

**APPROVED**

**[2022] IEHC 264**



THE HIGH COURT

2018 No. 308 MCA

IN THE MATTER OF SECTION 160 OF THE PLANNING AND DEVELOPMENT ACT  
2000 (AS AMENDED)

BETWEEN

ELAINE KELLY DUNNE  
NOEL MOORE  
ANN FLYNN  
DAVID KELLY  
ANNETTE McGRATH  
LOUISE O’SULLIVAN  
CLAIRE MOORE  
MATT KELLY  
MICHAEL KELLY

APPLICANTS

AND

GUESSFORD LIMITED  
(TRADING AS OXIGEN ENVIRONMENTAL)

RESPONDENT

**JUDGMENT of Mr. Justice Garrett Simons delivered on 2 June 2022**

## **INTRODUCTION**

1. This judgment is delivered in respect of an application to have two directors of the respondent company committed to prison for disobedience of an earlier court order. It is alleged that the respondent company is operating its waste facility in breach of the terms of an order made by this court pursuant to the planning legislation. It is sought to have

NO REDACTION REQUIRED

the directors committed to prison until such time as the respondent company complies with the court order.

## **PRINCIPAL JUDGMENT**

2. The contempt motion has been brought in the context of enforcement proceedings taken pursuant to section 160 of the Planning and Development Act 2000 (“*PDA 2000*”). The proceedings concern the planning status of a waste facility located at Barnan, Daingean, County Offaly (“*the waste facility*”). The proceedings have been brought by a number of individuals who live in the vicinity of the waste facility (“*the applicants*”). The respondent to the enforcement proceedings is the operator of the waste facility, Guessford Ltd (“*the respondent company*”).
3. This court delivered a reserved judgment on the substantive merits of the enforcement proceedings on 21 September 2021, *Kelly Dunne v. Guessford Ltd* [2021] IEHC 583 (“*the principal judgment*”). In brief, the principal judgment held that the authorised use of the waste facility under the planning legislation is confined to the recycling of “*construction and demolition waste*”. It was further held that this term would be understood, by the hypothetical “*ordinary and reasonably informed*” reader of the planning permission, as referring to waste material generated by activities involving the construction and demolition of buildings. Such waste material would be understood as including, for example, stone and soil from excavations, brick, rubble and concrete.
4. The principal judgment held that the planning permission does not authorise the treatment, by shredding, of timber at the waste facility. It should be emphasised that this finding had been reached in circumstances where the respondent company itself had categorised the source of this timber as municipal waste, not construction and demolition waste. The court had not been required to address the specific question of whether timber

arising from construction and demolition—such as, for example, roof timbers, latts or rafters—could be accepted at the waste facility.

5. There is no discussion in the principal judgment of the definition of “*packaging waste*” under European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (“*the European Directive on packaging waste*”). This is because the Directive had not featured as an issue in the enforcement proceedings.
6. Having regard to one of the arguments advanced on the committal application, it is also appropriate to note what had been said in the principal judgment in respect of the relevance of the European Waste Catalogue. The European Waste Catalogue is a hierarchical list of waste descriptions established by Commission Decision 2000/532/EC. A consolidated version of the European Waste Catalogue, which reflects the various amendments made to it over the years, has been published by the (Irish) Environmental Protection Agency and a copy of this document has been exhibited in these proceedings.
7. This court held in the principal judgment that it was legitimate to have regard to the European Waste Catalogue codes in assessing whether there had been a breach of the planning permission. See, in particular, paragraph 131 of the principal judgment as follows:

“[...] It is legitimate, therefore, to have regard to the definitions under the Waste Management Act 1996 (as amended) and to the European Waste Catalogue codes in assessing whether there has been a breach of the planning permission. As it happens, the concept of ‘construction and demolition waste’ is self-explanatory, and does not require further elaboration under the Act. It is defined under section 5 as meaning waste generated by construction and demolition activities. The European Waste Catalogue simply separates out the constituent parts of construction and demolition waste into individual codes.”

8. To assist the reader in understanding the significance of this finding, it should be explained that the European Waste Catalogue is used for the classification of all wastes and is designed to form a consistent waste classification system across the EU. These

classifications are used for waste management reporting obligations. The respondent company is required, under the terms of the waste facility permit last granted by the local authority, to maintain a register which records, *inter alia*, the date, time of arrival and quantities of waste in each consignment delivered to the waste facility and to categorise the waste type by reference to the waste's European Waste Catalogue code.

9. (As an aside, it should be observed that the status of the waste permit facility is a matter of controversy between the parties, with the applicants contending that there is no extant permit and that the respondent company is operating the waste facility in breach of the waste management legislation. This controversy cannot be resolved in the context of enforcement proceedings under the PDA 2000. If the applicants wish to pursue their complaint, it will have to be done by way of enforcement proceedings under the Waste Management Act 1996).
10. The European Waste Catalogue consists of twenty chapters. In most instances, these chapters refer to the source generating the waste. Chapter 17 applies to "*Construction and demolition wastes (including excavated soil from contaminated sites)*". Each chapter is broken down into subcategories, each with its own code. For example, construction and demolition waste has individual codes for, *inter alia*, concrete, bricks, tile, ceramics, wood, glass, plastic, metals, soil and stone, and dredging spoil.
11. For the purpose of the enforcement proceedings, the applicants had relied on the respondent company's own records, as obtained from the local authority, to establish the nature and source of the waste consignments then being accepted at the waste facility. The respondent company had agreed to the admission of these records as evidence.
12. Finally, for completeness, it should be recorded that the respondent company has brought an appeal against the principal judgment to the Court of Appeal. The appeal is listed to be heard on 20 July 2022.

**COURT ORDER OF 15 NOVEMBER 2021**

13. The principal judgment had concluded by indicating the form of order which it was proposed to make as follows (at paragraphs 172 and 173):

“Accordingly, an order will be made prohibiting the respondent, its servants and agents, from accepting any waste at the Barnan waste facility other than construction and demolition waste. For the avoidance of any doubt, the order will expressly prohibit the acceptance of mixed dry recyclables, waste from household or commercial skips, or waste from civic amenity sites. The planning permission does not authorise the treatment, by shredding, of any timber at the facility. Accordingly, an order will be made prohibiting the respondent from carrying on such activities. An order will also be made prohibiting the respondent from accepting any fridges, waste electrical and electronic equipment, beds, mattresses, sofas or tyres.

I will discuss the precise form of order with counsel. The proceedings will be listed before me on 4 October 2021 at 11 a.m. for final orders. The parties should be prepared to address the question of costs and of a stay, pending any appeal, on that date.”

14. The proceedings were duly listed on 4 October 2021. At the request of the parties, the matter was adjourned to 18 October 2021. On that date, counsel for the respective parties indicated to the court that they had been able to agree much of the final order. The outstanding matter was the length of time which was to be allowed to the respondent company to remove unauthorised waste from the site. Counsel on behalf of the respondent company submitted that a period of eight weeks should be allowed, and counsel for the applicants, very sensibly, accepted that this was reasonable in the circumstances.
15. The text of the draft order had not yet been furnished to the court, and the parties were directed to submit same to the registrar. The registrar would then, in turn, provide a draft order to me for approval. I expressly indicated to the parties that if I proposed to make any material or non-minor amendment to the text as agreed by the parties, I would invite further submissions from them. I also directed that the order would allow the respondent

company a period of eight weeks to remove non-compliant waste from the site, and that in the event of a dispute, the parties would have liberty to apply. I expressly stated that I would not attempt in advance to define what precisely can and cannot remain on-site.

16. The parties eventually submitted the agreed text of the draft order to the court, via the registrar, on 10 November 2021. The registrar then endeavoured to translate this agreed text into the house style of a formal court order. Unfortunately, the registrar's version did not capture all of the detail of the agreed text. Crucially, the formal court order did not include a prohibition on the treatment, by shredding, of any timber at the waste facility. This is so notwithstanding that the principal judgment had expressly indicated that the shredding of timber was to be prohibited. The formal court order also omitted reference to the parties having liberty to apply, as had been indicated at the hearing on 18 October 2021.
17. The order had been perfected, i.e. formally drawn up, on 15 November 2021 ("***the Court Order***"). The Rules of the Superior Courts provide a simple procedure for the correction, at any time, of clerical mistakes in orders, or errors arising therein from any accidental slip or omission (Order 28, rule 11). In the event, however, neither party sought to have the matter relisted before me to speak to the minutes of the Court Order nor to correct the obvious error entailed in the omission of the prohibition on shredding.
18. The Court Order had allowed a period of eight weeks for compliance with its terms. This eight-week period had been intended to allow the respondent company some time to rearrange its affairs so as to ensure compliance with the Court Order. The eight-week period expired on 10 January 2022. As noted above, I had indicated at the hearing on 18 October 2021 that the parties were to have liberty to apply after this eight-week period, but this was omitted from the Court Order as the result of a clerical mistake on the part of the registrar.

## CIVIL CONTEMPT: GENERAL PRINCIPLES

19. Disobedience of a court order represents a civil, as opposed to a criminal, contempt. The civil contempt jurisdiction is often described as being coercive rather than punitive: the principal objective is to secure future compliance with the relevant court order, not to punish the contemnor for their past disobedience. See *Laois County Council v. Hanrahan* [2014] IESC 34; [2014] 1 I.R. 720 (*per* Fennelly J. at paragraph 49 of the reported judgment):

“The law with regard to contempt of court has traditionally made a clear distinction between criminal contempt, on the one hand, and civil contempt, on the other. The object of criminal contempt is punitive; it is to uphold the law generally and the authority of the courts. The object of civil contempt is coercive: it is to enable one party to litigation to ask the court to compel another party to obey an order of the court which the first party has obtained. These categories are not entirely mutually exclusive but they are still the basic guide.”

20. The court possesses a power to punish or discipline a contemnor for past disobedience. This aspect of the civil contempt jurisdiction is generally exercisable at the instance of the court itself, rather than at the invitation of the parties. Whereas the coercive element of the civil contempt jurisdiction recognises the interest which a party with the benefit of a court order has in ensuring the order is complied with going forward, the punitive element is intended to vindicate the public interest in upholding the rule of law.
21. The matter has been put as follows by the Supreme Court (*per* McKechnie J.) in *Laois County Council v. Hanrahan* [2014] IESC 34; [2014] 1 I.R. 720 (at paragraphs 130 and 131 of the reported judgment):

“In practice the court will generally leave to the parties the enforcement of its orders, particularly if the rights in issue are of an exclusively private nature. However, there may also exist circumstances, where the nature, effect or consequences of a breach is such, that the court feels compelled to intervene or further intervene so as to mark its disapproval of conduct, which it views as being quite offensive. This will occur more readily where there are significant

public interest matters at issue, where the behaviour in question, is threatening to the court itself or otherwise constitutes a serious or significant challenge to it. Where such occurs I have no doubt but that the court has jurisdiction to act and its powers in this regard may be both coercive and punitive.

When intervention in this way becomes necessary as part of civil contempt, the court must be conscious that its jurisdiction has these two elements to it. Both may arise out of the same set of circumstances but when that occurs, it is of vital importance for the court, to distinguish sharply between its coercive intent and its punitive, or as it is sometimes put, its disciplinary intent. The reason is because the punishment is intended to reflect past conduct, i.e. conduct which has taken place up to the hearing date. Once therefore the imposed punishment has been met, the conduct which gave rise to it will have been legally dealt with. If further misbehaviour of a similar nature should reoccur, that likewise can be dealt with in the same way.”

22. This distinction is significant in the present case in that, as of the date of the hearing of the contempt motion in May 2022, compliance had belatedly been achieved in respect of certain of the (alleged) breaches of the Court Order. In particular, the evidence establishes that the shredding of timber at the waste facility had ceased by mid-February 2022.
23. Although it arises in the context of civil proceedings, the civil contempt jurisdiction partakes of certain characteristics of criminal proceedings. As discussed under the next heading below, this necessitates a high standard of procedural fairness. It also has the consequence that the criminal standard of proof applies, i.e. it must be established beyond a reasonable doubt that the alleged contemnor has disobeyed the court order.
24. There is a very useful discussion in S. Collins, *Enforcement of Judgments* (Round Hall, 2nd ed., 2019) at §§15–11 to 15–18 of the proper approach to be taken in determining whether or not there has been a breach of a court order such as to amount to contempt. The learned author refers, in particular, to the judgment of the High Court (Clarke J.) in *P. Elliott & Company Ltd v. Building and Allied Trades Union* [2006] IEHC 340 (at paragraph 3.3). There, the following test was posited:



“[...] Courts strive to ensure that orders made are clear in their terms. It is particularly important in cases where a party may be exposed to the risk of severe sanction for breach of an order that it be clear to that party what they can, cannot or must do. However despite the best efforts of all concerned it does remain the case that on certain occasions it may not be absolutely clear as to what is or is not within the scope of a binding order of the court. In those circumstances I am satisfied that, having regard to the penal nature of the contempt jurisdiction, a party could not be said to be in contempt of a court order where, objectively speaking, there was reasonable doubt as to whether the actions complained of came within or without the scope of the order concerned. I should emphasise that, in my view, the relevant test is an objective one. Would a reasonable and informed person, having had sight of the court order, come to the view that the acts complained of were legitimate having regard to that order.”

25. Collins next cites *Muller v. Shell E & P Ireland Ltd* [2010] IEHC 238 as authority for the proposition that if a reasonable doubt arises as to the scope or proper interpretation of an order, then this must be resolved in favour of the person who is alleged to have breached the order.
26. I respectfully adopt the approach in these two judgments as representing a correct statement of the law.

### **CIVIL CONTEMPT: PROCEDURAL REQUIREMENTS**

27. The invocation of the civil contempt jurisdiction has potentially severe consequences for the alleged contemnor, including the loss of their liberty. For this reason, then, the courts have insisted that certain procedural safeguards be strictly applied. These include a requirement that the alleged contemnor be properly served with the contempt motion, and that they be given adequate notice of the alleged breaches of the court order.
28. The necessity for such procedural safeguards has been explained as follows in *Dublin City Council v. McFeely* [2012] IESC 45; [2015] 3 I.R. 722 (*per* Hardiman J. at paragraphs 88 to 90 of the reported judgment):

“It is essential that the courts should possess power to punish in a summary manner contempt of the court or of the courts’ orders. If

the courts did not possess this power then a person who had lawfully obtained relief from a court might find himself or herself unable to enforce that relief.

But the exercise of this power must, in my opinion, always be a matter of last resort, embarked on with manifest caution and great reluctance. This is because the contempt of court procedures have the potential to deprive a citizen of his or her liberty, not to mention property, without their being accorded the elaborate but very necessary protections normally provided by the procedures of a criminal trial.

If a citizen could be summarily imprisoned, or fined a huge sum of money, without all proper meticulous attention being paid to the procedures which exist for his protection, then the liberties of citizens generally would be undermined. Everyone threatened with imprisonment for contempt, whether protestor, picketer or property developer, is entitled in the public interest, to a meticulous observation of procedural justice, all the more so since the nature of the procedures involved deprive him of the right to trial by jury. It is important that the court order allegedly breached should be indicated with absolute clarity and precision in the motion for attachment and committal and that the evidence alleged to establish breach of that order should be led in proper form after due and timely service of the motion for attachment and committal. This motion will normally be issued by a party and adjudicated upon, quite independently, by a judge.”

29. Various procedural safeguards are prescribed under the Rules of the Superior Courts.

The first in time is the requirement that the court order have been properly served and that the order bear the so-called penal endorsement. The penal endorsement is a formula of words which make it clear to the recipient, *inter alia*, that failure to obey the court order will leave them liable to possible imprisonment. The wording prescribed under Order 41, rule 8 of the Rules of the Superior Courts is as follows:

“If you the within named A.B. neglect to obey this judgment or order by the time therein limited, you will be liable to process of execution including imprisonment for the purpose of compelling you to obey the same judgment or order.”

30. There is some debate as to whether it is always necessary that service of the court order must be effected by way of personal service. The judgment of the High Court in *Laois County Council v. Scully* [2007] IEHC 212; [2009] 4 I.R. 488 held that the court order

might properly be served on the solicitor on record for the alleged contemnor. See paragraph 41 of the reported judgment as follows:

“Order 41, r. 8 makes no reference to personal service being required. There is simply a requirement in relation to an order requiring a person to do an act, to state the time after service by which it has to be done, and that the copy order served be endorsed with a penal endorsement. It seems to me that under the Rules of the Superior Courts 1986 an order such as the present one is not an order which the Rules require to be served personally on a defendant bound by it. It is not an order under O. 84, r. 1 for example. It seems to me, therefore, that where an order of this kind is made against a defendant for whom a solicitor is on record, service on that solicitor is permitted, since the Rules themselves have not required service to be personal service. The cases to which I have referred can be distinguished on their facts. That is not to say that out of an abundance of caution a plaintiff’s solicitor ought not to in fact effect personal service of such an order duly endorsed upon the defendant personally, but it does not appear to be a requirement.”

31. The judgment in *Scully* went on then to hold that even where the alleged contemnor does not have legal representation, personal service is still not required, and a court order might properly be served by way of registered post.
32. Collins observes that earlier authorities indicate that personal service is required. (S. Collins, *Enforcement of Judgments* (Round Hall, 2nd ed., 2019 at §§15–63 fn)). It is unnecessary for the purpose of the present proceedings to decide which approach is correct. This is because it has been accepted that both directors were properly served with a copy of the Court Order. The fact, however, that such service was not effected until *after* the eight-week period stipulated for compliance had already expired may have certain consequences: see paragraphs 68 to 70 below.
33. Whatever the position may be in respect of service of the court order, there is no doubt but that in the case of an unrepresented person, there must be personal service of a motion seeking attachment and committal (together with the grounding affidavit and exhibits). If there is some difficulty in effecting personal service, then an application for substituted service may be made to the court.

34. Order 52, rule 4 of the Rules of the Superior Courts provides, *inter alia*, that every notice of motion for attachment shall state in general terms the grounds of the application.
35. The object of this rule has been explained as follows by the Supreme Court in *Dublin City Council v. McFeely* [2012] IESC 45; [2015] 3 I.R. 722 (*per* Fennelly J. at paragraphs 106 and 118 of the reported judgment):

“The object of these rules is to comply with the obvious need to respect fair procedures where a person is at risk of being imprisoned, that is to respect the rule of *audi alteram partem*. It is inherent in this system that the person be put on notice of the nature of the contempt alleged against him. In a case where the charge is that he is in breach of a court order, he should be told what the order is and how he is alleged to be in breach. It seems to me axiomatic that these procedures must be observed before the court makes a finding that the person is in breach of the order. That is what the contempt consists of.

[...]

Without going into the question whether particulars of the breaches alleged must be set out in the notice of motion or in the grounding affidavit, I would conclude that the statements I have quoted support the rather obvious proposition that a person faced with a serious allegation of breach of a court order, which is, of course, contempt of court, must be afforded reasonable notice of the fact and the nature of the complaint.”

36. The requirement that the nature of the contempt alleged be notified assumes an especial importance in a case, such as the present, where the terms of the court order are complex. It is essential that the motion provide particulars of what parts of the court order it is alleged have been breached. Moreover, if progress has been made in complying with the court order in the period between the issuance of the motion and the hearing of same, the court should be told at the outset of the hearing what breaches are said to be ongoing and what relief is being sought in respect of same.

**APPLICATION FOR ATTACHMENT AND COMMITTAL**

37. The eight-week period allowed for compliance with the Court Order expired on 10 January 2022. The applicants took the view that the respondent company had not complied with the Court Order as of that date. A copy of the Court Order with a penal endorsement was served on the company and the two directors by way of registered post later that month, i.e. at a time when the eight-week period had already expired. No formal objection has been taken to the fact that the Court Order was served by registered post rather than by way of personal service on the two directors.
38. The solicitors acting on behalf of the applicants wrote to the solicitors acting on behalf of the respondent company on 21 January 2022 and alleged that the waste facility was being operated in breach of the Court Order. In response to this correspondence, the solicitors acting on behalf of the respondent company sought particulars of the alleged breaches of the order. There does not appear to have been any substantive reply to this letter of 26 January 2022.
39. On 17 February 2022, counsel on behalf of the applicants applied *ex parte* to abridge time for the service of a motion seeking leave to attach and commit two directors of the respondent company. On the return date, the matter was adjourned, on consent, to allow the parties to exchange affidavits. On 15 March 2022, this court gave directions as to the further exchange of affidavits and written legal submissions. This court also granted leave to each party to cross-examine the other side's deponents on their affidavits. The applicants were given liberty to issue a motion seeking to inspect the waste facility pursuant to Order 103 of the Rules of the Superior Courts, and a date was provisionally fixed for the hearing of this motion on 25 March 2022. In the event, the parties were able to reach an agreement on a joint inspection of the waste facility and the motion did not proceed. A joint inspection took place on 30 March 2022.

40. The contempt motion had been listed for hearing on 7 April 2022, but had to be adjourned because one of the deponents who was to be cross-examined had suffered a bereavement. The hearing ultimately took place over two days on 19 May and 26 May 2022. Counsel on behalf of the respondent company cross-examined two of the deponents on behalf of the applicants, namely Elaine Kelly Dunne and Anthony Murray. Ms. Kelly Dunne is herself one of the applicants in the proceedings. Counsel on behalf of the applicants cross-examined Brian Moylan. Mr. Moylan is an employee of the respondent company and his job title is “*head of planning and compliance*”.
41. The contempt motion had initially been pursued against two directors of the company. The application as against the second director has since been withdrawn because of an issue in respect of service. The default position is that, certainly in the case of an unrepresented person, service of a motion for attachment and committal should be by way of personal service. On the facts of the present case, neither of the alleged contemnors, i.e. the two directors, had been a party to the enforcement proceedings. The company had been the sole respondent and only it had legal representation. At the time that the contempt motion came to be served, neither director had a solicitor on record. It follows, therefore, that the contempt motion should have been served on them personally.
42. Counsel for the applicants confirmed, at a short supplemental hearing on 30 May 2022, that his side are not in a position to prove personal service upon Mr. Sean Doyle and are not therefore pursuing the application against him. The application proceeds against Mr. Aidan Doyle alone. Counsel for the respondent company confirmed that his solicitor has instructions to represent Mr. Aidan Doyle in the contempt motion.

## EVIDENCE FROM THE SITE INSPECTION

43. The engineer retained on behalf of the applicants, Patrick O'Donnell, prepared an affidavit following upon the site inspection on 30 March 2022. Mr. O'Donnell avers that, during the time he had been present on-site at the waste facility, two loads of waste arrived. The loads were weighed and accepted at the waste facility. The first load is described as containing only wooden pallets. The weighbridge documentation records the load as coming from BHA Construction Ltd. The load was assigned the European Waste Catalogue code 17 02 01 (construction and demolition waste: wood). The second load is described as containing demolition waste, most likely from the demolition of a dwelling, and includes kitchen press units and loose timber. The load was assigned the European Waste Catalogue code 17 09 04 (mixed construction and demolition waste).
44. Mr. O'Donnell offers the opinion, in his affidavit, that the first load should have been assigned the European Waste Catalogue code 15 01 03 (wooden packaging). Mr. O'Donnell supports this opinion by reference to the following: (i) the definition of "*packaging waste*" under the European Directive on packaging waste; (ii) the respondent company's annual environmental report for 2011; (iii) the EPA protocol for the evaluation of biodegradable municipal waste sent to landfill; and (iv) advice published by the UK Environment Agency.
45. Mr. O'Donnell then states as follows (at paragraphs 17 and 18 of his affidavit):

"In my opinion packaging waste is not suitable for acceptance at a construction and demolition waste recycling facility even if it originated on a construction site because it is not C & D waste, in the same way that canteen waste from a construction site should be treated as municipal waste, not C & D waste. Separately, in affidavit evidence given by me in the substantive proceedings, I explained that if only *inert waste* is acceptable at the Barnan facility, in line with commitments given in the planning application documentation, this would exclude any type of timber waste as timber is not inert.

It is now commonplace for developers to prioritise return/ repair/ reuse of packaging pallets in their Construction and Demolition

Waste Management Plans ('CDWMP') submitted with their planning applications and for planning authorities to attach conditions prohibiting, regulating, or controlling the deposit or disposal of waste materials as provided for in paragraph 18 of the Fifth Schedule of the Planning and Development Act, 2000, as amended."

46. Much of the content of Mr. O'Donnell's affidavit strays beyond the scope of the committal application and trespasses on the planning merits of the waste facility. This is not intended as any criticism of Mr. O'Donnell personally. It bears emphasis, however, that the only matter currently before this court is the committal application. This court has already delivered its ruling on the substance of the case against the waste facility in its principal judgment. The only issue now before the court is whether the Court Order of 15 November 2021 has been complied with.
47. The fact of the wooden pallets having been received is not disputed by the respondent company. Instead, the respondent company says that this material came from a construction site and is properly categorised as construction and demolition waste. Mr. Moylan was not prepared to concede on cross-examination that the waste had not been properly categorised, saying that the consignment of waste had been collected from a construction site and that wood was expressly included within chapter 17 of the European Waste Catalogue.
48. An affidavit has also been sworn on behalf of the respondent company by Bernadette Guinan. Ms. Guinan is a director of Fehily Timoney and Company and is qualified as an environmental scientist. Ms. Guinan confirmed on affidavit that she had been present at the waste facility at the time of the joint inspection on 30 March 2022.
49. Ms. Guinan also confirmed that the delivery of waste containing predominantly wooden pallets which had been received at the waste facility that morning had emanated from a construction site at Portlaoise and is correctly recorded as emanating from BHA Construction Ltd, Cloonrosk, Portlaoise. Ms. Guinan offered her professional opinion



that it would be “*very surprising*” if it were to be ever understood that pallets, which are a necessary part of construction activity in terms of the day-to-day work on construction sites, would be characterised or classified as *other than* construction and demolition waste.

#### **NATURE OF ONGOING BREACHES ALLEGED**

50. As will be explained presently, there had been an admitted delay on the part of the respondent company in complying with certain aspects of the spirit of the Court Order. However, given that the principal purpose of the court’s civil contempt jurisdiction is coercive, rather than punitive, I propose to commence my discussion with an analysis of the outstanding complaints.
51. The applicants contend that the respondent company is still in breach of the Court Order because it continues to receive timber (in the form of wooden pallets from construction sites) at the waste facility. The applicants submit that the Court Order prohibits the reception of anything other than “*construction and demolition waste*”, and that this concept must be understood by reference to the European Waste Catalogue.
52. It is said that the evidence demonstrates that the respondent company is receiving wooden pallets at the waste facility and that such waste is properly categorised as “*packaging waste*” as opposed to “*construction and demolition waste*”. Counsel on behalf of the applicants relies upon the definition of “*packaging waste*” under the European Directive on packaging waste.
53. The issue for determination on the contempt motion is whether the Court Order clearly precludes the acceptance, at the waste facility, of wooden pallets from a construction site. The question here is whether or not the term “*construction and demolition waste*”, as used in the Court Order, can reasonably be interpreted as encompassing this type of

waste. This is a narrower question than whether the planning permission, on its proper interpretation, authorises such activity. The difference between the two questions lies in the threshold applicable: whereas there might, in principle, be a range of *reasonable* interpretations of the Court Order, there can only ever be one *correct* interpretation of the planning permission.

54. To elaborate: had the receipt of wooden pallets at the waste facility arisen as an issue at the substantive hearing of the enforcement proceedings last year, then it would have been necessary for the court to adjudicate on whether such activity came within the authorised use under the planning permission. This would turn, largely, on the interpretation of the phrase “*construction and demolition waste*” as it would be understood by the hypothetical informed reader of the planning permission. The court would have to rule on which of the competing interpretations put forward by the parties was the correct one.
55. A different approach applies to the interpretation of the Court Order in the context of the contempt motion. Here, the question is whether a reasonable and informed person, having had sight of the Court Order, would come to the view that the acts complained of were permissible having regard to that order. If the Court Order is open to a *reasonable* interpretation which would permit the allegedly contumacious act, then the contemnor is entitled to the benefit of that interpretation. This is so notwithstanding that a court might, had the particular issue been fully argued before it at the substantive hearing, have been prepared to grant a differently worded order which explicitly prohibited the acceptance of wooden pallets.
56. It is not obvious from the terms of the Court Order of 15 November 2021 that it is intended to prohibit the reception of wooden pallets from a construction site at the waste facility. Neither timber in general nor wooden pallets in particular are included as part of the waste materials expressly prohibited under the Court Order. There is a respectable

argument that wooden pallets which emanate from a construction site come within the concept of “*construction and demolition waste*”. The chapters of the European Waste Catalogue fall into three different sets which need to be considered in a predetermined sequence as laid down in the Annex to the List of Wastes. The approach to be adopted has been explained as follows by the European Commission in its technical guidance on the classification of waste (2018/C 124/01):

- (i). First, it is important to consider the chapters 01 to 12 and 17 to 20 (excluding their general entries ending with 99) which identify a waste by referring to its source or industrial sector of origin.
  - (ii). If no appropriate waste code can be found in chapters 01 to 12 or 17 to 20, the next chapters to be checked, according to the defined order of precedence are chapters 13 to 15 (excluding their general entries ending with 99). These chapters are related to the nature of the waste itself, e.g. waste packaging.
  - (iii). If none of these waste codes apply, the waste must be identified according to chapter 16 (excluding its general entries ending with 99) which represents a miscellaneous set of waste streams which cannot be otherwise specifically related to a given process or sector, e.g. WEEE or end-of life vehicles.
57. In contrast to the position in respect of municipal waste, the List of Wastes does not expressly regulate the potential overlap between the chapter on packaging waste and the chapter on construction and demolition waste. There is no provision equivalent to that which states that separately collected municipal packaging waste must be classified as packaging waste under chapter 15 rather than municipal waste under chapter 20.
58. Tellingly, the factsheet published by the European Commission in respect of construction and demolition waste management in Ireland (September 2015) notes that construction and demolition waste is not clearly defined in Irish legislation and that the inclusion of

non- C & D waste generated by construction operations is a “*subjective area where there is limited guidance*”. It is suggested that—unless collected separately—packaging waste generated by construction operations can be included in the definition of construction and demolition waste where it forms part of a mixture of such waste.

59. As is apparent from even this brief discussion, the question of whether packaging waste, in the form of wooden pallets, falls within the definition of “*construction and demolition waste*” does not admit of an obvious answer. It should also be reiterated that this question did not arise for consideration as part of the principal judgment. In the circumstances, it cannot be said that, on an objective interpretation, the Court Order of 15 November 2021 would be clearly understood as prohibiting the receipt of wooden pallets at the waste facility.
60. It bears emphasis that it is not open to this court to revisit any aspect of the principal judgment as part of this committal application. If and insofar as the applicants consider that the terms of the Court Order of 15 November 2021 do not accurately record the principal judgment, then they can apply to speak to the minutes of the order. Alternatively, if the applicants consider that new or different activities are now being carried out at the waste facility, it is open to the applicants to seek to restrain such activities. The fact that an order has been made, pursuant to section 160 of the PDA 2000, prohibiting specific activities at a site does not render the developer immune from further enforcement action in the event that new activities are commenced. Depending on the circumstances of the particular case, it might be possible to apply within existing enforcement proceedings for relief in respect of the new activities or it may be necessary to issue fresh proceedings under the section.

**TIMBER SHREDDING**

61. As explained earlier, the formal court order did not include a prohibition on the treatment, by shredding, of any timber at the waste facility. This is so notwithstanding that the principal judgment had expressly indicated that the shredding of timber was to be prohibited.
62. The evidence before the court indicates that the activity of shredding timber had been carried out at the waste facility for a number of weeks following the expiration of the eight-week period allowed for compliance with the Court Order. Counsel on behalf of the respondent company has, very properly, acknowledged that this should not have happened. It was not until mid-February 2022 that this activity ceased, and the timber shredder was removed from the site.
63. By the time the contempt motion came on for hearing towards the end of May 2022, the alleged breach of this aspect of the Court Order had come to an end. It follows, therefore, that any remedy to be granted in this connection is punitive rather than coercive. Counsel on behalf of the applicants, having taken express instructions on the point, confirmed that his clients were not seeking to have the two directors committed to prison for this historical breach. The court retains jurisdiction to mark its disapproval of the historical breach by imposing a sanction, such as a fixed term of imprisonment or a monetary fine.
64. Matters are complicated by the fact that the Court Order, as perfected, omits any express prohibition on timber shredding. This omission came about as a result of a clerical error on the part of the registrar in drawing up the formal terms of the order. Either party could have applied to court pursuant to the so-called “*slip rule*” under Order 28, rule 11 to have the court order amended so as to correct this error. In the event, no such application was made, and the Court Order as served on the two directors of the respondent company does not expressly prohibit timber shredding.

65. Counsel on behalf of the applicants submitted that the omission is not fatal to this aspect of the contempt motion. First, it is said that the objective interpretation of a court order is to be reached by reference to a hypothetical informed reader, and that it should be assumed that such a reader would have knowledge of the content of the principal judgment. The principal judgment clearly envisaged that timber shredding would be prohibited. Secondly, it is said that in reaching an objective interpretation of the Court Order it is legitimate to have some regard to how the order had been understood subjectively by the employees of the respondent company. It is said that Mr. Moylan's evidence clearly indicated that he understood that the Court Order required the cessation of the shredding activity and the removal of the timber shredder.
66. With respect, neither of these propositions is correct. The consequences of a failure to comply with a court order are severe, including potential imprisonment, and it is crucial, therefore, that the terms of a court order itself set out precisely what is required to be done to comply with same. The Rules of the Superior Courts provide that it is the court order, rather than the judgment to which it gives effect, which must be served upon the affected parties. It is not reasonable to expect that a person should have to read through a lengthy and dense written judgment to understand what is required to be done. This is especially so in the circumstances of the present case where, at the margin, the precise delineation of what is and is not "*construction and demolition waste*" is not always obvious.
67. As to the nature of the test, the case law clearly establishes that it is an objective one: see paragraph 24 above. The hybrid objective/subjective approach suggested on behalf of the applicants is inconsistent with the case law. A court order is a public document and is binding upon all those with notice of same. A court order can only have one meaning and this has to be determined objectively. The fact, if fact it be, that an employee of the

respondent company may have thought that the Court Order had a particular meaning cannot, as a matter of law, affect the correct interpretation of the order. Moreover, the employee's interpretation cannot be binding on the persons sought to be imprisoned, namely the two directors of the respondent company.

68. There is a further complication in that the Court Order, with the requisite penal endorsement, was not served upon the two directors until after the eight-week period allowed for compliance had already expired. This fact is not acknowledged in the wording endorsed on the copies of the Court Order as served. In the absence of any evidence before the court as to the nature and extent of the responsibility of the two directors for the day-to-day operations at the waste facility, it cannot simply be assumed that they had previously been on notice of the eight-week period. Compliance with this aspect of the Court Order appears to have been achieved within four to five weeks of the date of service upon the two directors.
69. The purpose of the eight-week stay on the Court Order had been to allow the respondent company a reasonable period of time to rearrange its affairs so as to ensure compliance with the Court Order. Given that the two directors are not parties to the enforcement proceedings, it would potentially be unfair to expect them to achieve compliance with the Court Order immediately upon their being served with same for the first time on dates subsequent to the expiration of the eight-week period.
70. Having regard to, first, the omission of an express prohibition on timber shredding from the formal order, and, secondly, the fact that compliance had been achieved by the date of the hearing of the contempt motion and within four to five weeks of the date of service upon the directors, it would not be appropriate to exercise the court's punitive or disciplinary contempt jurisdiction in this case. The fact that compliance with the spirit

of, if not necessarily the letter of, the Court Order had been achieved only belatedly may, however, be relevant to the question of legal costs. I will hear the parties further on this.

#### **OTHER ALLEGED BREACHES OF THE COURT ORDER**

71. The applicants have also sought to complain that other aspects of the Court Order had been breached. It is alleged, variously, that furniture (consisting of a couch); waste electrical and electronic equipment (consisting of a television or computer monitor); and green waste (consisting of flower pots and soil) had been accepted at the waste facility on dates during January and February 2022.
72. The evidence adduced by the applicants in support of these allegations falls far short of that required by the criminal standard of proof. The only deponent who now purports to have first-hand knowledge in relation to these matters is Mr. Anthony Murray. Mr. Murray's residence is said to be the house closest to the waste facility.
73. Mr. Murray states that on a number of occasions during January and February 2022 he had seen skips being transported to the waste facility. Mr. Murray claims that he was able to identify some of the content of these skips, notwithstanding that the skips were covered by way of a net meshing.
74. Mr. Murray had taken a number of photographs of these skips on his mobile telephone and provided copies of these photographs to the solicitors acting for the applicants in these proceedings. Mr. Murray himself is not a party to the proceedings. The photographs were then exhibited as part of Ms. Kelly Dunne's first affidavit without it being explained that the photographs had been taken by Mr. Murray. A reader of Ms. Kelly Dunne's affidavit would be left with the mistaken impression that the photographs had been taken by her and that she had witnessed these events. Ms. Kelly Dunne also stated incorrect dates for the photographs. None of this should have



happened in the context of an application based on the criminal standard of proof and reflects badly on both Mr. Murray and Ms. Kelly Dunne.

75. The images in the photographs taken by Mr. Murray are of very poor quality with low resolution. This may be because they were taken at a considerable distance using the “*zoom*” function on the mobile telephone. The skips as shown in the photographs almost all appear to be covered with a dark covering and it is difficult to make out even the shape of items that might be underneath the covering.
76. Mr. Murray was cross-examined by counsel for the respondent company. Mr. Murray’s demeanour in the witness box was unimpressive: his answers were evasive and when confronted with difficult questions he became aggressive. Mr. Murray failed to disclose that he has animus towards the respondent company, having been prosecuted for causing criminal damage to company property by discharging a legally held firearm at a CCTV camera on the company’s premises. Mr. Murray further undermined his credibility by insisting that specific items could be clearly identified in the poor quality photographs when they could not, and then contradicted his own evidence by claiming to identify different items in the same photographs.
77. Mr. Murray was unable to give a coherent account of the circumstances in which individual photographs had been taken. For example, in one instance he stated in oral evidence that a particular photograph had been taken while he was on foot, yet in his affidavit the very same photograph is described as having been taken while he pursued, in his motor car, the vehicle carrying the skip. Mr. Murray conceded that he had taken no contemporaneous notes of the skip movements he had seen and that the dates and times of the photographs provided by him to the applicants’ solicitors were incorrect in the majority of instances when cross-checked against the date stamp recorded by the mobile telephone.

78. It is also a cause of concern that Mr. Murray contributed to a significant error in Ms. Kelly Dunne's first affidavit. Mr. Murray provided a number of photographs of a skip containing municipal waste. These photographs were then exhibited as part of Ms. Kelly Dunne's affidavit without proper explanation. A reader of the affidavit would be left with the mistaken impression that a skip containing non-compliant waste had been received at the waste facility. In truth, the skip in question had been photographed at a location in Tullamore town and the evidence establishes that the skip had been sent to a different facility operated by the respondent company and had not been received at the Barnan waste facility. Mr. Murray was unable to tell the court why he had supplied these photographs to the solicitors for the applicants without a proper explanation as to their provenance.
79. In all of the circumstances, I am not satisfied that Mr. Murray's evidence establishes beyond a reasonable doubt that items of the type described by him were, in fact, accepted at the waste facility in January and February 2022.
80. Ms. Kelly Dunne swore a number of affidavits in support of the contempt motion. It has since transpired that she had no direct or first-hand knowledge of the skip movements described in her first affidavit, but was instead relying on the photographs taken by Mr. Murray. Regrettably, this was not made clear in her initial affidavit. Rather, the language used in that affidavit suggests, inaccurately, that Ms. Kelly Dunne had witnessed the skip movements herself and had taken photographs of same.
81. The evidence given by Ms. Kelly Dunne in respect of her general impression of the volume of traffic is too vague and imprecise to meet the criminal standard of proof and is, in any event, contradicted by the unchallenged records exhibited by Mr. Moylan.
82. Mr. Moylan gave evidence on behalf of the respondent company as to the steps taken from November 2021 onwards to comply with the Court Order. Mr. Moylan stated that

some 117 loads of non-compliant waste, comprising 1,961 tonnes, were removed from the waste facility. Mr. Moylan exhibited records from the weighbridge which supported this statement. Mr. Moylan explained that the removal of this quantity of waste resulted in a temporary increase in traffic from the waste facility, but since then the level of activity and consequent traffic movement has decreased significantly. Mr. Moylan went on to say that the planning permission allows for a total of 30 truck movements over a 10 hour day. As part of his affidavit, Mr. Moylan exhibited a summary table of traffic between 10 January 2022 and 17 February 2022.

83. Mr. Moylan stated that most of the construction and demolition waste is sourced from established construction contractors, and exhibited a list of construction contractors who have accounts with the waste facility. The witness went on to explain that approximately between 5 and 10 per cent of skips would be provided to non-account or cash customers. Mr. Moylan stated that the despatch operators have been directed not to provide skips other than to construction and demolition projects. Such skips might be despatched to private individuals who were carrying out construction work, such as the erection of an extension to a domestic dwelling. Mr. Moylan explained that if a skip were to be sought simply for a clear-out of a domestic dwelling, rather than construction, its contents would not be accepted at the waste facility.
84. Mr. Moylan outlined the procedures put in place to ensure that non-construction and demolition waste will not be accepted at the Barnan waste facility. The drivers collecting filled skips have been instructed to carry out a visual inspection to check whether the skip contains prohibited waste, such as domestic refuse in black bin bags, furniture or bulky waste. A further visual inspection is carried out on the arrival of the filled skip at the waste facility. If, upon tipping out the contents of the skip, prohibited waste was observed, it would be quarantined and removed from the waste facility. Mr. Moylan

explained that there is a facility adjacent in Tullamore to which such waste could be diverted.

85. Mr. Moylan also addressed each of the photographs taken by Mr. Murray. In each instance, Mr. Moylan had been able to refute the allegation that the skip contained prohibited waste. In the most dramatic example, Mr. Moylan gave evidence that the skip allegedly containing pink flowerpots was, in fact, a consignment of cut-off wavin pipes.
86. Having carefully considered the evidence of each side's witnesses, I am satisfied that the respondent company has put in place reasonable measures to ensure that no waste other than construction and demolition waste is accepted at the waste facility as required by the Court Order. The fact, if fact it be, that the system is not entirely fool proof (as put by counsel for the applicants), and that some non-compliant waste might be thrown into a skip by a third party and make its way to the waste facility, does not constitute the type of wilful disobedience of the Court Order which would justify the imprisonment of the directors. Certainly, the applicants have failed to establish, to the criminal standard of proof, that non-compliant waste is regularly received and accepted at the waste facility.

### **PROPRIETY OF SEEKING RELIEF AGAINST DIRECTORS**

87. The discussion thus far has been addressed to the question of whether the respondent company is in breach of the Court Order. This reflects the manner in which the matter had been argued before me. There is, however, a shorter answer to the contempt motion. The circumstances in which a court order addressed to a company can be enforced against the directors of that company are constrained by the Companies Act 2014.
88. Section 53 of the Act provides as follows:

“53. (1) Any judgment or order against a company wilfully disobeyed may, by leave of the court, be enforced by—

(a) sequestration against the property of the company,

- (b) attachment against the directors or other officers of the company, or
  - (c) sequestration against the property of such directors or other officers.
- (2) An application may not be made, in the foregoing circumstances, for attachment against directors or other officers or for sequestration against their property unless the judgment or order of the court to which the application relates has contained a statement indicating the liability of such persons or of their property to attachment or sequestration, as the case may be, should the judgment or order be disobeyed by the company.”

89. Conroy suggests, correctly, that section 53 of the Companies Act 2014 requires that the statement in respect of liability should form part of the court order. See B. Conroy, *The Companies Act 2014: Annotated and Consolidated* (Round Hall, 2018):

“The objective of subs.(2) [of section 53] appears to be to ensure that company officers are put on notice of the potential application of subs.(1) at the time when the perfected order issues. However, company directors would have been so aware in any event under the prior legislation, as a penal indorsement would have been placed on the order by a moving party’s solicitor prior to service pursuant to Ord.41, r.8. A literal interpretation of the section would indicate that the statement in question is to form part of the perfected order which issues from the court, rather than simply being the equivalent of the penal indorsement placed on the perfected order by the plaintiff’s solicitor.”

90. The requirement that the court order, as perfected, should contain a statement which alerts the directors and officers of the company to their potential liability in the event that the order has been wilfully disobeyed is intended to ensure fair procedures. As emphasised in the modern case law, a person who is at risk of losing their liberty must be informed of what precisely it is that they are required to do. Logically, this should begin with the court order itself: the order should be self-contained and should set out the consequences of disobedience.

91. The enhanced procedural requirements of the Companies Act 2014 can be contrasted with those obtaining under the Rules of the Superior Courts. Whereas Order 42, rule 32

also provides that any judgment or order against a company which has been wilfully disobeyed may, by leave of the court, be enforced *inter alia* by attachment against the directors or other officers of the company, there is no requirement that the order itself should have contained a statement indicating that the directors are potentially liable. Rather, it is sufficient for the purpose of the Rules of the Superior Courts that a copy of the order be *subsequently* endorsed with words to the effect that failure to obey the order will result in the recipient being liable to a process of execution, including possible imprisonment, for the purpose of compelling them to obey the order.

92. As an aside, it should be observed that the form of wording endorsed on the copies of the Court Order served on the two directors does not even fulfil the requirements of Order 42, rule 32. The penal endorsement used fails to explain the basis upon which the individual served is said to be liable for the acts or omissions of the respondent company. The endorsement inaccurately refers to the individual served as “*the within named*” which implies that they have been named in the Court Order. Of course, the directors had never been joined as parties to the proceedings and their names do not appear anywhere in the Court Order. At the very least, the endorsement should have recited that it was sought to make the individual liable for execution in their capacity as a director of the respondent company.
93. Had the applicants in the present case wished to preserve the possibility of seeking to enforce against the directors in addition to the respondent company, then they should have requested that a statement for the purpose of section 53 of the Companies Act 2014 be included in the Court Order.
94. Even had such a statement been contained in the Court Order, the court would retain a discretion as to whether to grant leave to enforce against individual directors. It is an essential proof of such an application, first, that the particular director must have been on

notice of the court order, and, secondly, that they bear some responsibility, whether by act or omission, for the wilful disobedience of the order. An individual cannot be deprived of their liberty or their property by reference to the acts of a company, which in law is a separate legal entity, unless it has been demonstrated that they have some personal culpability. Given the severe consequences of an order for attachment, it seems that it must be established that there has been something akin to consent, connivance, approval or neglect on the part of the director whom it is sought to imprison.

95. In this regard, a loose analogy can be drawn with the approach taken under the Planning and Development Act 2000 to the liability of directors for criminal offences. Section 158 of the PDA 2000 provides as follows:

“Where an offence under this Act is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to have been facilitated by any neglect on the part of a person being a director, manager, secretary or other officer of the body or a person who was purporting to act in any such capacity, that person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.”

96. Whereas this section is confined to criminal proceedings, and thus inapplicable to civil contempt, it does illustrate the general principle that a director of a company cannot automatically be made liable for the acts or omissions of the company. There must be some connection established between the conduct of the director and the acts or omissions of the separate legal entity of the company.
97. The question of whether the directors and shareholders of a company should be held liable for breaches of the planning legislation on the part of the company has been considered in a number of judgments summarised in D. Browne, *Simons on Planning Law* (Round Hall, 3rd ed, 2021) at §11-316 to §11-320. These judgments involved cases where it had been sought to join directors or shareholders to enforcement proceedings from the very outset, i.e. the directors and shareholders were named as respondents with

a view to obtaining orders against those individuals as well as against the company. The position in the present case is different: the directors have only been embroiled in the proceedings post-judgment. The earlier case law is nevertheless of interest in that it illustrates a reluctance on the part of the courts to disregard the separate legal personality of the company. It is generally only in circumstances where the financial affairs of the company are not being conducted properly that it has been held to be appropriate to join the directors or shareholders to the enforcement proceedings.

98. By analogy, it would seem that a court order against a well-resourced company with assets should be capable of being effectively enforced by moving against the company's property, rather than by recourse to the Draconian remedy of imprisoning its directors.
99. The applicants in the present case have failed to adduce any evidence as to the corporate structure of the respondent company. No detail has been provided in respect of the financial statements of the company nor as to the number of directors. The court does not know, for example, whether the two individuals named are the only directors of the company nor whether they are executive or non-executive directors.
100. No evidence has been adduced in respect of the nature and extent of the operations of the company. It has not been established whether the respondent company is only responsible for the operation of the waste facility at Barnan, with other companies in the wider Oxigen group being responsible for different sites operating under that umbrella.
101. In the absence of any such evidence, it must be doubtful whether it would be appropriate to make orders against the directors of the company. The issue is now largely academic. This is because, for the reasons outlined earlier, there has been no ongoing breach established on the part of the company Guessford Ltd. If and insofar as there had been a breach of the spirit, if not necessarily the letter, of the Court Order prior to mid-February



2022, this cannot be visited upon the directors for the reasons explained at paragraphs 68 to 70.

102. Counsel on behalf of the applicants suggested that an application alleging that there has been civil contempt might be heard and determined on a staggered basis. More specifically, it was suggested that the question of whether or not the company itself was in breach of a court order should be determined first, in advance of any application against the directors of the company to be heard as part of a subsequent application.
103. With respect, these submissions would appear to be incorrect in point of practice and in principle. The only substantive relief which has been sought in the contempt motion is to commit the directors of the respondent company to prison. No meaningful relief has been sought as against the company itself. This is not, for example, a case where it has been sought to sequester the assets of the company, with relief being sought against the directors in the alternative only. Put shortly, there is nothing in the contempt motion which suggests that the applicants were seeking to have a preliminary finding made as to the culpability of the company.
104. Moreover, as a matter of principle it would be inappropriate to divide up the hearing and determination of a contempt application. This would entail unnecessary delay and duplication of legal costs. If a party wishes to seek relief as against the directors of a company, then all of the evidence which it is intended to rely upon in support of that relief should be adduced before the court as part of a single application.

## **CONCLUSION**

105. The principal complaint made by the applicants is that the respondent company is guilty of an ongoing breach of the Court Order of 15 November 2021 insofar as it accepts waste in the form of wooden pallets at the Barnan waste facility. This complaint is rejected for

the reasons set out at paragraphs 50 to 59 above. It cannot be said that, on an objective interpretation, the Court Order would be clearly understood as prohibiting the receipt of wooden pallets sourced from a construction site.

106. The respondent company had been in breach of the spirit of, if not necessarily the letter of, the Court Order by continuing to shred timber at the waste facility until mid-February 2022. However, for the reasons explained at paragraphs 61 to 70 above, it would not be appropriate to exercise the court's punitive or disciplinary contempt jurisdiction in this instance. The fact that compliance had been achieved only belatedly may, however, be relevant to the question of legal costs.
107. For the reasons explained at paragraphs 71 to 86, the other alleged breaches of the Court Order have not been made out on the facts.
108. Finally, even if it had been demonstrated that the respondent company were in ongoing breach of the Court Order, it would not be appropriate to imprison the directors for the reasons explained at paragraphs 87 to 104. In particular, the requirements of section 53 of the Companies Act 2014 have not been fulfilled.
109. Accordingly, the contempt motion is dismissed. The Court Order will be amended pursuant to Order 28, rule 11 to include a prohibition on the shredding of timber at the waste facility. This amendment is necessary to correct a clerical mistake in the order as initially drawn up.
110. These proceedings will be listed for argument on costs on 17 June 2022 at 10.30 am.

#### *Appearances*

Oisín Collins, SC and Margaret Heavey for the applicants instructed by O'Connell Clarke Solicitors

Michael O'Higgins, SC and Michael O'Donnell for the respondents instructed by John C. Kieran & Son Solicitors

Approved  
Gemma S. Mans