M. The loans to Data Sciences House, Hull Accommodation and Slough Housing were all made by B&M and did not fall within paragraph 3. The loan made to Go Estates was made by the Fifth Defendant and does fall within paragraph 3. But in any event, I am satisfied that the Second Defendant complied with paragraph 3 by disclosing the unaudited financial

statements of the Fifth Defendant for the year ended 31 August 2019.

61. Mr Jones invited me to draw the inference that the Second Defendant had an interest in each of the four debtor companies. Although I have found that the loans were a way of sheltering or warehousing funds in other companies, I am not prepared or able to draw the inference that the Second Defendant had, or has, a beneficial interest in those companies. Moreover, even if I were prepared to draw such an inference, I would not be satisfied that I could find without a reasonable doubt that the Second Defendant had such an interest. In my judgment, it is equally possible that he would shelter funds by making loans to companies owned or controlled by very close or trusted business associates on the basis that they would be repaid on demand as and when he needed the funds.

62. Moreover, there can be no doubt that Hull Accommodation is in liquidation. It seems highly unlikely, therefore, that the funds which B&M originally advanced to that company are still held by it and far more probable that the Second Defendant has sheltered them elsewhere. This might well justify a finding that the Fifth Defendant has failed to disclose those funds under paragraph 3. However, it is also possible that those funds have been repaid and that the Second Defendant has already used them either on legal expenses or other outgoings. I do not find, therefore, that the Second Defendant has failed to comply with paragraph 3 of the Order by failing to disclose an interest in Go Estates, Data Sciences House, Hull Accommodation and Slough Housing.

(3) Paragraphs 5.1 to 5.6

63. Paragraphs 5.1 to 5.6 required the Second Defendant to provide detailed financial information and documents in relation to all companies registered worldwide in which he had an interest:

> "5.1 Full details of the Second Defendant's interest, whether as director, officer, shareholder, or otherwise in all companies registered worldwide, whether in the United Kingdom, the Republic of Seychelles, the British Virgin Islands, or otherwise (hereinafter "***the Disclosed Companies***").
>
> 5.2 In respect of such of the Disclosed Companies as may be registered outside the United Kingdom, full details of the current officers, shareholders or contributories and of all other persons and/or legal entities having an interest therein, and the nature and extent of such interest.
>
> 5.3 Copy statements for all accounts held by each of the Disclosed Companies at any bank, building society, credit union or other financial

> institution for the period of the last 24 months before the making of this Order.
>
> 5.4 Two years' balance sheets and profit and loss accounts in respect of each of the Disclosed Companies.
>
> 5.5 Current management accounts for each of the Disclosed Companies.
>
> 5.6 Full details of any and all property assets of the Disclosed Companies, wheresoever held, whether leasehold or freehold or their equivalents in the jurisdictions where they may be situated, together with a statement of the value of each such asset."

64. The Claimants did not argue that the Second Defendant had an interest in any other companies apart from Croydon Tower, Go Estate, Data Science House, Hull Accommodation and Slough Housing. I have found that he is the ultimate beneficial owner of Croydon Tower or a substantial interest in that company but not in the other four companies. It follows, in my judgment, that he has failed to comply with paragraphs 5.1 to 5.6 in relation to Croydon Tower and I so find. But I do not find that he has failed to comply with those paragraphs of the Order in relation to the other four companies or, indeed, any other company.

(4) Paragraph 5.7

65. Mr Jones did not suggest to the Second Defendant that he had any other property assets which he had not disclosed. I am not prepared to draw an inference that he has other such assets or that he has not complied with paragraph 5.7 either on the basis of my findings in relation to Croydon Tower or the Company Loans or on the basis of the Second Defendant's credibility more generally. I do not find, therefore, that the Second Defendant has failed to comply with paragraph 5.7.

(5) Paragraph 5.8

66. Paragraph 5.8 required the Second Defendant to give detailed disclosure in relation to the financial records of B&M on the basis that he had given evidence to the judge that he was employed by B&M as a site manager at a salary of £1,000 per month but that he had not drawn any salary "over the Covid-19 period" because the site had not been generating any income: see [2022] EWHC 1126 (Ch) at [38]. Paragraph 5.8 required him to provide:

> "Copies of all invoices delivered by the company B&M Properties (1) Limited to any third party including (but not limited to) Hill and Standard Developments Ltd from 1 March 2020 until the date of the making of the

> Second Defendant's said affidavit, together with ledgers, management accounts, receipts and all such documents as shall demonstrate what sums have been received against such invoices."

67. The Second Defendant provided copies of invoices and exhibited them at BC5. It was not put to him that they were incomplete. He was cross-examined on the basis that he had failed to disclose invoices submitted to B&M by Estate Advisory and Ms Majid. I take the view that those invoices did not fall within paragraph 5.9 and that the Second Defendant was not in breach of the Order by failing to provide them. If they exist at all, they were invoices issued to B&M and not by it to a third party. In relation to B&M's financial records more generally the Second Defendant gave the following evidence in his first affidavit:

> "The bank statements for B&M Properties (1) Limited are at Exhibit BC2/26-203. These show the sums that were received by the company in respect of the invoices raised. The only sums received were from rental income. I confirm that I do not have in my possession or control any further documents, including ledgers, management accounts or receipts demonstrating the sums that have been received against such invoices. Any additional documentation demonstrating any payments made is with Hill and Standard Developments Ltd who went into administration on 7 March 2022. The administrators are Opus LLP and specifically Mark Nicholas Ranson and Steven John Parker. Any documents held by them are not in my possession or under my control but I have instructed by new legal team to write to them to enquire whether they would make voluntary disclosure of any documents falling within paragraph 5.8 of the 11 May Order. If they do so, I will ensure that these are also disclosed."

68. Mr Miajee did not accept this explanation in his report and Mr Jones did not accept it either in his Skeleton Argument. However, the Claimants were unable to challenge it in cross-examination. There is no basis for me to find that the relevant documents are in the possession or control of the Second Defendant and if they are not, I am satisfied that he has given an explanation which complies with paragraph 4 of the Order.

69. Moreover, I am prepared to accept the Second Defendant's explanation even though the payment of £300,000 by SLD to B&M on 21 July 2017 is plainly inconsistent with his evidence that B&M only received rental income. This payment was not put to him in cross-examination and I heard no submissions about it. I relied on it for the purposes of concluding that SLD was a conduit and that the Second Defendant was prepared to route payments through offshore companies to disguise their source and ultimate recipient. But

it would be unfair to the Second Defendant to rely on it as a failure to comply with paragraph 5.8.

(8) Paragraph 5.9

70. Paragraph 5.9 required the Second Defendant to provide complete copies of Gordons Solicitors' client ledger accounts in respect of the Fifth and Sixth Defendants for the period between 1 March 2013 to 4 November 2019. The Second Defendant provided disclosure of Gordons' ledgers and, although Mr Jones criticised them on the basis that they did not comply with the SRA Accounts Rules (as in force at the relevant time), he did not suggest that they were incomplete or that the Second Defendant had not exhibited all of the relevant documents which he had received from Gordons. I am satisfied therefore that the Second Defendant has complied with paragraph 5.9.

(9) Paragraphs 5.10 to 5.13

71. Paragraphs 5.10 to 5.13 required the Second Defendant to provide documents relating to the allocation of funds advanced by the Claimants. The judge recognised in his judgment that this exercise was unlikely to be fruitful because the Claimants' funds were paid into general bank accounts and then mixed with other monies: see, in particular, [41]. Nevertheless, he ordered the Second Defendant to provide the following information:

> "5.10 Any document recording or explaining the allocation of funds received from the Claimants to any particular transaction between 1 March 2013 to 4 November 2019.
>
> 5.11 In respect of any transaction made using the Claimants' funds, complete copies of transfer deeds, leases, and exchanged sale and purchase contracts, such documents to be provided whether or not there is any additional documentation disclosed under sub-paragraph 5.10 recording or explaining such allocation.
>
> 5.12 In the event that (i) the Second Defendant says that funds received from the Claimants have been allocated to a particular transaction, but (ii) there are no documents to disclose falling within sub-paragraph 5.10 of this order, then the Second Defendant's affidavit shall contain a narrative explanation setting out the basis on which it is said that the funds were so allocated.
>
> 5.13 To the extent the Claimants' funds were not applied to property transactions, the said affidavit shall contain an explanation of the purpose for which such funds were used and/or the assets the said funds were applied to, and if applicable shall identify the relevant assets acquired with such funds."

72. In both his first and second affidavits the Second Defendant explained that the Claimants' funds were invested in five projects and that each one of those projects failed. Mr Jones did not challenge the Second Defendant's individual explanations in his Skeleton Argument or in cross-examination although he submitted with some force that it would have been easy for the Second Defendant to cherry-pick transactions in order to substantiate his assertion that the funds advanced by the Claimants were lost. Given that the Second Defendant's explanations were not tested in cross-examination I do not find that he failed to comply with paragraphs 5.10 to 5.13.

VII. Discretion

73. CPR Part 81.10(3) confers a wide discretion but requires the Court to consider all the circumstances of the case. I have found that the Second Defendant failed to comply with the Order in relation to Croydon Tower but I have not found that he failed to comply with the Order in any other respects. I have, therefore, considered whether I should treat him as having substantially complied with it and, if so, whether I should vary the sentence imposed by the judge as a consequence.

74. I am not satisfied that the Second Defendant has fully complied with the Order or made an honest and reasonable attempt to do so and, in my judgment, he remains in continued contempt of Court. I say this for the following reasons:

(1) Croydon Tower is the owner of very substantial property assets worth £15,225,323. The net assets of the company were £3,410,554. If the Second Defendant has otherwise complied with the Order, then his interest in Croydon Tower is likely to be his only asset of value.

(2) I did not find the Second Defendant to be an honest or reliable witness. I am also satisfied that he took a deliberate decision not to disclose his interest in Croydon Tower. It is striking that he did not refer to the company at all in his second affidavit even though he was on notice of the point and dealt in some detail with the failure of the original project.

(3) I also have no doubt that the Second Defendant hoped to deflect attention from Croydon Tower and only dealt with it in evidence in chief when he was forced to do so. Even then, it was difficult for the Claimants to probe or challenge this

evidence and he no doubt hoped that the Court would be unable to find him in breach because he had disclosed no documents at all in relation to his interest in Croydon Tower.

75. I have considered the evidence about his personal circumstances which the Second Defendant has submitted in mitigation in his second affidavit. The judge gave no weight to the evidence which the Second Defendant gave about his health in the absence of medical evidence: see [51]. The Second Defendant now claims that he lives with his parents and is their primary carer. The Court of Appeal has given recent guidance that where a contemnor is committing a continuing breach of the Order, this would not justify the suspension of a custodial sentence but might justify a reduction in sentence: see *Sellers v Podstreshnyy* [2019] EWCA Civ 613 at [34] to [37].

76. Apart from a self-serving letter from his brothers and sister, the correspondence which the Second Defendant has exhibited do not provide evidence that he is their primary carer although his evidence is that Ms Kaur, who is named as their carer, is his wife. But even if the Second Defendant is now caring for his parents, this is a recent development. If he had been the primary carer for his parents on 11 May 2022, he would have given evidence to this effect to the judge. Moreover, on 21 April 2022 he gave evidence to Master Clark that he lives in at Little Foxwarren, Redhill Road, Cobham KT11 1EF.

77. Although I am only prepared to give limited weight to this evidence, however, I cannot dismiss it altogether. I must also take into account the fact that the Second Defendant has made substantial disclosure in order to comply with the Order albeit that he deliberately concealed his interest in Croydon Tower. Taking those factors into account I will vary the sentence which the Second Defendant will serve by reducing it to 24 weeks. I make it clear that my intention is to reduce the coercive element by 4 weeks to 16 weeks and the punitive element by 4 weeks to 8 weeks.

78. Finally, in case the matter goes further and I am found to be wrong in finding that the Second Defendant is in continuing contempt of Court, I set out briefly how I would have dealt with the sentence if I had found that the Second Defendant had complied with the Order or made an honest and reasonable attempt to do so. The judge indicated that the punitive element of the sentence was 20 weeks and the coercive element was 12 weeks and my initial view was that if the Second Defendant had complied with the Order, I

would follow the judge's indication and reduce the sentence to 20 weeks.

79. However, Mr Ramsden submitted that the appropriate course was either to suspend the entire sentence or to reduce it and suspend the balance of the sentence conditional upon the Second Defendant complying with his continuing disclosure obligations and his co-operation with the Claimants. He submitted that it was in the Claimants' interests that he should not be in prison and available to assist them and that the suspension of the sentence would provide the necessary incentive for the Second Defendant to co-operate fully. Moreover, in closing argument Mr Jones accepted the force of this submission.

80. If I had found that the Second Defendant had complied with the Order or made an honest and reasonable attempt to do so, I would have been prepared in principle to suspend the entire sentence of 32 weeks conditional upon the Second Defendant's continued compliance and co-operation with the Claimants. However, I note that an oral examination of the Second Defendant has already taken place before Master Clark and I would have invited further argument to identify the remaining steps in the enforcement proceedings, the precise terms of any conditions and the circumstances in which the Claimants would be entitled to apply to lift the suspension.

VIII. Disposal

81. I, therefore, vary the Order by substituting the term of 24 weeks for 32 weeks in paragraph 1 of the Order. The Second Defendant will be entitled to unconditional release after serving half the sentence under section 258 of the Criminal Justice Act 2003. I will hear argument about consequential matters and, in particular, whether the Second Defendant requires permission to appeal.