England and Wales Court of Appeal (Civil Division) Decisions

Neutral Citation Number: [2022] EWCA Civ 706
Case No: CA-2022.000220

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Mr Justice Kerr
[2022] EWHC 3662 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL
26/05/2022

B e f o r e :

LORD JUSTICE GREEN
LADY JUSTICE NICOLA DAVIES
and
LORD JUSTICE MALES

Between:

FARRER & CO LLP	**Respondent/Claimant**
- and -	
JULIE MARIE MEYER	**Appellant/Claimant**

The Appellant was unrepresented and did not attend
Liisa Lahti (instructed by Farrer & Co LLP) for the Respondent

Hearing date: 19 May 2022

HTML VERSION OF JUDGMENT APPROVED

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30 a.m. on Thursday 26 May 2022.

Lord Justice Males: #

Introduction

1. This is an appeal by the defendant, Julie Marie Meyer, against the order made by Mr Justice Kerr on 26th January 2022 finding her in contempt of court and sentencing her to a suspended sentence of six months' imprisonment.

2. Ms Meyer is a citizen of the United States, resident in Zurich, Switzerland. She is the Chief Executive Officer of Viva Investment Partners AG ("Viva"), an investment company which she says that she founded in July 2018, although she says also that she is not a shareholder or in control of any shares in the company. She describes herself as "the public face of the firm and its sole director".

3. Between April and November 2018 Ms Meyer instructed the claimant, a firm of solicitors. The claim in this action is for unpaid fees of £187,227, together with interest. On 10th December 2019 the claimant obtained a default judgment against Ms Meyer. The claim form had been served on her pursuant to section 1140 of the Companies Act 2006 at two London addresses registered by her in connection with her role as a director of two English companies.

4. The judge dealt with a number of matters in his judgment. He dismissed Ms Meyer's application to set aside the default judgment; he refused an extension of time for her to comply with an order to disclose certain documents; he refused to vary the order for disclosure and ordered her to attend in person at a hearing on 14th February 2022; he found that Ms Meyer was in contempt of court; and he sentenced her to a suspended sentence of six months' imprisonment. Ms Meyer sought permission to appeal on all of these matters, contending that the default judgment should be set aside; that the disclosure order was wrong in principle; that the judge had no jurisdiction to find her in contempt; and that the sentence imposed was excessive.

5. Permission to appeal was refused by Lord Justice Coulson on all of these issues without a hearing. His comprehensive ruling extended to 32 paragraphs. However, at a hearing on 5th April 2022 at which the defendant was represented by counsel (Ms Francesca Perselli), it was submitted on her behalf that she did not need permission on any of her five proposed grounds of appeal. Lord Justice Coulson held (see [2022] EWCA Civ 585) that Ms Meyer did need permission to appeal on four of the five grounds (concerned with whether the default judgment was regular, whether the proceedings had been validly served on her, and whether the judge should have exercised his discretion to set aside the judgment), that those grounds had no prospect of success, and that his refusal to grant permission would be maintained. He accepted, however, that the defendant was entitled to appeal against the finding of contempt and the sentence imposed on her without permission pursuant to section 13 of the Administration of Justice Act 1960.

6. Accordingly the sole ground of appeal so far as liability is concerned is that:

   > "The learned judge had no jurisdiction to find that the Appellant was in contempt of court, or to make a suspended committal order because the relevant provisions of CPR Part 71 and PD 71 were not complied with in respect of the 21 January hearing and the order made subsequently to it."

7. This ground of appeal does not identify the respects in which it is contended that there was a failure to comply with the provisions of CPR 71 and PD 71. We must therefore find these, as best we can, in a skeleton argument prepared by Ms Perselli in support of the initial application for permission to appeal, together with a further skeleton argument, dated 27th April 2022, prepared by Mr Anthony Metzer QC and Ms Emma Harris after the hearing before Lord Justice Coulson at which the scope of the appeal was defined.

8. Ms Meyer is currently unrepresented and did not attend the hearing of the appeal. Nor did she provide the appeal bundle required by CPR 52 PD 6.3. On 11th May 2022 (i.e. eight days before the hearing of this appeal) Mr Stephen Gilchrist of her solicitors, Clarke & Co, notified the court that she had dispensed with the services of his firm and, as he understood it, of counsel. Ms Meyer has claimed that she did not attend the hearing on 14th February 2022 ordered by the judge because "her Swiss and US legal team has directed her not to appear in court nor to go to the UK for the foreseeable future". I infer that this remains her position.

9. So far as I can see there is no good reason why Ms Meyer could not have attended the hearing of her appeal, save perhaps for her desire to avoid imprisonment in the event of it being unsuccessful. Equally, it has been her choice to dispense with the services of her lawyers here. She continues, apparently, to be advised by what she describes as her "Swiss and US legal team". Until recently she has had access to legal advice from solicitors and counsel here, but she has chosen not to provide the documents required for proper consideration of her appeal or to attend or instruct counsel to advance her case.

10. In these circumstances the appeal could properly be regarded as having been abandoned. However, as we have been provided with an appeal bundle by the respondent claimant, and as we have the benefit of the skeleton arguments prepared by Ms Perselli and by Mr Metzer and Ms Harris, I think it preferable to decide the appeal on its merits. I am satisfied that we are in a position to do so fairly. In particular, we have been greatly assisted by the submissions of the claimant's counsel, Ms Liisa Lahti, both in writing and at the hearing. Ms Lahti very fairly identified the points which might have been made in favour of the appeal.

Background

11. The claimant firm seeks payment of £187,227, together with interest, being fees for professional services rendered to Ms Meyer between April and November 2018. On 9th October 2019 the claimant sent a letter before claim to her address in Switzerland, but Ms Meyer did not respond. The claim was issued on 15th November 2019. On 19th November the claimant served the claim form at two London addresses registered by Ms Meyer pursuant to section 1140 of the Companies Act 2006 in connection with her role as a director of two English companies. Ms Meyer learned of the proceedings, apparently from a media source, and emailed Mr Julian Pike, a partner of the claimant, on 6th December 2019, saying that she had heard that a claim had been made. However, she did not acknowledge service.

12. Accordingly the claimant obtained a default judgment on 10th December 2019. On 20th January 2020 an order was made under CPR 71, endorsed with two penal notices, requiring Ms Meyer to attend at the Royal Courts of Justice on 5th March 2020 to provide information about her means for the purpose of enforcement of the judgment. The order explained that she would be required to produce documents to the court and answer questions on oath. The second penal notice warned that if she did not obey the order, she might be sent to prison for contempt of court. A list of documents to be produced was included.

13. On or about the same day, 20th January 2020, Ms Meyer (at this point unrepresented) made an application to set aside the default judgment, challenging the validity of the service upon her. She complained that the claimant had provided a poor standard of service and that, at the most, only £50,000 was due to it rather than the full sum claimed. She sought also a stay of execution and an adjournment of the oral examination due to be held on 5th March 2020. That application came before Mr Justice Saini on 4th March 2020, with Ms Meyer represented by counsel, Mr Tom Bell. Mr Bell accepted that Ms Meyer owed money to the claimant, but could not put a figure on how much was owed. He submitted that she had a good defence to the balance of the claim, whatever that was, so that the judgment ought to be set aside. Mr Justice Saini dismissed the application to adjourn the oral examination due to take place the next day. He adjourned the remainder of Ms Meyer's application.

14. The hearing on 5th March 2020 took place before a court officer. Ms Meyer did not attend, either remotely or in person (this was before the first coronavirus lockdown), but was represented by counsel. The court officer referred the matter to a Queen's Bench Master. There was then a very long delay during which the claimant chased the court on a number of occasions. Eventually, in June 2021, the claimant sought an order that Ms Meyer be held in contempt, requesting that a suspended sentence should be imposed, and that she should be ordered to attend court in order to comply with the order previously made under CPR 71. Mr Justice Lane ordered the matter into court, warning Ms Meyer that she would be in contempt if she did not attend the hearing by remote means. His order was endorsed with a penal notice.

15. On 28th July 2021 the matter came before His Honour Judge Simpkiss, sitting as a judge of the High Court. Ms Meyer did not attend, although she was represented by Ms Perselli, instructed by Oakland & Co. Judge Simpkiss found that she was in contempt, ordered the CPR 71 hearing to be listed, and ordered that if she did not attend, the matter should be referred to a High Court judge under CPR 71.8 to decide whether to make a suspended committal order. His order contained a penal notice.

16. The adjourned CPR 71 hearing came before Mrs Justice Heather Williams on 25th October 2021. On this occasion, Ms Meyer did attend remotely, but was not represented. She made an affirmation and was questioned by Mr James McWilliams, counsel for the claimant. She said that she did not have any assets and was cash poor. She lives and works in Zurich for Viva. Her living expenses are paid by Viva, but she does not draw a salary. She said that until the business is successful, she will not be able to do so.

17. Mrs Justice Heather Williams made an order requiring the defendant to provide documents by 15th November 2021, some of which she had agreed to provide at the hearing. The order was endorsed with a penal notice. The documents ordered to be provided, whose existence Ms Meyer had confirmed in her evidence, were:

    (i) bank statements for any account held in the defendant's name at Banque Migros from the date that account was opened to the date of the order;

    (ii) documents relating to the loan obtained by the defendant from Banque Migros, including but not limited to (a) the loan agreement; (b) bank statements and other documents showing the account or accounts into which the loan proceeds were paid; and (c) bank statements and other documents showing payment in respect of the loan and the accounts from which those payments had been made;

    (iii) documents relating to or evidencing the status of her alleged director's account with Viva Investment Partners AG from the date of her first involvement with Viva Investment Partners AG (howsoever called) to the date of the order;

    (iv) credit card statements in respect of any corporate card or credit card used by the defendant to fund her living and/or personal expenses from 2016 to the date of the order;

    (v) any correspondence or documents relating to her notification to Companies House as a Person with Significant Control in respect of Lattun Limited;

    (vi) her tax returns to the United States' Internal Revenue Service for each and every year from 2016 onwards;

    (vii) the two sale and purchase agreements to which the defendant referred during the course of her adjourned examination and under which her entitlement to earnout consideration arises; and

    (viii) any documents relating to the exercise of and sums held in her pension.

18. The deadline for production of these documents came and went and, on 18th November 2021, Ms Meyer's new solicitors, Birketts LLP, issued an application for relief from sanctions, an extension of time and an order requiring the claimant not to use documents disclosed otherwise than for the purpose of the litigation. In addition, on 24th November 2021, Ms Meyer applied to restore the application to set aside the default judgment, having done nothing to pursue this since it was adjourned by Mr Justice Saini on 5th March 2020.

19. On 15th December 2021, without a hearing, Mr Justice Robin Knowles made an order (sealed the next day), recording that it appeared that Ms Meyer had not complied with the order made by Mrs Justice Heather Williams, and ordering that her application for relief from sanctions and an extension of time should be listed before a High Court judge. His order added that, at that hearing, "consideration is also to be given to the consequences of and steps to be taken in respect of the apparent and continuing non-compliance with the Williams J Order".

20. The matter then came before Mr Justice Kerr on 21st January 2022. Ms Meyer attended remotely and was represented by Ms Perselli, who produced a detailed skeleton argument as well as making oral submissions.

The judgment

21. Mr Justice Kerr dealt first with the application to set aside the default judgment. He held that the defendant should be held to a concession made on her behalf by Mr Bell at the hearing on 4th March 2020 that the judgment was regular, and that in any event the concession was correct, according as it did with a number of first instance authorities, including the decision of Sir Julian Flaux C in *PJSE Bank "Finance & Credit" v Zhevago* [2021] EWHC 2522 (Ch). Service of the claim form at Ms Meyer's registered address pursuant to section 1140 was valid service. The judge recognised that he had a discretion to set aside the default judgment, but said that he had rarely seen a weaker case for exercising that discretion. In particular, there had been inexplicable, inordinate and inexcusable delay in pursuing the application to set aside the judgment, with nothing having been done between 4th March 2020 and 24th November 2021. Further, the merits of any defence were shaky, with a sum owing in any event that could be measured in tens of thousands of pounds and nothing in Ms Meyer's complaint that the claimant's bills were inadequately particularised: she was evidently well acquainted with the exact nature of the work done by the claimant.

22. The judge turned next to what had been argued as an application for relief from sanctions for non-compliance with the order made by Mrs Justice Heather Williams. He pointed out that this was not in reality an application for relief from sanctions, but rather an application to discharge the order so that it need not be complied with. The argument advanced by Ms Perselli on Ms Meyer's behalf was that disclosure of the documents would be unlawful as a matter of Swiss law requiring secrecy of information that could harm a company's financial interests. The gist of the Swiss law advice was that disclosure would harm Viva Investments AG – despite the fact that the documents ordered to be produced concerned Ms Meyer's personal financial information and despite the fact that, on her own evidence, the company was already so unsuccessful that it could not afford to pay its Chief Executive Officer a salary. The judge firmly rejected this argument, saying that the defendant was in continuing breach of a mandatory order endorsed with a penal notice; that she had made no attempt to comply with the order nor any application to vary or discharge it; that medical evidence put forward as providing a partial excuse was inadequate and unconvincing; and that the Swiss law evidence relied on did not begin to excuse the non-compliance, applying the principles set out in *Bank Mellat v HM Treasury* [2019]EWCA Civ 449 and *Tugushev v Orlov* [2021] EWHC 1512 (Comm) at [32] to [38]. He concluded, therefore, that "the defendant is, and remains, in serious breach of the order of Heather Williams J, is not entitled to discharge of her obligations under it or any other relief from that breach and its consequences".

23. As for what those consequences should be, the judge held that he had jurisdiction to make an order punishing the defendant under CPR 71.8 and that it was appropriate to do so. As he put it:

    > "171. I am satisfied that this is an appropriate case to exercise that jurisdiction. The defendant has shown herself in these proceedings to be a selfish and untrustworthy person, her word counts for nothing if it suits her to break it, she showed indifference to the respect properly due to the court and to the financial and resource burdens to which she continues to subject the claimant and the court."

24. The judge concluded that any sentence short of imprisonment would be ineffective: Ms Meyer would not pay any fine if she could avoid doing so, while confiscation of her assets would be ineffective as she would be likely to put them beyond the reach of the court. A sentence of imprisonment was appropriate because the breach of the court's order was "deliberate, cynical and continuing" and because Ms Meyer would "continue to flout orders of the court unless coerced into obeying them". The judge suspended the order for imprisonment, as he was required to do by CPR 71.8(3), ordering Ms Meyer to comply with the order made by Mrs Justice Heather Williams and to attend in person (not remotely) at a hearing on 14th February 2022.

25. Ms Meyer did not attend the hearing on 14th February 2022, although she was represented by Ms Perselli. Mr Justice Kerr ordered (among other things) that a warrant be issued for Ms Meyer to be brought before a High Court judge. A warrant was duly issued.

The appeal

26. As I have indicated, permission to appeal against the judge's order has been refused and the sole ground of appeal is that the judge had no jurisdiction to find that Ms Meyer was in contempt of court, or to make a suspended committal order, because the relevant provisions of CPR Part 71 and PD 71 were not complied with in respect of the hearing before Mr Justice Kerr.

The relevant provisions of CPR Part 71 and PD 71

27. CPR 71.2 enables a judgment creditor to apply for an order requiring a judgment debtor to attend court to provide information about the debtor's means or any other matter about which information is needed to enforce a judgment or order. A person served with such an order must attend at the time and place specified, must produce at court documents in her control which are described in the order, and must answer questions on oath or affirmation.

28. No complaint is made about the order made on 20th January 2020 requiring the defendant to attend court on 5th March 2020. The claimant attempted unsuccessfully to serve the order on Ms Meyer, so an order for alternative service was made pursuant to CPR 71.3(1). This provides:

    > An order to attend court must, unless the court otherwise orders, be served personally on the person ordered to attend court not less than 14 days before the hearing.

29. It has never been suggested that the order was not validly served. However, the defendant did not attend, and therefore was in breach of the order. The breach is all the more glaring as she sought and was refused an adjournment of the examination at the hearing before Mr Justice Saini on 4th March 2020.

30. The procedure to be followed when a judgment debtor fails to attend or fails otherwise to comply with an order under CPR 71.2 is set out in CPR 71.8. This provides:

    > (1) If a person against whom an order has been made under rule 71.2—
    >
    > (a) fails to attend court;
    >
    > (b) refuses at the hearing to take the oath or to answer any question; or
    >
    > (c) otherwise fails to comply with the order,
    >
    > the court will refer the matter to a High Court judge or Circuit Judge.
    >
    > (2) That judge may, provided the judgment creditor has complied with rules 71.4 and 71.5, hold the person in contempt of court and make an order punishing them by a fine, imprisonment, confiscation of assets or other punishment under the law.
    >
    > (3) If such an order is made, the judge will direct that—
    >
    > (a) the order shall be suspended, provided that the person—
    >
    > (i) attends court at a time and place specified in the order; and
    >
    > (ii) complies with all the terms of that order and the original order; and
    >
    > (b) if the person fails to comply with any term on which the order is suspended, they shall be brought before a judge to consider whether the order should be discharged.

31. CPR 71.4, which is referred to in this rule, is concerned with payment of travelling expenses to the judgment debtor on request. It has no application in this case as no such request was ever made. CPR 71.5 requires the judgment creditor to file an affidavit confirming service of the order to attend the examination; confirming either that travelling expenses have been paid or that they have not been requested; and stating how much of the judgment debt remains unpaid. A trainee solicitor in the claimant firm, Ms Xinlan Rose, swore an affidavit of service dated 3rd March 2020, which stated also that Ms Meyer had not asked for payment of travelling expenses and that the judgment debt remained unpaid in its entirety.

32. The procedure to be followed when the failure of a judgment debtor to comply with an order under CPR 71.2 is referred to a High Court judge or Circuit Judge pursuant to CPR 71.8(1) is described in paragraph 6 of PD 71. This provides:

    > If a judge or court officer refers to a High Court judge or Circuit Judge the failure of a judgment debtor to comply with an order under rule 71.2, he shall certify in writing the respect in which the judgment debtor failed to comply with the order.

33. One obvious course which may be taken when a judgment debtor fails to comply with an order under CPR 71.2 is that the judge to whom the matter is referred may give further directions in order to ensure compliance with the order, including allowing the debtor more time to do so. That is what happened in this case, for example when Mrs Justice Heather Williams made her order requiring disclosure of documents by 15th November 2021. Adjournment of a judgment debtor's examination is addressed in CPR 71.7, which provides:

    > If the hearing is adjourned, the court will give directions as to the manner in which notice of the new hearing is to be served on the person ordered to attend court.

Ms Meyer's submissions

34. The skeleton argument prepared by Mr Metzer and Ms Harris set out the provisions of CPR 71 and PD 71. It continued:

    > "11. Summarising the above, where a Part 71 hearing is adjourned, any orders re-listing the Part 71 hearing must be in accordance with r71.7 and, it is submitted, in form N79A, be served in accordance with r71.3 and an affidavit filed in accordance with r71.5. Where a person is considered to be in breach of a requirement under Part 71 and the matter is referred to a High Court Judge, they must certify in writing the respect in which the judgment debtor failed to comply with the order.
    >
    > 12. These procedures were not complied with in any respect in regard to the orders made subsequently to the Part 71 Order itself. In particular, neither the Williams J Order nor the Knowles J Order certified that the Appellant was in breach or made an order in form N39 or containing the same information contained in form N39. The Orders were not served personally on D and no orders were made for alternative service. C did not file affidavits in respect of the same. The Knowles J Order did not bear a penal notice putting C on notice that the hearing of her own applications on 21 January 2022 would be treated as an adjourned Part 71 hearing. Furthermore, the order of HHJ Simpkiss, leading to the hearing before Williams J and the order of Knowles J did not comply with the requirements of r71.2(6) and were not therefore orders made pursuant to r71.2. They did not specify attendance at a specified time and place. The Kerr J Order requiring the Appellant to attend on 14 February 2022 was not made in form N79A. It would only have been open for Kerr J to make a finding of contempt under r71.8 if it had been an order made under rule 71.2 that the Appellant had failed to comply with. Kerr J also needed to be satisfied that the requirements of r71.4 and 71.5 had been complied with. It is submitted that this required personal service on the Appellant, as no alternative method was authorised in those orders and further affidavits for service were also required. No such service or affidavits were produced. The retrospective dispensing with such service in the order of Kerr J of 17 February 2022 is a gross violation of the strict procedure required out of fairness for the Appellant in light of the serious consequences that she faces with her liberty being at stake.
    >
    > 13. Therefore, it is respectfully submitted that the finding of contempt in the Kerr J Order suspended sentence ought to be set aside for procedural non-compliance; …"

35. These paragraphs are not as coherent as might have been wished and it is not easy to disentangle (or even to count) the various procedural complaints made. It appears to me, however, that they can conveniently be grouped into the following submissions as follows:

    (1) orders other than the initial order requiring Ms Meyer to attend on 5th March 2020 needed to be personally served on her pursuant to CPR 71.3;

    (2) there was no certificate of the respect(s) in which Ms Meyer had failed to comply with the order made under CPR 71.2, as required by paragraph 6 of PD 71;

    (3) the orders made were not in the right form;

    (4) there was no affidavit as required by CPR 71.5;

    (5) the order made by Mr Justice Robin Knowles did not bear a penal notice;

    (6) the order made by Judge Simpkiss was defective;

    (7) the order with which Ms Meyer had failed to comply was not an order made under CPR 71.2; and

    (8) the order made by Mr Justice Kerr at the hearing on 14th January 2022 dispensing retrospectively with personal service of the order appealed from was defective.

36. It is striking that nowhere in this skeleton argument is any submission made (let alone evidence produced) that any of these supposed procedural deficiencies had caused Ms Meyer the slightest prejudice. It is evident from the history which I have set out that Ms Meyer was aware of each and every order made in these proceedings, that she attended (albeit remotely) a number of the hearings including the hearing before Mrs Justice Heather Williams, and that she has been legally represented (almost) throughout. She has been in contact with the claimant and with the court, sometimes through her solicitors and sometimes in person, regarding the listing of the various hearings which have taken place. No claim to have been prejudiced could possibly have been made. The alleged deficiencies are entirely technical.

37. It is equally striking that there is no submission in the skeleton argument that any of these procedural deficiencies had been relied on, or even mentioned, at the hearing before Mr Justice Kerr. That omission is particularly notable in view of the terms in which Lord Justice Coulson refused permission to appeal on this ground before it was appreciated that Ms Meyer was entitled to appeal as of right. He said:

    > "*Ground 4: Contempt*
    >
    > 23. Ground 4 appears to be a new and technical point, to the effect that an order relisting the Part 71 hearing had to be in a particular form and that there had to be an affidavit filed according to rule 71.5. Criticisms are made of the form of the orders made.
    >
    > 24. There is nothing in any of these points. First, they were not points made to the judge, and therefore they cannot arise on appeal. Secondly, they are in any event wrong. I consider that all the procedural requirements in Part 71 relevant to this contempt hearing and order were complied with. Thirdly, if they were not, any technical non-compliance was waived when no such objections were taken at the hearing before Kerr J.
    >
    > 25. Accordingly, for these reasons, I consider that there is nothing in Ground 4. It has no prospect of success."

38. If Lord Justice Coulson was mistaken in his understanding that these were new points, I would have expected Ms Meyer's skeleton argument to say so. But I do not think that he was mistaken. Certainly there is no reference to any of these points in the skeleton argument prepared by Ms Perselli for the hearing before Mr Justice Kerr. However, with conspicuous fairness, Ms Lahti (who did not appear below) pointed to one paragraph in the judgment where the judge recorded that Ms Perselli "does not accept that the court has the power under CPR rule 71 to make a suspended committal order as sought by the claimant". The judgment does not explain why this was not accepted. I would infer, given the judge's full treatment of the submissions made by both parties, that any submission to this effect was made very fleetingly and was not developed. Ms Lahti was able to shed some further light on this by reference to what happened at the hearing on 14th February 2022 (which she did attend). She told us that Ms Perselli said to Mr Justice Kerr on that occasion that she had raised the fact that the hearing on 26th January 2022 was not a hearing under CPR 71. Ms Perselli made the same point at the hearing before Lord Justice Coulson on 5th April 2022 (which Ms Lahti also attended).

Analysis

39. In my judgment there is no substance, and certainly no merit, in any of the points made on behalf of Ms Meyer. I say this for three reasons.

No new points on appeal

40. First, I agree with Lord Justice Coulson that it is not open to an appellant to raise technical new points of this nature on appeal, when those points were not taken in the court below. That applies even to an appellant who has a right of appeal under section 13 of the Administration of Justice Act 1960. Indeed, it will sometimes be an abuse of process to raise such points: see *Al-Rawas v Hassan Khan & Co* [2022] EWCA Civ 671 at [29].

41. It seems to me to be clear that all but one of the points now made are new points which, if they had any substance, could and should have been taken in the court below, where Ms Meyer was represented and deployed in full through her counsel the submissions which she wished to make, not only on the issue of contempt but on the other issues which were before the judge. Accordingly it is too late for them to be advanced for the first time in this court. As Lord Justice Coulson put it, "any technical non-compliance was waived when no such objections were taken at the hearing before Mr Justice Kerr".

42. The one point which was made and which is therefore open, that the hearing before Mr Justice Kerr was not a hearing under CPR 71, was hopeless. Although there were other matters to be dealt with, it was a hearing pursuant to a direction given by Mr Justice Robin Knowles that consideration should be given to the consequences of and steps to be taken in respect of non-compliance with the order made by Mrs Justice Heather Williams, which was itself an order made at the adjourned examination under CPR 71. The whole course of the proceedings which I have described were pursuant to CPR 71 and were initiated by the order requiring Ms Meyer to attend for examination on 5th March 2020 which (as she has not disputed) was validly served upon her.

Merits

43. Second, I consider that the various points made are unfounded. I address them briefly by reference to the grouping suggested at [35] above:

Service

44. CPR 71.3 requires personal service (unless ordered otherwise) of the order which initiates the CPR 71 procedure. It does not apply to further orders made within the same procedure. If the hearing is adjourned, the applicable rule is CPR 71.7, which enables the court to give directions as to the manner in which notice of the new hearing is to be served on the judgment debtor. The purpose of this provision is to ensure that the judgment debtor has notice of the date and time at which she must attend. It is apparent that reference to the notice being "served" on the judgment debtor is not a requirement for personal service. A direction for personal service may sometimes be an appropriate direction for the court to give, but not necessarily. It depends on the circumstances. In the present case Ms Meyer had notice of the deadline of 15th November 2021 for disclosure of documents contained in the order made by Mrs Justice Heather Williams because she was present (remotely) in court when the order was made. She had notice of the order made by Mr Justice Robin Knowles because it was provided to her solicitors and in turn to her. There was, therefore, no failure to serve documents on Ms Meyer and no need for any directions in that regard.

Certificate

45. The requirement contained in paragraph 6 of PD 71 for a written certificate of the respect in which a judgment debtor has failed to comply with an order made under CPR 71.2 is to ensure that the debtor knows precisely what she has failed to do. It is, in effect, the charge sheet. Here, the order of Mr Justice Robin Knowles made the position abundantly clear: as she perfectly well knew, Ms Meyer had not complied with the order to produce documents as ordered by Mrs Justice Heather Williams. That was why she made an application for relief from sanctions. No further certificate was required.

Forms

46. The orders made were in each case perfectly clear. The use of particular forms was not mandatory.

Affidavit

47. The affidavit by Ms Rose satisfied the requirements of CPR 71.5. Nothing further was required.

Penal notice

48. The order made by Mr Justice Robin Knowles did not order Ms Meyer to do anything. It merely provided that the consequences of her failure to comply with the order made by Mrs Justice Heather Williams would be considered at the next hearing. There was therefore no need for it to bear a penal notice. Indeed, such a notice would not have made sense. The order with which Ms Meyer was required to comply was the order made by Mrs Justice Heather Williams, which did contain a penal notice.

The order made by Judge Simpkiss

49. It is not easy to discern the nature of the complaint about the order made by Judge Simpkiss. But it does not matter. The contempt for which Ms Meyer is to be punished is her failure to comply with the order of Mrs Justice Heather Williams, not the order of Judge Simpkiss.

An order under CPR 71.2

50. I have already rejected the submission that the order of Mrs Justice Heather Williams with which Ms Meyer failed to comply was not an order made under CPR 71.2.

Dispensing with personal service retrospectively

51. As I have held that personal service of prior orders was not required, the complaint that the judge should not retrospectively have dispensed with personal service leads nowhere. In any event the judge was entitled to make provision for alternative service of his order.

Dispensing with strict compliance

52. Third, although this is not the occasion on which to address the precise basis on which the court may dispense with strict compliance with all of the procedural requirements set out in CPR 71 and PD 71, it would be surprising if the court is powerless to enforce compliance with its orders when any procedural deficiencies have caused absolutely no prejudice and are entirely technical, as is the position here. Ms Lahti suggested a number of possible routes to the conclusion that in an appropriate case such strict compliance can be dispensed with. These were: (1) an order under CPR 3.1(2)(m) to manage the case and further the overriding objective; (2) an order under CPR 3.10 to remedy an error of procedure; and (3) an order under the inherent jurisdiction of the court to fill any gap in the rules. In the absence of any submission to the contrary, I am prepared to proceed on the basis that the court does have an appropriate power and that this is a clear case in which (if it were necessary) it should be exercised if there is any substance in the points made on behalf of Ms Meyer. While such a general power cannot be used to override a specific provision in the rules (cf. *Ideal Shopping Direct Ltd v Mastercard Incorporated* [2022] EWCA Civ 14, [2022] 1 WLR 1541 at [146]), there appears to be nothing in CPR 71 which would prevent its use in circumstances such as the present.

Sentence

53. I turn to the appeal against sentence. The skeleton argument prepared by Mr Metzer and Ms Harris makes three submissions, namely that the judge (1) failed to consider any mitigation advanced by Ms Meyer before imposing a custodial sentence; (2) failed to take into account the alternatives to a custodial sentence; and (3) was wrong in imposing at this stage a suspended prison sentence. Those submissions are not explained or developed. I can deal with them briefly.

54. The approach which a sentencing court should take, and which in turn should be taken by this court on appeal, was discussed in *Financial Conduct Authority v Mc Kendrick* [2019] EWCA Civ 524, [2019] 4 WLR 65. It is sufficient to say that Lord Justice Hamblen and Lord Justice Holroyde emphasised the seriousness of a breach of a court order and the likelihood that nothing less than a prison sentence would suffice to punish such a serious contempt of court. As to the approach of this court, they said (omitting citations):

    > "37. In deciding what sentence to impose for a contempt of court, the judge has to weigh and assess a number of factors. This court is reluctant to interfere with decisions of that nature, and will generally only do so if the judge: (i) made an error of principle; (ii) took into account immaterial factors or failed to take into account material factors; or (iii) reached a decision which was plainly wrong in that it was outside the range of decisions reasonably open to the judge. …
    >
    > 38. It follows from that approach that there will be few cases in which a contemnor will be able successfully to challenge a sentence as being excessive …"

55. In the present case the judge did consider such mitigation as was advanced on behalf of Ms Meyer. In effect, what this came to was the suggestion that she was prevented from disclosing the documents because to do so would be contrary to Swiss law. The judge considered that suggestion fully, but was not impressed. He was right not to be.

56. Further, the judge considered and rejected alternatives to a sentence of imprisonment, as I have already recounted.

57. In my judgment the judge was right to conclude that this was a deliberate and cynical breach of the order which would continue unless Ms Meyer was coerced into obeying it. She had been given more than enough time to comply, but had made clear that she would not do so. The suspended sentence of imprisonment for six months which the judge imposed cannot possibly be regarded as outside the range of decisions reasonably open to him. The term might well have been longer.

Disposal

58. I would dismiss the appeal.

Postscript – embargo

59. As is well known, the usual practice of this court is to send draft judgments to the lawyers and the parties to give them an opportunity to correct typographical or minor factual errors and to prepare submissions on consequential matters. That is done in strict confidence, pending hand down of the judgment, at which point its contents become public. Failure to respect this confidence is a contempt of court. In this case, however, we were not satisfied that it was appropriate to send a draft judgment to Ms Meyer, in view of the fact that she has been found guilty of contempt of court in the circumstances described in the judgment, demonstrating a willingness to disregard the orders of the court if it suits her to do so. Accordingly we sent the draft only to the respondent's lawyers and did not invite submissions at that stage, but only corrections. In order to ensure fairness to both parties, we will give Ms Meyer an opportunity to correct any minor factual errors after this judgment has become public and, if necessary, will publish an addendum making any appropriate corrections. We now invite both parties to agree the terms of an order, if possible; or if not, to make brief written submissions.

Lady Justice Nicola Davies

60. I agree.

Lord Justice Green

61. I also agree.
