Neutral Citation Number: [2017] EWHC 3229 (Ch)
Claim No. HC-2017-000905

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

The Honourable Mr. Justice Marcus Smith

Date: 7/12/2017

Royal Courts of Justice
Strand
London
WC2A 2LL

BETWEEN:

YASHWANT DAHYABHAI PATEL

Claimant

- and –

(1) GIRISH DAHYABHAI PATEL
(2) JAYSHREE PATEL
(3) RANJANBALA PATEL
(4) NIRJA JAIN

Defendants

Mr. David Head, Q.C. and **Mr. Alexander Learmonth** (instructed by **Gardner Leader LLP**) appeared on behalf of the Claimant
Mr. William Boyce, Q.C. (instructed by **Stevens & Bolton LLP**) appeared on behalf of the First Defendant
Ms. Constance McDonnell (instructed by **IBB Solicitors**) appeared on behalf of the Second, Third and Fourth Defendants

Judgment

MR JUSTICE MARCUS SMITH:

Introduction

1. By a Part 8 claim form dated 28 March 2017, the Claimant applied to commit the Defendants for contempt of court. The court gave permission for the committal application to proceed on 26 May 2017. Initially, it appeared that there would be considerable factual dispute about the various contempts alleged. The time estimate for the substantive hearing was originally of the order of ten days.

2. At the pre-trial review, the time estimate for the hearing was reduced from ten days to three days. This was in light of various admissions that had been made. I shall refer to these admissions later on in this judgment.

3. In light of further recent narrowing of issues, the estimate was reduced to one and a half days. In the event this hearing will be concluded in the course of a single day.

4. I am very grateful to all of the counsel who have appeared before me: Mr. David Head, Q.C. and Mr. Alexander Learmonth for the Claimant; Mr. William Boyce, Q.C. for the First Defendant; and Ms. Constance McDonnell for the Second, Third and Fourth Defendants.

The Probate Proceedings

5. The committal application arises out of proceedings brought in the Chancery Division under claim number HC-2015-002485. I shall refer to these proceedings as the "Probate Proceedings".

6. By his Particulars of Claim in the Probate Proceedings, the First Defendant claimed that his mother – and I shall refer to her as the "Deceased" – executed a will dated 23 June 2005 (the "2005 Will").

7. By the 2005 Will, the First Defendant was named as sole executor and sole

beneficiary of the Deceased's estate. Had the 2005 Will been a valid will, it would have had the effect of revoking an earlier will of the Deceased, dated 18 June 1986 (the "1986 Will"), in which the Claimant was named as the sole executor and sole beneficiary, and in respect of which the Claimant had (in 2012) obtained a grant of probate.

8. During the course of the Probate Proceedings, the First Defendant, together with the Second, Third and Fourth Defendants, gave a detailed factual account by way of *(i)* pleadings, *(ii)* witness statements, *(iii)* affidavit and *(iv)* oral evidence at trial of the purported circumstances in which the 2005 Will had been prepared and executed at the office of the First Defendant's company, Barrowfen Properties Ltd, on 23 June 2005.

9. The trial of the Probate Proceedings was heard by Deputy High Court Judge Andrew Simmonds, Q.C. between 21-25 November and 1 December 2016. Upon handing down judgment in Patel v. Patel [2017] EWHC 133 (Ch) on 10 February 2017, Mr Simmonds dismissed the claim with indemnity costs, finding that the 2005 Will was a forgery, for the numerous reasons set out in his judgment. There was no appeal against that judgment.

Admissions by the Defendants

10. Subject to certain minor qualifications recently agreed between the parties, each of the Defendants has now admitted that the evidence given by them in the Probate Proceedings was false and was known by each of them to have been false at the time that evidence was given.

11. The First Defendant now admits that the Probate Claim was a fraudulent claim, which sought relief to which he knew he was not entitled. The Second, Third and Fourth Defendants now admit that they gave false evidence, knowing it to be false at the time it was given.

12. In short, the Defendants have admitted to their contempt in all material respects. It follows that, particularly in relation to the First Defendant, but also as regards the Second, Third and Fourth defendants, there has been contempt of court of the most serious kind. In light of the admissions made, all parties accept that there is no need for the court to hear any oral evidence, and I have made an order (dated 4 December 2017) to that effect.

13. I stress that I base this judgment entirely and solely on the evidence that has been

admitted. I have no regard to any evidence outwith that admitted evidence.

14. The only matters remaining, therefore, for consideration by the court are essentially points of mitigation and the determination of the appropriate sanctions.

15. I do not consider that it is necessary to set out in any detail the circumstances that led to the Probate Claim. Suffice it to say that the background concerns a major family dispute, still ongoing, between the Claimant on one side and the First Defendant on the other side. These circumstances are, I find, broadly irrelevant to the matters before me, although purely by way of background they have been explained to me.

16. Nor is it necessary to consider the Probate Proceedings, and the manner in which Mr. Simmonds, Q.C. determined the 2005 Will to be a forgery, in any great detail.

17. It is also not necessary to set out the evidence, including expert evidence, adduced by the Claimant in support of the contention before me that the 2005 Will is indeed a forgery. That is because the admissions made by all of the Defendants.

18. Having regard to those admissions, and to the evidence adduced before me, I am satisfied, so that I am sure, that the First Defendant advanced a detailed factual account as to the circumstances of the execution by the Deceased of the 2005 Will on 23 June 2005, that was false, and that in this he was supported by the evidence of the other Defendants.

19. It is further unnecessary, in the present case, for me to rehearse in any great detail the relevant legal principles in relation to contempt. These were helpfully set out in the parties' written submission, and no one has sought to contend that the false evidence of the Defendants was anything other than an extremely serious contempt of court.

20. I obviously must be satisfied, to the criminal standard, that the contempt has been committed. For the reasons that I have given, I am satisfied that that standard has been met. No-one contended to the contrary before me. But independently of that, I have satisfied myself, so that I am sure, that these contempts have been committed.

Relevant principles relating to mitigation and penalty

21. I turn, therefore, to the related questions of mitigation and penalty. I begin with the relevant principles.

22. I begin with the purpose of the jurisdiction. A sentence for contempt has two functions. First, it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. As Norris J. said, in Commissioners for Her Majesty's Revenue and Customs v. Munir [2015] EWHC 1366 (Ch) at [9(i)]:

"A contempt of court is not a wrong done to another party to the litigation. It is an affront to the rule of law itself and to the court."

23. Secondly, in some instances, the contempt jurisdiction provides an incentive for belated compliance, because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.

24. Pausing there, this coercive function is of no relevance in the present case. There is no ongoing contempt by any of the Defendants. It was common ground, and I so find, that any sentence for contempt that I impose will be based upon the first of the two functions that I have articulated (namely, that in paragraph 22 above).

25. I move on to the relevant factors that I should take into account when sentencing for contempt. A number of cases have helpfully set these out, but I remind myself that the list is not a closed one. The relevant factors include the following:

- Whether the claimant has been prejudiced by the contempt, and whether the prejudice is capable of remedy
- The extent to which the contemnor has acted under pressure
- Whether the breach of the order was deliberate or unintentional
- The degree of culpability

- Whether the contemnor was placed in breach by reason of the conduct of others

- Whether the contemnor appreciated the seriousness of the breach

- Whether the contemnor has cooperated. A genuine offer following judgment but before sentence to co-operate in the provision of information is capable of being a serious mitigating factor

- Whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea. By analogy with sentencing in criminal cases, the earlier the admission is made, the more credit the contemnor is entitled to be given

- Whether the contemnor has made a sincere apology for his contempt

- The contemnor's previous good character and antecedents

- Any personal mitigation advanced on his or her behalf.

26. I have been greatly assisted by the following paragraphs in the written submissions of the Second to Fourth Defendants, which set out extremely clearly a number of important points:

"The custody threshold

11. A sentence of imprisonment should only be imposed if a custodial sentence only is justified. The custodial sentence must be for a fixed term, and the maximum is two years: s.14(1) Contempt of Court Act 1981. The Court may impose an unlimited fine or order sequestration: s.14(2).

12. The custody threshold has not been defined, but in R. v. Montgomery [1995] 2 Cr App R 23 Potter LJ said "an immediate custodial sentence is the only appropriate sentence to impose upon a person who interferes with the administration of justice, unless the circumstances are wholly exceptional". In Shorey, in which the defendant had admitted knowingly proffering false evidence in an affidavit (which he had then corrected at an early stage in the proceedings), Green J. said at para 46:

"I start by considering the intrinsic severity of the contempt. In the present case

> the Defendant has admitted proffering knowingly false evidence in an affidavit. This was part of the perpetuation of a series of false and misleading statements designed to subvert the due administration of justice. My necessary starting point is that this was a serious infringement committed deliberately and with knowledge, with the specific intent of undermining judicial proceedings. A Court would be remiss if it did not conclude that this is the sort of conduct where in many instances the custody threshold will prima facie be passed. In my view this particular case hovers at or fractionally beyond the custody threshold. I can contemplate many more serious infringements; but that does not undermine the seriousness of the contempt of Court which is before the Court. My starting point, therefore, is that in principle a custodial sentence would prima facie be appropriate." [emphasis supplied]

13. A term of imprisonment should be as short as possible commensurate with the gravity of the contempt and the need to deter the contemnor and coerce compliance: Official Receiver v. Brown at para 19.

Reduction where contemnor has not experienced prison

14. It has been suggested that the Court should bear in mind the desirability of keeping offenders, and particularly first-time offenders, out of prison, by reference to the criminal authorities R. v. Kefford [2002] 2 Cr App R (S) 106 and R. v. Seed and Stark [2007] 2 Cr App R (S) 69 (cited to the Court in Templeton Insurance). Templeton Insurance itself was cited to Eder J. in Otkritie v. Gersamia in 2015 in support of this submission, but in fact in Templeton Insurance the Court of Appeal does not appear to have been impressed by the submission. At para 45 of his judgment in that case (with which Black and Lewison L.J.J. agreed) Rix L.J. referred to personal mitigation factors and said "It is not so much that the appellants are first time offenders who are unlikely to offend again. That must be true of many such defendants".

15. However, two more recent cases suggest that the Court will give more weight to this factor. In Shorey, Green J. was prepared to give "modest weight" to the fact that the defendant had no previous convictions, because he recognised that this was a common factor for alleged contemnors in civil proceedings (at para 49 of the judgment). Most recently, in November 2017, in Official Receiver v. Brown, HHJ Simon Barker, Q.C. stated at para 20 that "in line with general sentencing principles, if the appropriate period of imprisonment under consideration is 12 months or less, the court should further consider whether a shorter term will sufficiently meet the sentencing objectives, especially if the contemnor has not previously experienced imprisonment". In that case, the Judge reduced a term of 12 months by 4 months expressly in recognition of the fact that Mr Brown had not previously experienced prison: para 52.

Reduction for guilty plea

16. There should also be a discount of up to one-third in any custodial sentence where the contemnor has admitted guilt, consistently with the approach taken in cases of criminal contempt: see Sentencing Council Guidelines Reduction in Sentence for Guilty Plea (2007)…"

Pausing there, Mr. Boyce, Q.C. referred me to more recent Guidelines, to similar effect. It is these, later, Guidelines that I have regard to.

"…These Guidelines suggest that the level of reduction should be gauged on a sliding scale ranging from a recommended one third (where the guilty plea was entered at the first reasonable opportunity in relation to the offence for which sentence is being imposed), reducing to a recommended one quarter (where a trial date has been set) and to a recommended one tenth (for a guilty plea entered at the 'door of the court' or after the trial has begun).

Unconditional release

17. A person committed is entitled to unconditional release after serving half of the sentence: s. 258 Criminal Justice Act 2003. This must be made clear by the Court in its judgment: Official Receiver v. Brown at para 18…"

Pausing again, I take this opportunity to emphasise this fact for the purposes of this judgment.

"…Suspension of sentence

18. A sentence of imprisonment may be suspended, in the exercise of the Court's inherent jurisdiction (and see CPR r. 81.29). This is a matter for the Court's discretion. Suspension may be appropriate to secure compliance with the Court's orders (which is not applicable in this case), or taking into account cogent personal mitigation including admissions and remorse. Recent cases in which suspended sentences have been imposed include…"

I omit the various sub-paragraphs to paragraph 18. Finally, paragraph 19 states:

19. If a custodial sentence is suspended, it is essential to specify the terms of the suspension. HHJ Simon Barker QC noted in Official Receiver v. Brown at para 21 that "a feature of suspending a sentence is that the deterrent effect is emphasised, at least over the period of suspension".

27. I should also read from paragraph 71 of the Claimant's written submissions. This states:

"In all cases, the court should consider whether committal to prison is necessary, what is the shortest time necessary for such imprisonment, whether the sentence of imprisonment can be suspended, and that the maximum sentence which can be imposed on any one occasion is two years."

28. To be clear, I have taken these principles to heart and borne them in mind. The sentences that I seek to impose are the minimum I consider appropriate, and I have specifically considered whether prison, as the punishment of last resort, can be avoided.

29. I have borne in mind that all of the Defendants are of good character, that there is no question of seeking to incentivise compliance in the present case, and that prison would be a great shock to all of the Defendants. I also recognise, as has been said in evidence, and has been said on their behalf, that all of the Defendants have suffered greatly from the consequences of their wrongdoing, irrespective of what punishment I impose.

The fraudulent claim that was the Probate Proceedings

30. Moving on from these general factors, to which I shall revert when I consider the individual position of the four Defendants before me, I turn to the fraudulent claim that was the Probate Proceedings, and the many lies told by the Defendants in pleadings, witness statements, affidavits and orally in front of Mr. Simmonds, Q.C.

31. There is no doubt that the First Defendant is guilty of contempt of the most serious kind, and that he was the architect of a dishonest scheme to mislead the court at the substantial expense of the Claimant. He forged the 2005 Will. It matters not why he did so. Self-evidently, he considered it in his interests to displace the 1986 Will with the forged 2005 Will.

32. In order to achieve this end, the First Defendant initiated the probate proceedings as claimant. It was his choice to bring these proceedings. He knew from the outset it was a wholly fraudulent claim. This was not a case of the exaggeration of a valid claim, but one of outright invention.

33. The First Defendant contested the Probate Proceedings to the very end. The case was fought to judgment. The First Defendant lost, despite his best efforts. He put the Claimant to huge expense, and occupied a substantial amount of court time unnecessarily.

34. It goes without saying that I must place it on the record that in any proceedings of whatever sort, be they civil or criminal, putting false evidence knowingly before the court is capable of undermining the integrity of the court process and is extraordinarily serious. In this case, justice was done. Mr. Simmonds, Q.C. reached the correct decision, but at enormous cost to the Claimant and enormous cost to the state in terms of the court time that was wasted.

35. The First Defendant persuaded the other Defendants, three individuals over whom

I accept he had significant influence as a close family friend and/or father figure and/or former or present employer, first to sign the 2005 Will as witnesses, and then to give false evidence on his behalf about it, by affidavit, by witness statement, and in oral, sworn, testimony.

36. According to the Second, Third and Fourth Defendants, whose evidence I accept as to their subjective states of mind, he did so by misrepresenting to them the genuineness of the document that they were signing and by telling them that it represented the Deceased's real wishes. He did so notwithstanding the fact that he must have known that he was exposing them to criminal penalties.

37. The First Defendant is an experienced litigant, both in England and in other jurisdictions. He is, or was, also a professional man, a qualified chartered accountant, who has acted as an arbitrator. He was well-aware of the seriousness of his actions.

38. The First Defendant arranged to meet with his witnesses (that is, the other Defendants) on 20 November 2016, before the trial of the probate claim, where he discussed certain aspects of their evidence and persuaded them not to mention that they had met. He then lied on oath about when he had last seen them.

39. So much for the First Defendant's role in the Probate Proceedings. It follows from what I have said about the First Defendant's role, that I accept that the guilt of the Second, Third and Fourth Defendants as regards the Probate Proceedings is less than that of the First Defendant. They were secondary participants in a scheme not of their making. Yet there is no doubt that they are also guilty of contempt of court. Each of them lied repeatedly to the court in relation to matters that lay at the heart of the Probate Proceedings. Each of them accepts that they knew that their statements were not true at the time they were made.

40. But I do accept that there are a number of mitigating factors in relation to the participation of each of the Second, Third and Fourth defendants. I appreciate, as Ms McDonnell submitted, that the positions of the Second, Third and Fourth Defendants need to be considered separately, and I do so. However, for the purpose of this judgment and ease of exposition, it is more straightforward to consider the Second, Third and Fourth Defendants together. I do so only for the sake of clarity of exposition and I stress that I have considered their situation as individuals in each case.

41. So they were not the primary instigators of the Probate Proceedings. They did not stand to benefit from participation in the Probate Proceedings. As I find, they

subjectively considered themselves to be under pressure to participate in those proceedings by the First Defendant, an apparently respectable, wealthy man of influence, held in considerable esteem by each of them.

42. The First Defendant gave them false information about the 2005 Will, namely that it accorded with the Deceased's wishes, to persuade them to give the false account that they ultimately did give.

The warning letter

43. At a very early stage in the Probate Proceedings, that is to say at the time of preparing the Claimant's defence in September 2015, having considered the expert evidence then available and the numerous documents contradicting the First Defendant's case, and after careful consideration, the Claimant's legal team sent letters to each of the Defendants warning them, in balanced and measured terms, as to the possibility of committal proceedings.

44. Those letters were dated September 2015. They summarised the content and strength of the expert reports which had been served before the defence itself was served. Notwithstanding these letters, all of the Defendants persisted in their conduct and continued to give false evidence. Each of them continued to lie, even though they had been alerted to the serious consequences of giving false evidence.

45. It may be that the First Defendant is more culpable than the Second, Third and Fourth defendants because of the influence that he had over them, and because of his control over the Probate Proceedings. Nevertheless, it must be underlined that disregarding this very clear warning as to the wrongfulness or likely wrongfulness of their behaviour, was a very serious failure on the part of all of the Defendants.

The conduct during the committal proceedings

46. I turn to the conduct of the Defendants in these committal proceedings. From the issue of the committal application on 28 March 2017 until relatively recently, all of the Defendants were jointly represented by Messrs Stevens & Bolton, the same firm that conducted the Probate Proceedings on behalf of the First Defendant. While jointly represented, the Defendants collectively opposed the grant of permission to pursue the committal application. Notwithstanding that opposition, permission was granted on 26 May 2017.

47. While remaining silent on matters of detail, as was their right, the Defendants apparently maintained a case, certainly that was the inference to be drawn, that they were innocent of giving false evidence. At the very least, they did not admit

their guilt. That was, of course, their right, and they chose to exercise it.

48. Subsequently, the First Defendant brought an application, heard on 27 July 2017, to stay the committal application by reason of the existence of the private prosecution against him, now pending in Southwark Crown Court and to be heard late next year, as well as because of certain developments in proceedings in other jurisdictions.

49. That application was dismissed. It is fair to note that in relation to that application, the Second, Third and Fourth defendants adopted a neutral stance.

50. There were obvious and serious concerns, which were expressed in court at the July hearing, regarding the continued joint representation of the Defendants in circumstances where there were obvious potential conflicts of interest between them.

51. On 27 July 2017, the court made an order directing Stevens & Bolton to file a letter with the court confirming that they had given or procured to be given to the Defendants advice in relation to potential conflicts, and that each of the Defendants nonetheless wished or did not wish, as the case might be, to continue to instruct that firm for the purposes of the committal application.

52. Following significant delay during August and early September 2017 – which I simply note; it plays no part in my thinking on penalty – the Second, Third and Fourth Defendants instructed Messrs IBB Solicitors on 19 September 2017.

53. On 2 October 2017, IBB contacted Gardner Leader, acting for the Claimant as the Claimant's solicitors, to indicate the intention of the Second, Third and Fourth Defendants to admit the allegations made against them in the committal application. That was supported by unsigned evidence from them served on 3 October 2017 and later perfected, confirming that they had lied to the court when giving evidence in the probate proceedings.

54. Inevitably, that forced the First Defendant's hand. On 3 October 2017, Stevens & Bolton wrote to Gardner Leader to inform them that the First Defendant intended to serve further evidence and would be, "conceding the principal allegations" against him. He did so notwithstanding that he had only just served evidence, including additional expert evidence, purporting to support his case that the 2005 Will was genuine, some four days earlier on 29 September.

55. On 5 October 2017, via Stevens & Bolton's letter of that date, the First Defendant formally withdrew that earlier served evidence.

56. I find that the Second, Third and Fourth Defendants are entitled to a very substantial discount on any penalty that I impose. I have in mind the maximum discount of one-third. These Defendants admitted their contempt in full within a short time of instructing alternative solicitors, IBB. Since admitting their contempt, they have engaged with the Claimant, including by providing affidavits explaining how the fraud developed and unfolded.

57. I appreciate that, in the scheme of things, the admission could have been made sooner. But I find that it was not made sooner because of the common representation of the Defendants by a single firm of solicitors, and that it was made as soon as practically possible by the Second, Third and Fourth Defendants on instructing IBB.

Personal mitigation of the Second, Third and Fourth Defendants

58. Each of the Second, Third and Fourth Defendants has expressed profound regret at their actions. Each of these Defendants has not only given evidence as to the reasons for their participation, but also of the serious impact on them of these proceedings and their own difficult personal circumstances.

59. I have received detailed evidence from each of the Second, Third and Fourth Defendants in this regard. That evidence has been fully summarised and set out in paragraphs 23*ff* of the written submissions made on behalf of the Second, Third and Fourth Defendants. It would unnecessarily extend the length of this judgment were I to quote from those paragraphs. Suffice it to say I have taken those paragraphs, and the evidence they summarise, fully into account.

60. In summary, and it is a very broad summary, the Second Defendant has explained that she believed that the 2005 Will was a genuine document signed by the Deceased which just needed another witness signature to make it formal. She explains that the First Defendant was a father figure whom she believed and that in hindsight she feels that the First Defendant took advantage of her and others, as they were vulnerable.

61. I stress that I accept this as the Second Defendant's subjective point of view and,

as I made clear in the course of submissions, I am not going to attribute the same subjective intent to the First Defendant. It seems to me that I can quite properly take this approach, since subjective intentions differ from person to person, and I am not here concerned with the establishment of what is an objective state of affairs or state of mind. I am concerned here only with subjective states of mind, and I accept that these can diverge.

62. The Second Defendant has described her difficult family circumstances and how these proceedings have affected her and her children.

63. Moving on to the Third Defendant, she has explained that she thought the 2005 Will represented the Deceased's wishes. The First Defendant told her to sign the document and told her what to say in evidence. She was impressionable. She was not a highly-educated woman. She now understands that she was badly misguided by the First Defendant. She was in poor physical health. She was influenced by the First Defendant as her boss. She found she could not say No to his wishes.

64. The Fourth Defendant is a former employee of the First Defendant, aged 21 at the material time. She respected the First Defendant. She did not question him when he asked for assistance. She believed that the 2005 Will had been properly witnessed. She had co-operated with the Claimant. She explains that her family life has suffered as a result of the Probate Proceedings. Whether or not the stillbirth of her child and subsequent miscarriage – tragedies by any reckoning – were in fact caused by these proceedings, and (specifically referring to the stillbirth) by her long-haul flight to England while six weeks pregnant to give evidence in the Probate Proceedings, her husband apparently believes that they were causative, and blames her for that.

65. These are all mitigating factors which were set out both in the evidence and in the written submissions I received from the Second, Third and Fourth Defendants' legal team.

The position of the First Defendant

66. By contrast, the First Defendant's initial response to this committal application has been to try to put off the hearing of the application by resisting the application for permission and by seeking to stay the proceedings. Of course, the First Defendant had every right to make these procedural applications. But the corollary is that it cannot be said that he seized an early opportunity to acknowledge his guilt.

67. Instead, he served evidence, including expert evidence, purporting to support his original case in the Probate Proceedings.

68. I find that the First Defendant's change of tack occurred after the other Defendants had indicated their intention to admit the contempt, and was occasioned by this. In short, he only made the admissions that he did when he was effectively bound to do so.

69. I obviously do take the admissions into account, even in the case of the First Defendant. Those admissions have resulted in the substantial curtailment of this hearing, from ten days down to a single day. They have ensured that this court did not have to hear contested oral evidence, and made possible a hearing of one day which proceeded on agreed facts.

70. I find that the First Defendant is entitled to some discount on whatever sentence I impose, but not the maximum of one-third. I shall return to that in due course.

71. In terms of the mitigation advanced by the First Defendant, the written submissions on behalf of the First Defendant said as follows:

- It was accepted that the First Defendant's conduct had been serious and persistent, and that it had affected other: paragraph 22

- But he had admitted his contempt and sought to cooperate with the Claimant to agree the factual basis for the sentence; he had entered the equivalent of a guilty plea and had therefore saved witnesses from having to give evidence as well as saving a considerable amount of court time and resources; he had made a genuine apology for his conduct: paragraph 23

Pausing there, the point was made against the First Defendant that no apology had been extended to the Claimant. I make no finding one way or the other as to whether an apology from the First Defendant to the Claimant is appropriate or not. What I do say is this: it is not a matter that goes one way or the other to the question of guilt or sentence. I consider that there has been, both through his evidence and through his counsel, an apology for his conduct to the court, and it is that which matters.

- The First Defendant has no previous convictions or antecedents

- Various "character references" were produced on behalf of the First Defendant. These I have read, and taken fully into account

- As a result of his contempt before this court, the First Defendanthas lost his good character and his standing within the community. That is no small personality to pay for a man of 66 years, who was quite obviously well respected and well regarded within his community. The public humiliation of these events will continue to bear heavily upon him: paragraph 26

- The wider proceedings have also caused a great deal of stress and anxiety for the First Defendant's immediate family, his wife and children. The extent that his conduct in the probate proceeding has contributed to that is something that Mr Patel bitterly regrets: paragraph 27

Length of individual sentences for specific grounds of contempt and concurrency

72. The lies to the court by the Defendants were many and varied. But they all went the same way and had the same purpose. I find, therefore, that the punishment will be the same for each individual ground of contempt against each specific Defendant, and that those penalties will run concurrently with each other.

Authorities on penalty

73. I have, in the course of submissions, been referred to many authorities, suggesting the sort of penalty that I ought to impose. I have, of course, had regard to those authorities, which appear both in various lever-arch files that I had for my attention and in summaries helpfully appended to the written submissions of the Claimant and the Second, Third and Fourth Defendants.

74. I should say, however, that it is clear that each case must turn on its facts. For that reason, specific reference to the detail of the case-law is not particularly productive or helpful. I have relied upon the case-law to provide me with a bird's eye or panoramic view as to what other courts have done in what may be regarded as broadly similar situations. But I have done no more, in the case of the sentencing authorities that I have been referred to, than that.

75. It seems to me that to go further, would inappropriate and would be to disregard the fact-specific nature of the job that I must do.

Sentence: the Second, Third and Fourth Defendants

76. I deal first with the Second, Third and Fourth Defendants.

77. It is accepted by counsel on your behalf that the custody threshold has been passed in this case. In calculating what would be the appropriate prison sentence, I take the factors I have identified into account. In summary, I take account of

- Your good character

- The fact that the threat of the prison door is, in your cases, a very considerable one

- The fact that you have provided real help to the Claimant in understanding the nature of the dishonest scheme that constituted the Probate Proceedings. I accept that you were secondary participants in that scheme and derived no personal benefit from it. I accept also that the First Defendant had some influence on your decision to participate in that dishonest scheme, albeit I weigh against that the fact that you are also responsible adults who ought to have been capable of refusing to do the wrong things the First Defendant asked you to do

- I also take into account the very sincere apologies that you have advanced in evidence and through your counsel

78. I find that the appropriate sentence, taking into account a one-third discount for a guilty plea, is one of three months' imprisonment for each of you.

79. It is necessary, having determined the appropriate sentence, to ascertain whether that sentence requires immediate imprisonment or whether the sentence can be suspended. I was referred to a number of authorities that deal with the question of suspended sentences. I refer to only one, Official Receiver v. Brown [2017]

EWHC 2762 (Ch):

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

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

80. I have determined, taking into account all the factors that I have listed, that the appropriate sentence is three months. I do consider that in the case of the Second, Third and Fourth Defendants, it is appropriate to suspend the sentence. The sentence that I accordingly impose in the case of each of the Second, Third and Fourth Defendants is that they shall be subject to imprisonment for a period of three months, that sentence to be suspended for a period of 12 months, on terms that each Defendant does not commit any further contempt of court during the period of suspension.

81. I should briefly identify why it is that I consider the suspension of the sentence to be appropriate. I obviously have in mind the general points made in mitigation, but I also have in mind the personal circumstances of the Second, Third and Fourth defendants. These are helpfully summarised in paragraph 60.12 of the written submissions on behalf of the Second, Third and Fourth Defendants:

"The Second Defendant's adult son and daughter live with her and she works with her son in his business. The severe impact of these proceedings on the Second Defendant's daughter has been referred to above. The Second Defendant is sole next of kin for her elderly mother, whom she visits daily in the nursing home.

The Third Defendant is 68 years old and has health problems relating to her mobility. She is deeply troubled by her own contempt.

The Fourth Defendant's life has fallen apart. The impact upon her, and indeed her husband, of losing their baby, which may have been as the result of travelling to the UK in November 2016, which she felt she had to do, is impossible to assess, particularly since it now seems that the Fourth Defendant will not have children, either naturally or by adoption. Further, the impact of an immediate custodial sentence upon her would be particularly harsh, not least because her home is now in Australia. It is very likely that

she will lose her job and probably also her marriage, as well as any chance of having children, as a result of her admission of contempt of court."

82. I take these personal circumstances into account. I would also add a further point in relation to the Fourth Defendant. As I have just read, her home is now in Australia. I made it clear that I expected her presence before me today, and I do consider that some credit is deserved for submitting herself to the jurisdiction of this court, and I regard that as entirely consistent with her apology and explanation for her contempts.

83. That is therefore the sentence that I pass in respect of the Second, Third and Fourth Defendants.

Sentence: the First Defendant

84. I turn then to the First Defendant. His conduct is obviously rather more serious, and it is obviously the case that a longer sentence is called for. I have well in mind that the penalty must be the minimum required in all the circumstances. I take into account the fact that he has now admitted these contempts and as a result has caused these proceedings to be shortened.

85. I take into account all that I have found so far.

86. I take into account the character references that I have been referred to.

87. I take into account the enormous personal hardship that has occurred since the conclusion of the probate proceedings. The first defendant has lost his profession. He has lost his standing in the community. Financially speaking, he has paid not only the cost of the Probate Proceedings, but also will pay the costs that will inevitably have to be paid in these proceedings. He is paying for the Second, Third and Fourth defendants' costs in this case.

88. I accept that the stress of the process on him has been considerable. I accept that he has apologised to the court. I have listened with great care to what Mr. Boyce, Q.C. has said on his behalf. In particular, his statement regarding the effect that the clang of the prison gates will have on a 66-year-old man going to prison for the first time is a point of real substance. The fear of going to prison for an elderly gentleman who has not committed, as I find, any substantive offence in his life before, is clearly a major factor.

89. I also take into account the effect on his family, as set out in the various letters that I have referred to. Mr. Boyce said, very fairly, that the First Defendant's punishment has already begun.

90. These are all cogent factors, and I find that taking into account the guilty plea, a sentence of 12 months is appropriate. But for the guilty plea, that sentence would have been longer by two months, that is to say 14 months. The sentence that I impose is one of 12 months' imprisonment.

91. The question that I must next ask is whether that sentence can be suspended. I have given this question most anxious consideration, particularly bearing in mind the fact that prison will contain significant fears for the First Defendant. But I must also bear in mind the very serious nature of these contempts and the critical importance of deterrence and the need to maintain the integrity of the judicial process by ensuring that claims that are in essence fraudulent are not commenced by a claimant hoping to benefit from that fraud.

92. I fear that I have no option but to impose an immediate custodial sentence of the term that I have stated, 12 months. I have before me a warrant, which I date this date and which I sign.