Tchenguiz v Akers & Hamedani
Court of Appeal
24th July, 2015

JUDGMENT
33/2015

Appeal against an order made, following a judgment in camera, dismissing an application to set aside an order for service out of the jurisdiction of an application ("the Committal Application") by the Respondent, to have the Appellant, committed to prison for contempt of court.

Approved Text
24.07.2015

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION APPEAL No. 487

23 July 2015

Before: **Sir Hugh Bennett, President**
George Bompas QC
Sir Michael Birt

Between: **ROBERT TCHENGUIZ** **Applicant/Respondent**

and

(1) STEPHEN AKERS **Respondent/Intervener**

(2) HOSSEIN HAMEDANI **Respondent/Appellant**

Advocate Alasdair M Davidson for the Appellant
Advocate Paul Richardson for the Respondent
Advocate John P Greenfield for the Intervener

JUDGMENT

BOMPAS JA, giving the judgment of the Court:

Introduction

1 The appeal now before the Court is against an order made, following a judgment in camera, by Lieutenant Bailiff Patrick Talbot QC dismissing an application to set aside an order for service out of the jurisdiction of an application ("the Committal Application") by the Respondent, Mr Robert Tchenguiz, to have the Appellant, Mr Hossein Hamedani, committed to prison for contempt of court.

2 The appeal arises out of an order, referred to below as "the Protocol Order", made by consent on 11 August 2010 in proceedings brought in private by trustees seeking the Court's directions concerning their trust. Those proceedings ("the Trust Proceedings") had been started in May 2010 when Investec Trust (Guernsey) Ltd and Bayeux Trustees Ltd, the then trustees of the Tchenguiz Discretionary Trust, applied to the Royal Court for directions concerning their trust. Shortly after the start of the Trust Proceedings the trustees were replaced by Rawlinson & Hunter Trustees SA ("R&H"). The Trust Proceedings have been on occasion referred to as "Guernsey 2".

3 The substantive argument on this appeal has been heard in open court. There was at the outset of the appeal, which had initially been in private as it was from a judgment given in camera, an application by the Respondent to have the appeal heard in open court. Having heard that application the Court directed that the appeal should continue in open court, with reasons for that direction being given later. The Court directed also that all the material, save for the authorities, filed in relation to the appeal (including the procedural application) should be sealed, and therefore not available to the public; but the parties were given liberty to apply to a single judge of the Court of Appeal to release any particular documents.

4 This judgment contains our reasons for the decision for the appeal to be heard in open court, as well as our decision on the appeal.

5 The Appellant's case on the substantive appeal is that the Lieutenant Bailiff was wrong to conclude that it was appropriate for the Committal Application to be served on him:

5.1 because the Committal Application failed to disclose any reasonable case against the Appellant, even assuming that the matter is properly justiciable before the Royal Court ("the factual ground"); and.

5.2 because the Royal Court has no jurisdiction to punish a foreigner for contempt of court consisting of the aiding and abetting of a breach of an order not addressed to the foreigner, where the foreigner is abroad and has not submitted to the court's jurisdiction, and the acts said to amount to the contempt were wholly committed abroad ("the jurisdiction ground").

Background

6 The present appeal, indeed the Committal Application, is but a small part of the welter of litigation which has come to surround the Tchenguiz Discretionary Trust ("the TDT"). For example there is in Guernsey a set of proceedings, known as Guernsey 1, in respect of which Lieutenant Bailiff Sir John Chadwick gave a judgment [Judgment 38/2013] in December 2013 following a trial in open court. That judgment, in favour of certain BVI companies controlled by their liquidators, Mr Stephen Akers and Mr Mark McDonald, is under appeal; but it has given rise already to several judgments of the Court of Appeal on various applications concerning the appeal.

7 No summary of the position can be complete or accurate. Therefore we set out below the narrative, so far as immediately relevant to the Committal Application, by drawing upon the affidavit put forward on behalf of the Respondent when the Committal Application was brought before the Royal Court.

8 It will be seen from this narrative that in 2008 the TDT came under financial pressure from an Icelandic bank, Kaupthing Bank Hf, which had provided significant financial support to the TDT and related entities for building up a substantial share and property portfolio. The shares included the share capitals of various BVI companies (including four named in the Protocol Order, which are referred to as "the BVI companies"). This led to the Trust Proceedings and also to Guernsey 1: office holders had been appointed to various companies in one way or another involved with the TDT and were seeking to recover loans and property, to that end making investigations and instituting proceedings. Also there was an investigation by

prosecuting authorities (notably the Serious Fraud Office in the London). Now the Respondent is seeking reparation for wrongs in the course of the investigations.

9 The Committal Application concerns a wrong alleged by the Respondent, not for himself but "as protector of the TDT", the wrong being a breach of the Protocol Order by Mr Akers and the Appellant by the disclosure of information subject to restriction in the Protocol Order. Later we shall set out the text of the Protocol Order and describe the material parts of what is alleged in the Committal Application.

10 The story starts in about December 2007 when Kaupthing and the interests of the TDT agreed a restructuring of the borrowings, including a loan facility to Oscatello Investments Ltd (one of the BVI companies), secured by pledges of shares in the TDT's BVI companies.

11 During the latter part of 2007 the financial markets began the steady deterioration which culminated in the collapse of Lehman Brothers on 15 September 2008. Between January and July 2008 Kaupthing had increased the extent of its financial support to the interests of the TDT, through increased advances to Oscatello under the loan facility, money market loans, and related transactions. By August 2008 Kaupthing and Oscatello were under severe pressure as a result of the continuing decline in the markets.

12 The collapse of Lehman triggered a global financial crisis, at the height of which Kaupthing collapsed, on 8 October 2008. The following day a Resolution Committee was formed to get in the assets of the bank and make recoveries for creditors. An Icelandic Special Prosecutor was appointed to investigate the collapse. In mid-November the Resolution Committee instructed Weil, Gotshal & Manges to examine the lending between Kaupthing and entities associated with the Respondent. Grant Thornton UK LLP ("GTUK") were appointed as Kaupthing's joint UK liquidators.

13 On 24 November 2008 Kaupthing called in the Oscatello loan facility and gave notice of default. Between November 2008 and February 2009 Mr Akers and Mr McDonald were appointed as joint receivers over the shares of the BVI companies and proceeded to liquidate the companies' assets.

14 On 5 December 2008 the Resolution Committee began proceedings in the British Virgin Islands against Investec Trust (Guernsey) Ltd and the BVI companies alleging that various transactions carried out a little before by those entities had been fraudulent. Subsequently the proceedings were settled, with a sum being paid to Kaupthing and all allegations of fraud being withdrawn.

15 On 28 December 2008 Weil, Gotshal & Manges and GTUK had reported to the Resolution Committee their conclusion that the lending to Oscatello had been highly irregular, involving a lack of due diligence regarding the value of the security, manipulation of data by senior management of Kaupthing to permit excessive lending to take place, and disregard of internal credit procedures.

16 On 18 August 2009, Mr Akers and Mr McDonald were appointed as joint liquidators of the BVI companies other than Oscatello, to which they were appointed as joint liquidators on 16 February 2010. Their appointments as liquidators, made by the Eastern Caribbean Supreme Court, have been recognised by the High Court in England and Wales and by the Royal Court. The liquidation of the BVI companies has involved litigation in London, the Isle of Man, the British Virgin Islands and Guernsey.

17 On 15 December 2009 Mr Richard Alderman, then director of the SFO, authorised a formal investigation into Kaupthing's dealings with the Appellant and the TDT interests. This investigation involved also the Appellant's brother, and also interests connected with another trust. The SFO received information from various sources including the Financial Services Authority, Goldman Sachs, Deutsche Bank and, most relevantly, GTUK. It is the Respondent's contention that Mr Akers and the Appellant were closely involved in this

process, which began with meetings in October 2009 before the commencement of the investigation.

18 On 12 March 2010 Investec Trust (Guernsey) Ltd, as trustees of the TDT, issued the Guernsey 1 proceedings in the Royal Court. These sought the Court's determination of the status of certain transfers of funds between Investec and the BVI companies. The BVI companies, controlled by their liquidators Mr Akers and Mr McDonald, counterclaimed for repayment of loan liabilities. These proceedings were heard in open court and are the subject of a lengthy, and publicly available, judgment of Lieutenant Bailiff Sir John Chadwick handed down on 6 December 2013. This is Judgment 38/2013, referred to above.

19 On 19 May 2010 the Trust Proceedings were started, and on 20 July 2010 Mr Akers and Mr McDonald, as Joint Liquidators controlling the BVI companies, applied to be joined to the Trust Proceedings. This application led to the making of the Protocol Order.

20 On 4 March 2011 the SFO and City of London Police delivered an Information to the Central Criminal Court supporting an application for search warrants under section 2(4) of the Criminal Justice Act 1987 and to arrest the Respondent, his brother and others. His Honour Judge Paul Worsley QC heard, and granted, the application on 7 March 2011. The Information and supporting evidence relied heavily upon information provided by GTUK.

21 At 6.55am on 9 March 2011 the search warrants obtained by the SFO were executed by officers of the City of London Police, with representatives of the SFO in attendance, at the home of the Respondent; and he was arrested on suspicion of conspiracy to defraud and steal from Kaupthing and its creditors.

22 No charges were ever brought as a result of the SFO investigation, which was discontinued on 15 October 2012.

23 The Respondent sought judicial review of the lawfulness of the grant of the search warrants and of the arrests. On 31 July 2012 the Divisional Court quashed the warrants, granted declarations that the warrants, and consequent searches and seizures, were unlawful and transferred the civil claim for damages to the Queen's Bench Division. In delivering the judgment of the court *(R (Rawlinson & Hunter Trustees and Ors) v Central Criminal Court* [2012] EWHC 2254 (Admin), Sir John Thomas P (as he then was) was critical of the SFO's conduct of the warrant application, holding that the SFO had presented the application in an inaccurate and misleading manner, including as to the manner in which it had presented the involvement of GTUK.

24 Since then there has been continuing litigation arising out of the collapse of Kaupthing and the BVI Companies and the SFO's proceedings against the Respondent. GTUK, Mr Akers and the Appellant have been involved in this, the propriety of their conduct in relation to the assistance given to the SFO being under challenge.

25 The principal affidavit on behalf of the Respondent in support of the Committal Application describes Mr Akers and the Appellant as being "of" GTUK; and, in the case of the Appellant, the deponent says that he is a partner in the forensic investigation services group of GTUK which was providing analytical and forensic support to Mr Akers and Mr McDonald as liquidators of the BVI companies. (Bearing in mind that GTUK is a UK limited liability partnership formed under the Limited Liability Partnerships Act 2000, the reference to the Appellant being a "partner" is strictly speaking to his being a member of the limited liability partnership. This was noted by the Lieutenant Bailiff in the judgment appealed from.)

The Protocol Order

26 The Protocol Order came to be made after Mr Akers and Mr McDonald, with the BVI Companies, applied to be joined in the Trust Proceedings. The application was stayed on the terms of the Protocol Order made on 11 August 2010. The Protocol Order was signed by the

Advocates for the parties to the Trust and for "the Companies". The expression the Companies was defined in the Protocol Order as meaning "*Stephen Akers and Mark McDonald as joint liquidators of Eliza Limited, Oscatello Investments Limited, Thorson Investments Ltd and Glenalla Properties Limited (together "the Companies")".* The Appellant was not included in this defined expression.

27 The Protocol Order was short and straightforward. It provided:

> *1. In the event that either Investec Trust (Guernsey) Limited and/or Bayeux Trustees Limited and/or Rawlinson & Hunter Trustees SA apply to the Royal Court for directions relating to any transaction or matter which may remove, dispose of, or in any other way deal with, encumber or diminish the value of, the TDT trust property or assets, the applicant undertakes to raise with the Court at any such application the question of whether, and if so to what extent, and when, Stephen Akers and Mark McDonald as joint liquidators of Eliza Limited, Oscatello Investments Limited, Thorson Investments Limited and Glenalla Properties Limited (together "the Companies") and their Advocates Carey Olsen should be informed about the transaction or matters in question.*
>
> *2. In the event that notification is given to the Companies and their Advocates pursuant to Paragraph 1 above, the Companies be at liberty to submit such evidence and make such submissions, including as to the sufficiency of information provided, in relation to the transaction or matter as the Court may order.*
>
> *3. For the avoidance of doubt, any information or documents provided pursuant to an application or order under Paragraph 1 above, shall be provided in confidence and solely for use in relation to that Application and shall not, without further order, be used for any other purpose. This restriction extends to any further information or documents provided to the Companies following any submissions under paragraph 2 above.*

28 It is important to note how the Protocol Order is expressed to operate.

28.1 Paragraph 1 of the Order is engaged when one of three entities, the former trustees and the present trustee of the TDT, applies to the Royal Court for certain specified directions (directions about the TDT property). On the application the applicant is to ask (and indeed has undertaken to ask) the Royal Court whether, and if so when and how far, various persons (including Mr Akers and Mr McDonald, but together described as "the Companies", and their Advocates) should be notified about the subject of the directions being sought (referred to as "*the transaction or matter in question*").

28.2 Paragraph 2 is engaged "*In the event that notification is given to the Companies and their Advocates pursuant to Paragraph 1 above*" (emphasis added). It is not expressed to be engaged otherwise. Under paragraph 2 the Companies are to be allowed to provide evidence and make submissions in relation to the "*the transaction or matter in question*" (in other words the subject of the directions being sought).

28.3 Paragraph 3 applies "*for the avoidance of doubt*" to make "*any information or documents provided pursuant to an application or order under Paragraph 1 above"* (emphasis added). That information and those documents are placed under a restriction of confidentiality. The restriction is expressed as extending to any further information or documents "*provided to the Companies following any submissions under paragraph 2*". The material covered by paragraph 3 is not to be used otherwise than in relation to "the Application", which must be the application referred to in paragraph 1.

28.4 The Appellant is not named anywhere in the Protocol Order, whether as one of the persons described as being within the label, "the Companies", or otherwise by name or by description.

29 We have set out, and explained, the terms of the Protocol Order because there has been confusion. The principal affidavit in support of the Committal Application explained that "*in broad terms*" the effect of the Protocol Order was, by paragraph 1, that if the Trustees "*proposed to deal with assets of the TDT then, before doing so, they would give notice to*" the Companies. That was not what paragraph 1 provided, even described "*in broad terms*". The description given in the affidavit was misleading. In fact paragraph 1 was expressed only to apply when an application for directions was made in relation to a proposed dealing; and when it applied, it required the Royal Court to be invited to say whether anything and if so what should be notified to the Companies. Thus any information provided pursuant to that paragraph would be information directed by the Court.

30 On 7 December 2010 Herbert Smith, solicitors advising R&H as trustees of the NS One Trust and the Tchenguiz Settlement wrote to R&H as trustees of the TDT. The letter concerned a property in London known as the Royal College of Organists (referred to as "the RCO"). The letter asserted that their clients had a claim against the TDT arising out of a contract made in 2009 for the TDT to transfer to their clients the share capital of Iver Resources Ltd (referred to in the letter as "Iver", but at other times as "IRL"), the sole asset of which was said to be the RCO. The letter explained that £6 million had been paid pursuant to the contract. It went on to offer a further £7.9 million, arrived at on the basis that the RCO was worth £22 million, and that Iver had debts of £14.1 million (including an undocumented, unsecured and interest-free debt owed to the TDT). Claims under the sale contract were not to be waived.

31 By letter dated 13 December 2010 the Advocates (Ogier) acting for R&H as trustees of the TDT sent a letter to the Advocates representing "the Companies" (and thus Mr Akers) forwarding a copy of the letter of 7 December 2010. Ogier's letter added that the trustees of the TDT had exercised their powers to permit the RCO to be occupied by the Respondent as his family home, and stated that benefits of what was proposed in the letter would include "*the fact that the TDT will no longer have to meet the ongoing mortgage repayments associated with the RCO, and will be able to achieve full value for the shares [in Iver], while converting an illiquid asset (which at present is subject to falls in the London property market) to a liquid asset*".

32 Ogier in their letter further explained that, given that R&H had a potentially conflicting interest as trustees of both the buying and the selling trusts, a named individual said to have no previous connection had been engaged to consider the proposal and a firm of London solicitors were to advise him. The letter then stated that the proposal, if the individual were minded to proceed with it, would "*require obtaining the blessing of the Royal Court of Guernsey*". It stated that, mindful of the Protocol Order, should an application to the Royal Court be necessary, R&H was providing to the Companies the letter of 7 December 2010 "*to afford you the opportunity to comment, and would ask that you do so as soon as is reasonably possible*", indicating that any application would be likely to be made "*during the course of this week*". The letter stated that on the application R&H would bring to the attention of the Court any comments the Companies might have; but it also stated that "*we do not accept that our client owes any duty to your clients"*, and that the provision of the letter of 7 December 2010 was without prejudice to that.

33 Again it appears there is a confusion which needs to be clarified. The principal affidavit in support of the Committal Application explains that the letter of 13 December 2010 was sent "*giving notice to the BVI companies and the Joint Liquidators of the proposed transaction as required by paragraph 1 of the Protocol Order*". However, on the evidence before us (and this is the evidence given on behalf of the Respondent), at the time the 13 December 2010 letter was sent there had not been any application to the Royal Court for directions as to the subject matter of the letter (that is, the proposal put forward in the 7 December 2010 letter from Herbert Smith). Further, and as a consequence, the letter of 13 December 2010 was not

one which had been, and was not giving information, required to be given by the Royal Court pursuant to any such application. The letter was directed at a proposed application which R&H were yet to make but which they might not make.

34 After referring to the letter of 13 December 2010, as we have just described, the affidavit in support of the Committal Application explains that the maker of the affidavit is "*unaware of any evidence that the Joint Liquidators had any source of information about the proposed dealings with the shareholding in IRL (or, by implication its underlying assets), other than as a result of a disclosure made by Ogier pursuant to"* the Protocol Order. The reference to Ogier as the person making disclosure must have been intended to indicate that the disclosure was made in Ogier's letter of 13 December 2010.

35 On 15 December 2010 the Companies' Advocates responded to Ogier seeking a considerable amount of further information concerning the proposed transaction. Their letter contained some 18 specific questions.

36 On 17 December 2010 R&H as trustees of the TDT issued an application to the Royal Court for sanction to enter into the proposed transaction. The application did not expressly ask for any directions concerning notification to the Companies and their Advocates, as provided by paragraph 1 of the Protocol Order.

37 On 20 January 2011 the Companies applied to be joined to the 17 December 2010 application; and in their application they sought to have the Royal Court give an order for the Companies to be provided with the information requested in the letter of 15 December 2010. They also asked to have permission to use "*all information and documents received ... pursuant to the Protocol Order*" in other proceedings before the Royal Court. At the end of the application the Companies stated that it was their assumption that Ogier's letters had been sent "*in pursuance of paragraph 1 of the Protocol Order*".

38 According to the principal affidavit in support of the Committal Application, the Royal Court refused the Companies' application.

The breach of the Protocol Order alleged by the Respondent

39 What is said then in the principal affidavit on behalf of the Respondent is that it has now been discovered that at a meeting with the SFO at the London offices of GTUK on 23 March 2011 the SFO were told of a proposal for the transfer of the RCO via a transfer of the shareholding in Iver to NS1. The maker of the affidavit says that that meeting was attended by Mr Akers and the Appellant, both of whom "*were well aware that they were not at liberty to refer to the proposed transfer*".

40 It is not explained in the evidence in support of the Committal Application what precisely it is that the Appellant has done which might involve a breach of the Protocol Order. It may be inferred (although not expressly stated) that the allegation is that at the meeting the proposal for the transfer of the RCO (via the Iver share transfer) was disclosed to the SFO. However, it is not in terms said who made that disclosure and what part in that disclosure was played by the Appellant.

41 The Respondent's Committal Application was by Notice dated 23 May 2014 ("the Committal Notice"). The Committal Notice does not improve upon the statements made in the principal affidavit on behalf the Respondent to explain what was relied upon as having been provided to the SFO in breach of the Protocol Order, and what specifically was said to have been done wrongly by the Appellant. Much of what is said in the affidavit is a repetition, with some elaboration, of what is in the Committal Notice. The concluding, and material paragraphs in the Committal Notice, are:

> "*1.23 When they attended the meeting with the SFO on 23 March 2011 both Mr Akers and [the Appellant] were aware that they were not at liberty to refer to the proposed transfer of the RCO via a transfer of the shareholding in IRL to NS1. Their knowledge of that proposed transaction derived solely from information provided to them pursuant to the Protocol Order and was thus subject to the prohibition on disclosure in paragraph 3 of the Order. Such disclosure was a breach of the Protocol Order.*
>
> *1.24 Having regard to the deliberate nature of the breach of the Protocol Order, the Applicant alleges that the Contemnors, Mr Akers and [the Appellant], are in contempt of court.*
>
> *2. In the event that the Contemnors are found to be in contempt of court, they should stand committed to prison for a period as may be (sic) from the date of their apprehension."*

The Committal Application and this Appeal

42 The Committal Notice was dated 23 May 2014. On 28 May 2014 there was an ex parte hearing before the Lieutenant Bailiff, when he gave the Respondent permission to serve the Committal Notice out of the jurisdiction on the Appellant as well as on Mr Akers.

43 On 10 June 2014 the Appellant applied to the Royal Court to set aside the order of 28 May 2014 and to have the Committal Application as against him struck out for want of jurisdiction.

44 Mr Akers has not made such an application and has submitted to the jurisdiction of the Royal Court to deal with the Committal Application on its merits as against him.

45 On 14 June 2014 the Lieutenant Bailiff made an order giving directions for the further conduct of the Appellant's application to set aside the order for service out of the jurisdiction. The directions order recited that the Lieutenant Bailiff had concluded that there was no need to hear from the representative of the minor, unborn and unascertained beneficiaries in relation to the conduct of the application.

46 The hearing of the application to set aside the order for service out took place in camera before the Lieutenant Bailiff over two days in the first half of August 2014.

47 On 28 August 2014 the Respondent made an application, referred to in the order mentioned in the next paragraph as the "In Public Application". This was for the Committal Application to be heard in public.

48 On 2 December 2014 the Lieutenant Bailiff handed down in camera a judgment on the Appellant's application to set aside the order for service out of the jurisdiction. The order, dated 2 December 2014, made to give effect to his judgment, not only dismissed the Appellant's application but also contained a direction concerning the In Public Application: it provides that "*the Contempt Application shall continue to be heard in camera, subject to the Court directing in the future that all or some part or parts of these proceedings shall be heard in public*". The court in question is the Royal Court, not this Court. The Appellant's present appeal is only against so much of the order of 2 December 2014 as dismissed the Appellant's application.

49 It is apparent from the terms of the order of 2 December 2014 that the Lieutenant Bailiff had before him the In Public Application, and that he was seeking to case manage the Committal Application, envisaging a further hearing to continue that management to take place in the New Year.

50 In relation to the substantive appeal before this Court the Respondent has made an application, by notice dated 14 January 2015, for the appeal to be heard in public. That application is opposed by Appellant.

51 Further, a document dated 23 June 2015 has been put before the Court of Appeal on behalf of Mr Akers. His document stated that it was an application for leave to file written submissions, being the submissions contained in the document, on the Respondent's application for the substantive appeal to be heard in public. Mr Akers' document set out arguments against that application. Although Mr Akers sought to intervene on that procedural application in relation to this appeal, he did not seek to intervene on the substantive appeal.

52 Before the start of the hearing of the appeal we directed that Mr Akers' Advocate, Advocate John P Greenfield, should be allowed to address us only on any points on the Respondent's application which had not been raised in his written submission or dealt with by the Appellant's Advocate, Advocate Alasdair M Davidson, in his response to the application, or which had been newly raised by the Respondent. In the event we heard brief oral argument from Advocate Greenfield on the Respondent's procedural application, and he withdrew when we came to hear the substantive appeal.

53 As already explained, at the conclusion of argument on the Respondent's application we directed that the appeal should continue in open court. We rejected the submissions on behalf of the Appellant and of Mr Akers that the present appeal was appropriately heard in private, there being no sufficiently compelling reason to depart from the principle of open justice. This principle "*is and always has been a fundamental principle of our administration of justice*", as it was put in *IFS Investments Ltd v Manor Park (Guernsey) Ltd* GLR 2003-04 77 by Lieutenant Bailiff Day, at para 16). Lieutenant Bailiff Day's judgment in that case was accepted, rightly, by the parties before us as setting out in clear and compelling terms the applicable law in Guernsey: the general exception to this fundamental principle is where justice itself would be frustrated, or where there has been some statutory derogation; and even then privacy will only prevail to the extent strictly necessary, the presumption being that justice will be administered in public for all the reasons explained in Lieutenant Bailiff Day's judgment.

54 The arguments raised on behalf of the Appellant, supported by Mr Akers, for the appeal to be in private may be summarised as follows:

54.1 The Committal Application is made in the Trust Proceedings; these were started as and still are an application for directions by trustees proceeding in private; therefore the Committal Application would normally be subject to the same privacy restraints.

54.2 Before the Royal Court the Committal Application (of which the Appellant's application was part) has been and still is proceeding in camera, with an express direction to that effect made by the Lieutenant-Bailiff, and that direction has not been the subject of any appeal. In principle, therefore, the appeal should be in private, as a public hearing would be inconsistent with the position before the Royal Court.

54.3 Further, on the appeal matters will be discussed and documents will be considered which are subject to confidentiality restrictions in the Royal Court. An obvious example is the judgment now appealed from. But while the judgment may be considered to be part of the Committal Application, other materials explaining the genesis of the Protocol Order and the alleged breach, touch immediately the Trust Proceedings.

54.4 The confidentiality restriction which continues in relation to the Trust Proceedings (and indeed the Committal Application) must have been imposed for good reason. While the Appellant cannot say what the reason was as regards the Trust Proceedings, for the Committal Application or this appeal to be in public would be inconsistent with that restriction. Further, there may be parties to the Trust Proceedings with an

interest in maintaining privacy, and on this appeal the Court of Appeal does not have their views.

54.5 The Respondent is now seeking to use facts and matters arising from the Committal Application for his own private interest rather than the administration of justice.

54.6 The Committal Application, not being conventional inter-partes litigation but an application brought in the public interest, the alleged contemnors should not be exposed to the same risk of reputational damage which might be an incident of being a party to any civil or criminal litigation in which claims of misconduct, which may turn out to be baseless, are made against a party. (This particular argument, we should mention, was disclaimed by the Appellant in the course of oral argument, when his Advocate said that the Appellant's opposition to the appeal being heard in public was not by reason of any apprehension of possible injury to his reputation.)

55 The Respondent accepts, and we agree, that the Court of Appeal has power to direct this appeal to be heard in private.

56 We consider below in turn the various arguments made on behalf of the Appellants which we have set out above. In our judgment they are insufficient to support a departure in the present case from the fundamental principle of open justice. Our reasons may be stated very shortly.

57 As to the first argument, while technically the Committal Application may have been started as an application made in the Trust Proceedings, so far as relevant on this appeal it can be viewed as free standing: the question is whether or not the Appellant has been in contempt of court by reference to a breach of the Protocol Order. It is not a proceeding in which any assistance or directions are being sought from the Royal Court in relation to the TDT. So while, as a matter of technicality, the Committal Application may be part of the Trust Proceedings, being in form an interlocutory application in the Trust Proceedings, we consider that to be beside the point.

58 As to the second argument, the directions order made concerning confidentiality in relation to the Committal Application is not one which directly regulates the proceedings before this Court. There may be, for all we know, very good reasons for the hearing of the Committal Application to be in private. It is not necessary for us to speculate about this, as the future conduct of the Committal Application will be a matter for the Royal Court. What is important on this appeal is that we have not seen anything in the materials before us which requires a departure from the fundamental principle of open justice in relation to this appeal, and the mere fact of the direction having been made in the Committal Application does not provide such a requirement.

59 Nothing which we have decided as to this appeal being heard in open Court is intended to bind the Lieutenant Bailiff as to the future conduct of the Committal Application. Further, to avoid so far as we can pre-empting any decision which might be made by him as to directions for the hearing of the Committal Application, and to avoid a risk of indiscriminate distribution of material obtained under compulsion from third parties, when giving the direction for the substantive appeal to continue in public we also gave the direction (referred to above) restricting access to the underlying documents deployed before us.

60 As to the Appellant's third point, the evidence before us, which is evidence in the Committal Application, does include materials (such as application notices and orders for directions) generated strictly in the Trust Proceedings in which the Royal Court' directions were being sought by the trustees of the TDT. However no evidence has been given as to any further details. For example, we have not seen any affidavits or the like which may have been made in the Trust Proceedings (as opposed to the Committal Application). We would add that, with Guernsey 1 having been conducted in public, it is difficult to imagine that much of the past affairs of the TDT (that is, their affairs in the period down to 2011) still remain private. What is likely to be different is the future ability of the trustees of the TDT to seek directions from

the Royal Court on a continuing basis without fear that their applications will necessarily be publicised.

61 As to the fourth argument, the Respondent is bringing the Committal Application in his capacity as protector of the TDT. We are entitled to assume that with his advisers he has given proper consideration to the question whether there is any requirement, in the interests of the TDT and its beneficiaries, for this appeal to be conducted in private in order to preserve any remaining privacy for the past affairs of the TDT.

62 Fifthly, although it is the Respondent who has raised the question whether the appeal should be in public, it is a question which would anyway have arisen, regardless of any reasons the Respondent might or might not have: the Court would need to be satisfied that there should be a departure from the fundamental principle of open justice. This would be so, even if (as submitted) the Respondent were acting for a collateral or improper purpose. As to this, we note the comment made by Eady J in *Lakah Group v Al Jazeera Satellite Channel* [2002] All ER (D) 383 at para 27, set out below:

> "*The court's jurisdiction in contempt is a valuable one but its essential purpose must always be borne in mind. Litigants, and indeed for that matter the court itself, should always be mindful that resort should be had to its salutary but Draconian powers only where necessary; that is to say, where there is no other effective means of achieving the desired objective. The underlying rationale of the jurisdiction is to uphold the rule of law by protecting or enforcing the authority of the court. It is most emphatically never appropriate to use it as a tool of oppression or even as a tactical weapon: see e.g. Att.-Gen. v Times Newspapers Limited* [1974] A.C. 273 *, 302, 307–9, per Lord Diplock*."

It has not been explained to us how the Respondent might be seeking to use the Committal Application as a tool of oppression or as a tactical weapon.

63 The final argument, concerning the nature of the Committal Application, points in favour of open justice rather than the opposite. It does not, we think, lead to the conclusion that this appeal should be in private, with the public interest in open justice being displaced.

The substantive appeal - relevant law

64 [**The nature of the appeal**] This appeal is against the exercise of the discretion of the Lieutenant Bailiff to allow service of the Committal Application on the Appellant out of the jurisdiction. Therefore, as pointed out by Advocate Paul Richardson on behalf of the Respondent, there is a limit to the power of the appellate court: it can interfere only where there has been an error as to the applicable principles or as to what may be taken into account, or where the decision is plainly wrong.

65 [**RCCR Rule 8 and leave to serve out**] The discretion which the Lieutenant Bailiff was exercising arose under Rule 8 of the Royal Court Civil Rules, 2007 ("the RCCR"). This concerns service of documents out of the jurisdiction, in the present case service of the Committal Notice on the Appellant in England. While Rule 8(1) gives a general power to allow service out, Rule 8(2) restricts this stating that in order to allow service out the Court has to be satisfied that the matter to which the document relates "*(a) is properly justiciable before the Court"* and also "*(b) is a proper one for service out of the jurisdiction*".

66 It is common ground that the approach to the exercise of the discretion to be adopted in the present case was that explained by the Deputy Bailiff (as he then was) in *Carlyle Capital Corporation Ltd v Conway* (Judgment 29/2011). What is "properly justiciable" and "proper" for service out is to be considered in the light of the judgment of Lord Collins of Mapesbury in *AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7, [2012] 1 WLR 1804, in particular in paragraph 71 of the judgment. However, that was a case on appeal to the Privy

Council from the Isle of Man and concerned service of an originating process out of the jurisdiction; and the applicable rules of court resembled those in the CPR of England and Wales and in the Jersey rules of court: those rules require that a cause proposed to be pursued against a foreign defendant must fit a specific description and not simply be within the description "*properly justiciable*".

67 With the caveat mentioned in the previous paragraph (a caveat which we return to later in this judgment), the guidance given in *Kyrgyz Mobil*, as explained by the then Deputy Bailiff in the *Carlyle Capital* case, may give assistance in this Bailiwick as follows. In summary to allow service out of the jurisdiction, the Court must be satisfied:

67.1 that there is a serious issue to be tried on the facts (that is a substantial question of fact or law or both), such an issue being one as to which there is a real (as opposed to a fanciful) prospect of success; and

67.2 that the cause is properly justiciable (the Court being able, should it think fit, to draw assistance as to this from the approach taken by the courts in neighbouring jurisdictions in relation to the available "gateways" prescribed by their rules of court for service out of the jurisdiction); and

67.3 that Guernsey is in the circumstances of the case clearly and distinctly the appropriate forum; and

67.4 that in the circumstances the Court should exercise its discretion (given by Rule 8(1) of the RCCR) to allow service out.

68 In the present case the Lieutenant Bailiff had in mind the approach taken in the *Carlyle Capital* case, which he found to represent the current practice of the Royal Court. Before us that is accepted, we think correctly, to be the position in Guernsey, subject always to the caveat we have mentioned above and to the fact that Rule 8(2) of the RCCR requires the Court to be satisfied as to the two matters stated in paragraphs (a) and (b) of the Rule (namely that the matter to which the document relates is properly justiciable and that it is a proper one for service out of the jurisdiction), before it can exercise the discretion given to it by Rule 8(1) of the RCCR to allow service out of the jurisdiction.

69 As it seems to us the determination of the question whether the matter to which the document relates is properly justiciable may be assisted by considering the first two of the four elements derived from the guidance in the *Kyrgyz Mobil* case, while the determination of the question whether it is proper for service out of the jurisdiction may be assisted by considering the second and third of the elements.

70 As a further observation, we consider that a decision as to the first three of the elements mentioned in paragraph 67 above involves a matter of judgment, requiring a conclusion to be reached as to a particular set of circumstances, while the fourth element (the exercise of the Rule 8(1) discretion) is purely a matter of discretion once the conditions in Rule 8(2) of the RCCR have been satisfied. If this Court on this appeal concludes that the Lieutenant Bailiff was mistaken as to the conditions in Rule 8(2) of the RCCR being satisfied, it follows that it will be open to the Court to review his exercise of his discretion.

71 [**The law of contempt in Guernsey**] The law relating to contempt of court, so far as relevant to the Protocol Order, is entirely customary law: at present there is no relevant legislation to provide for or regulate the law.

72 A particular instance of customary law is the Royal Court's inherent jurisdiction to punish breaches of its orders to enforce compliance, and also to punish interference with the due administration of justice, including with its orders. Although there is little in the way of reported Guernsey case law on the subject, there is enough to establish that Guernsey customary law as to contempt is similar to the common law of contempt in England, and that guidance can be found in English authorities. The recent case of *X v X* (otherwise referred to

as B&H v W), Guernsey Judgment of 2 September 2013, is important in clarifying various of the applicable principles in the case, at any rate, of contempt involving the failure of a party to comply with a mandatory court order directed to the party. In that case the Bailiff, Sir Richard Collas, approached the relevant contempt as a civil one. An earlier case, *BBC v Officers of the Crown* [1988] GLR 6:25, decided by this Court, demonstrates that a contempt of Court consisting of interfering with the administration of justice can be prosecuted and punished as a criminal offence.

73 It is also common ground between the parties that the RCCR contain no provisions dealing specifically with contempt. In this they differ both from the current form of Civil Procedure Rules, 1998, of England and Wales (these rules containing, in Part 81, a detailed section dealing with applications to commit for contempt), as well as from previous Rules of Court in England and Wales.

74 Before the Lieutenant Bailiff reference was made to the Royal Court judgment in *X v X*, above, in which the Bailiff, Sir Richard Collas, pointed out that the code set out in the English Civil Procedure Rules 1998, Part 81, is not part of the procedural law of the Royal Court. He said:

> "*I accept that English procedural rules may be persuasive and may be followed at times ... However, I do not accept that [that] should always be so. If it was the intention of the Royal Court that we should simply follow the CPR, there would have been no need to adopt the RCCR; we could simply have promulgated a rule specifying that the CPR shall apply in Guernsey as they do in England and Wales. We have not done so, we have our own procedures, some of which have evolved as a result of our ancient historical, independent, jurisdiction and we are proud to preserve our independence in order to follow procedures we believe are best adapted to suit the needs of our courts and of the litigants who appear before them*".

75 In *X v X* what was at issue was whether there was adequate particularisation in a notice of application to have a party committed for contempt in failing to comply with an order directing the party (a party to the original proceedings) to produce documents. In England and Wales CPR, Part 81, contains provision dealing with particularisation. The Bailiff held in *X v X* that failure to follow the procedures laid out in CPR, Part 81, "*is not of itself a reason to strike out*" the committal application before him. However, he went on to state: "*I consider that what is important is that the alleged contemnor should know sufficient detail of the allegation to understand the complaint and to concede, if concession is appropriate, or to defend the complaint, if that is what is desired*".

76 This, we have to say, would have been established English law long before 2012, when CPR, Part 81, was enacted and brought into operation. It follows from the fact that the liberty of the alleged contemnor is in issue that he should not be in any doubt about the charges made against him when sought to be committed for contempt.

77 Speaking generally, the law of contempt of court is concerned with upholding and ensuring the effective administration of justice, the applicable rules being the means by which the law vindicates the public interest in the due administration of justice. As the administration of justice has many facets, so too there are many forms of contempt of court.

78 For present purposes it is worth noting the taxonomy described by Lord Donaldson MR in *A-G v Newspaper Publishing plc* [1988] 1 Ch 333 at 362: on the one hand there is "*conduct which involves a breach, or assisting in the breach, of a court order"*, while on the other "*any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process...*". Lord Donaldson added,

> "*What distinguishes the two categories is that in general conduct which involves a breach, or assisting in the breach, of a court order is treated as a*

> *matter for the parties to raise by complaint to the court, whereas other forms of contempt are in general considered to be a matter for the Attorney-General to raise. In doing so he acts not as a government minister or legal adviser, but as guardian of the public interest in the due administration of justice*".

79 A further point of taxonomy may be noted, this being in relation to breaches of court orders, on the one hand where the conduct is by a person to whom the order is addressed, and on the other where it is not (the case of assisting a breach). This distinction was explained by Lord Oliver in *A-G v Times Newspapers Ltd* [1992] 1 AC 191 at 217:

> *"... A distinction (which has been variously described as 'unhelpful' or 'largely meaningless') is sometimes drawn between what is described as 'civil contempt', that is to say, contempt by a party to proceedings in a matter of procedure, and 'criminal contempt'. One particular form of contempt by a party to proceedings is that constituted by an intentional act which is in breach of the order of a competent court. Where this occurs as a result of the act of a party who is bound by the order or of others acting at his direction or on his instigation, it constitutes a civil contempt by him which is punishable by the court at the instance of the party for whose benefit the order was made and which can be waived by him. The intention with which the act was done will, of course, be of the highest relevance in the determination of the penalty (if any) to be imposed by the court, but the liability here is a strict one in the sense that all that requires to be proved is service of the order and the subsequent doing by the party bound of that which is prohibited. When, however, the prohibited act is done not by the party bound himself but by a third party, a stranger to the litigation, that person may also be liable for contempt. There is, however, this essential distinction that his liability is for criminal contempt and arises not because the contemnor is himself affected by the prohibition contained in the order but because his act constitutes a wilful interference with the administration of justice by the court in the proceedings in which the order was made. Here the liability is not strict in the sense referred to, for there has to be shown not only knowledge of the order but an intention to interfere with or impede the administration of justice - an intention which can of course be inferred from the circumstances."*

80 This distinction, in cases in relation to compliance with court orders, between cases where the alleged contemnor is directly addressed by the order, and cases where the contemnor is a stranger, was described long ago by Lindley LJ in *Seaward v Paterson* [1897] 1 Ch 545. At page 555 Lindley LJ said:

> "*A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of Court, not because he is bound by the injunction by being a party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the order of the Court for the benefit of the person who got it. In the other case the Court will not allow its process to be set at naught and treated with contempt. In the one case the person who is interested in enforcing the order enforces it for his own benefit; in the other case, if the order of the Court has been contumaciously set at naught the offender cannot square it with the person who has obtained the order and save himself from the consequences of his act. The distinction between the two kinds of contempt is perfectly well known, although in some cases there may be a little difficulty in saying on which side of the line a case falls.*"

81 The distinction noted by Lindley LJ was not only that expounded in the speech of Lord Oliver, quoted above, in *A-G v Times Newspapers Ltd* [1992] 1 AC 191, but was also clearly stated in the speeches of Lord Brandon (at 203 & 206) and Lord Jauncey (at 227-228) in the same case. It was further described as follows in the judgement of Lloyd JL in *A-G v Newspaper Publishing Ltd* [1988] Ch 333 at 378: "*But the question here is not whether a third party is bound by the injunction, but whether he can be liable for contempt even though he is not bound by the injunction. He cannot be liable in contempt for breach of an order to which he is not a party.*"

82 Again, as a further point of taxonomy, where there is an order restraining or requiring a particular act, a third party (that is someone other than the person to whom the order is addressed) may be found to be in contempt of court, not on the ground that he has aided and abetted a breach by the person to whom the order is addressed, but rather on the wider ground that he has himself done something calculated to interfere with the due administration of justice. In that sort of case the question whether or not the third party has been in contempt does not depend on the precise terms of the order. That was the case with which both *A-G v Newspaper Publishing Ltd* [1988] Ch 333 and *A-G v Times Newspapers Ltd* [1992] 1 AC 191 were concerned: the third party's actions had the potential for destroying the very subject of the litigation.

83 It is important to see that that is not the present case, in which the allegation against the Appellant (not someone to whom the Protocol Order was addressed) depends upon the alleged breach of the Protocol Order: the Committal Notice is quite specific in this respect. In other words, fundamental to the contempt alleged against the Appellant is the fact that the Protocol Order has been breached, not that there is in some more general sense an interference with the administration of justice by bringing about something which the Protocol Order was designed to prevent.

84 Finally it should be noted that, where the question concerns compliance with a court order, the court's jurisdiction in relation to contempt may be invoked, typically, in two classes of case. There is the case where a party to proceedings is seeking the court's assistance to enforce an order to ensure performance. In this situation, where what is at stake is the securing of compliance to ensure for the benefit of a party what the order was intended to secure, it is primarily a matter for that party whether or not to proceed. On the other hand there is the case (of which the present is an example) where there is alleged to have been a failure to comply with an order and the Court is being invited to punish the person responsible for the failure, continuing compliance with the particular order now being of little or no relevance. Although the matter will typically be brought before the court by a party to the proceedings (as pointed out by Lord Donaldson MR in the passage from his judgment in *A-G v Newspaper Publishing Ltd* [1988] Ch 333 quoted above), in this class of case the Court will be concerned with the public interest in protecting the administration of justice by maintaining confidence in the enforcement of its orders.

85 The point in the previous paragraph is relevant when considering a particular issue which has arisen in the present case, namely whether it is necessary or appropriate to classify the contempt alleged against the Appellant as being either a civil or a criminal contempt. Where there has been a deliberate disobedience to a court order, the character of the contempt may be difficult to identify because of the overlapping but distinct interests in responding to the disobedience. On the one hand the party in whose favour the order was made will have an interest in enforcement; that is in securing future obedience from the person to whom the order was addressed. On the other hand there will be a public interest on the part of the state in securing the exercise of a penal or disciplinary jurisdiction to protect more widely the integrity of the court system and the administration of justice. It may be thought that steps taken to secure compliance with an order would have a civil character, while those to punish disobedience would have a criminal character.

86 Under Guernsey law the distinction mentioned in the previous paragraph does undoubtedly exist. This can be seen by comparing *X v X* and *BBC v Law Officers of the Crown*. In the

former case the Court approached the relevant contempt as a civil matter; in the latter the contempt was dealt with as a criminal matter. The same distinction unquestionably exists in English law, being recognised in the judgment of the Supreme Court, given by Lord Toulson JSC, in *R v O'Brien* [2014] UKSC 14, [2014] AC 1246 (see, in particular, para 37: "*There is a distinction long recognised in English law between 'civil' contempt', ie. conduct which is not itself a crime but which is punishable by the court in order to ensure that its orders are observed, and 'criminal contempt'...*").

87 We consider below the implications of the existence of this distinction for the decision of the present case.

The judgment below

88 The Lieutenant Bailiff, after setting the context in which the issues arose before him, and explaining that without doubt the Royal Court has jurisdiction to deal with contemnors, directed himself as to the applicable principles (described above) for leave to be given for service of the Committal Notice out of the jurisdiction. He then considered a question which has often arisen in contempt cases in England and Wales, namely whether the proceedings are properly to be characterised as civil or criminal. As to this he noted that there has been judicial and academic criticism of the existence of this distinction. He made reference, for example, to the remarks by Lord Oliver in the first sentence quoted in paragraph 77 above from his speech in *A-G v Times Newspapers*. He then expressed the view that it was neither necessary nor appropriate for there to be any such distinction for applications in civil proceedings in the Royal Court to commit someone for contempt, concluding that he did not need to classify one way or another the respective applications in relation to the Appellant and Mr Akers. Nevertheless, he then appears to have approached the question of service of the Committal Notice on the Appellant as if he were dealing with a civil cause and not a criminal charge.

89 As to material facts, the Lieutenant Bailiff noted that while the Appellant is a member of GTUK, he is a UK resident and does not reside in Guernsey. He found that the Appellant could be assumed for present purposes to have read the Protocol Letter: it appears that in Guernsey 1 the Appellant had at one stage made a witness statement in which he referred to having read a statement by Mr McDonald in those proceedings, and the latter's statement mentioned the Protocol Order. He also considered that the Appellant could be said to be, as a member of GTUK, an agent of Mr Akers (as Mr Akers would be an agent for the Appellant, both being members of that entity); but he considered that when forensic accountancy services were provided to the liquidators of the BVI Companies that was done by GTUK as agent and not by the Appellant. This conclusion was relevant to a submission made on behalf of the Respondent (but rejected by the Lieutenant Bailiff) that in some manner the Appellant might be a person "bound as a party to the terms" of the Protocol Order by being a member of GTUK's staff.

90 As to this the Lieutenant Bailiff said that "*the only way in which the [Respondent] may be able to establish that [the Appellant] is in contempt of the Royal Court is by proving that he knew of the terms of the [Protocol Order] at the time of the SFO meeting and that, with that knowledge, he passed on to the SFO, or assisted Mr Akers in passing on, to the SFO, information provided to the joint liquidators under the terms of the Protocol Order, ie. in private and in confidence, thereby assisting or aiding and abetting a breach of the consent order by Mr Akers".* This proposition, not disputed by the Respondent on this appeal, we consider correct. For the Appellant to have been in contempt as an aider and abetter he need to be shown to have appreciated that the information being passed on was information which the Protocol Order prohibited from being passed on: this follows from the description of the relevant form of contempt given by Lord Oliver in *A-G v Times Newspapers Ltd*, quoted above.

91 As to the question whether there was a serious issue to be tried on the merits, the Lieutenant Bailiff considered that the substantive allegations against the Appellant with regard to the

Protocol Order were stated with sufficient particularity to enable him to defend himself and to present full reasoned argument on the set aside application. In addition he considered that on the evidence there was a real prospect of the Respondent proving "*that [the Appellant] knew of the terms of the [Protocol Order] when attending the SFO meeting and that with that knowledge he intentionally passed on, or assisted Mr Akers, in passing on, to the SFO information relating to the possible transfer of the Royal College of Organists out of the TDT company structure*".

92 The question whether the Committal Application in relation to the Appellant is properly justiciable before the Court, the Respondent having as to this the better of the argument, the Lieutenant Bailiff answered in the affirmative. Having rejected the view that the application as against the Appellant is properly to be characterised as criminal, he found it immaterial that in principle the criminal jurisdiction of the Royal Court does not extend to parties resident outside the Bailiwick in respect of activities outside the jurisdiction. He said "*the approach of Courts in cases where leave to serve civil proceedings on a foreign person out of the jurisdiction, especially where it seems that a person may be attempting to prevent service, has, as I see it, moved on from a strict application of a rule based on an exorbitant use of court's powers and in the Committal Application the Royal Court is not being asked to use its criminal jurisdiction*". We return to the reasoning in this passage, as it is central to the Lieutenant Bailiff's conclusion that there could have been a contempt of court by the Appellant for which the Royal Court had substantive jurisdiction to punish the Appellant, despite the fact that the Appellant is a foreigner, resident in England, that the relevant order (the Protocol Order) was not addressed to him as a party, and that insofar as any specific acts are alleged against the Appellant they took place abroad.

93 However we should at once point out that there is no allegation in the present case that the Appellant is seeking to "prevent service", if by that it is meant he is trying to evade service of proceedings properly instituted against him. What he is perfectly entitled to argue is that, if the order to have him served abroad has been mistakenly made because the Royal Court has no jurisdiction over him as to the subject matter of the proceeding, the order should be set aside. The Lieutenant Bailiff's reference to "preventing service" suggests a possible conflation of questions of service and questions of substantive jurisdiction.

94 Having decided that the Royal Court could properly try the Appellant for the contempt, the Lieutenant Bailiff observed that "*I consider that clearly Guernsey is not only an appropriate forum for the Committal Application, but very probably the only forum for it".* This conclusion is obviously correct and hardly needs further discussion. Only the Royal Court, the court in Guernsey, can commit someone to prison for contempt of the Royal Court. The Committal Application is not a proceeding in which the Respondent is seeking personally, or for the TDT Trust, its beneficiaries or trustees, to have compensation or restitution from the Appellant; it is one in which the Royal Court is being invited to protect the administration of justice in this Bailiwick by punishing a contempt of court which has involved a breach of its orders.

95 As a further observation, the Lieutenant Bailiff said "*I would add that, in my view, [the Appellant] would be a proper party, even if not a necessary party, to the Committal Application".* As a reason for giving leave to serve the Committal Notice on the Appellant this consideration presupposes that there is a matter as against the Appellant which can properly be brought before the Royal Court, there being a cause as against him. The "necessary or proper" party gateway in England and Wales, in the Isle of Man and in Jersey is normally relevant where rules of court do not otherwise allow service out on a defendant for the cause on which he is to be sued, but where it is proper to join the defendant because the cause against him is properly to be tried along with and at the same time as causes against other parties who are before the court. The gateway does not allow the pursuit of a claim as to which there is no cause in the first place.

96 Finally the Lieutenant Bailiff concluded that if the Appellant does not come before the Royal Court in response to the Committal Notice, the fact that enforcement of an order for his

committal to prison (or presumably a fine) outside the jurisdiction would not be practicable, nevertheless the Royal Court would not be powerless to hear the application and, if necessary, subject the Appellant to some sort of punishment, even if only in the form of a declaration.

The Factual Ground

97 As a threshold issue is the question whether the factual ground of appeal is open to the Appellant. The factual ground is that, contrary to the judgment of the Lieutenant Bailiff, there is no serious issue to be tried. The Respondent, in his Skeleton Argument, asserts that this ground is not open, there being no appeal by the Appellant as to the Lieutenant Bailiff's conclusion that the Committal Notice raised as serious issue to be tried. The Appellant's response was that the ground is indeed relied upon.

98 We accept the Appellant's submission without hesitation. The grounds of appeal set out in the Notice of Appeal raise squarely the case that the Royal Court was mistaken in concluding that there is a serious issue to be tried on the facts. This case was developed in the Appellant's Skeleton Argument. Further, in paragraph 3 of the Appellant's Reply Skeleton the Appellant reiterated that he does rely on the ground.

99 In our judgment the Committal Notice was defective for two related reasons, disregarding the jurisdiction question discussed below, and did not put forward a case against the Appellant which the Appellant could be required to answer. Therefore the Respondent has failed to raise for the Court a serious issue to be tried concerning the Appellant's alleged contempt.

100 As mentioned above, the Appellant was not a party to the Trust Proceedings, neither was he one of "the Companies" (ie the various companies and individuals, notably Mr Akers) named in the Protocol Order and who were specified as being under the restrictions in the Protocol Order. Any contempt alleged against him by reference to breach of the Protocol Order could only be as an aider and abetter; that is someone who assisted one of "the Companies" named in the Protocol to contravene the prohibition Companies set out in the Protocol Order against their misusing restricted information. In this the Lieutenant Bailiff was correct.

101 The first, and narrow, objection is that the Committal Notice does not allege against the Appellant any specific action which in fact involves his aiding and abetting a breach of the Protocol Order. For all that appears in the Committal Notice, the Appellant may have been present in the meeting with the SFO when restricted information was passed to the SFO without himself having done anything. It is not stated that he knowingly did anything to encourage or bring about the imparting of restricted information. As commented by A.L. Smith LJ in *Seaward v Paterson* supra at page 557, "*the mere fact of a man being present as a spectator at a prize-fight, or a boxing exhibition, or a like thing, does not make him an aider and abettor of what is going on*".

102 The second, and more fundamental, objection to the case in the Committal Notice is one which was raised by the Court when the substantive appeal was being opened in the morning of 21 July 2015, after the Respondent's procedural application had been disposed of. This point was responded to by Advocate Richardson on behalf of the Respondent after the lunch adjournment; and his arguments are considered below. In short, it does not appear from the Committal Notice, or for that matter from what was said in the supporting evidence on behalf of the Respondent, that such information as was imparted to the SFO at the meeting was in fact subject to any restriction resulting from the Protocol Order. Simply stated, Ogier's letter of 13 December 2010 was not sending information directed by the Royal Court following an application within paragraph 1 of the Protocol Order, with the consequence that it was never subject to the restriction contained in paragraph 3.

103 If it is said that the conclusion in the previous paragraph involves a strict reading of the Protocol Order, the answer is that court orders should in principle be drafted with precision so that any reader understands exactly what is required or prohibited; that the Protocol Order was in its drafting perfectly clear and precise; and that what is alleged against the Appellant

as to the relevant breach of the Protocol Order does not fall within the terms of the Protocol Order.

104 If the Respondent (who was a party to the Protocol Order) or R&H (who also were parties) have any complaint about disclosure of the Ogier's letter of 13 December 2010, it is not that the disclosure involved a breach of the Protocol Order. As regards the Protocol Order, the failure was the failure of R&H to apply to the Royal Court for directions before Ogier sent their the letter and to ask the Royal Court pursuant to their undertaking in paragraph 1 of the Protocol Order what if any information should be provided to the Companies.

105 In reaching this conclusion we reject the submission made on behalf of the Respondent that the Protocol Order was intended and understood to capture, and to make confidential, information imparted by any of the TDT Trustees in advance of an intended application for directions, and therefore should be construed has having that effect. What matters, in relation to the question whether there has been a breach of the Protocol Order, is what the Protocol Order provided, not what it was believed to provide.

106 We are unable to accept that, on any reasonable interpretation of the Protocol Order, the references to information provided "*pursuant to* " a particular paragraph of the Order, or "*pursuant to*" an application or order under a paragraph, are references to information provided in advance of any application for directions having been made to which paragraph 1 of the Order applied. The expression "*pursuant to"* clearly connotes that the information in question was to be following and consequential on something (that is, an application or order).

107 Further, we are unable to accept the submission, made by Advocate Richardson on behalf of the Respondent, that because on 17 December 2010 an application was made to the Royal Court for directions in relation to the proposed transfer of shares in Iver, that had the effect of retrospectively making the sending of the letters of 7 and 13 December 2010 "pursuant to" paragraph 1 of the Order. As it seems to us the question whether information is provided "pursuant to" some application or order within the meaning of the Protocol Order is, so far at least as the Protocol Order is concerned, to be determined by the circumstances as they were at the time the information was provided.

108 Advocate Richardson submitted that the content of the letters of 7 and 13 December 2010 might have been subject to some general privacy or confidentiality restriction in the hands of the recipients of the letters, and that that would be sufficient to support a finding of contempt on the Committal Application. This submission we also reject: the Committal Application is explicitly based on breach of the Protocol Order as a central foundation. It would not be open to the Royal Court to commit the Appellant on the Committal Application for a different contempt of court which had no reference to any breach of the Protocol Order.

109 Finally, Advocate Richardson submitted that the case disclosed by the Committal Notice and the supporting evidence was sufficient to give rise to a seriously arguable case. This submission we reject for the reason that the Committal Notice and supporting evidence do not contain the necessary statements of fact which, if true, would give rise to an arguable case that there had been a contempt of Court by the Appellant.

110 This, it seems to us, is sufficient to result in the Appellant's appeal being allowed: the case sought to be made against him in the Committal Application does not raise a seriously arguable case that he is guilty of contempt of court. Accordingly leave should not have been given for service of the Application Notice on him out of the jurisdiction.

111 Nevertheless we now consider the second ground, the jurisdiction ground.

The jurisdiction ground

112 The question of law is shortly stated. Where someone who is not a person to whom a court order is addressed (and normally orders are only addressed to parties to proceedings) is outside the jurisdiction and does something wholly outside the jurisdiction as a result of which the order is broken, can that person be dealt with by the Royal Court as being in contempt of court? This question is only concerned with the person who may be liable for a contempt which involves aiding and abetting a party to the order to act in breach of the order.

113 The argument of Advocate Davidson for the Appellant is that whatever may be the nature of the contempt alleged against Mr Akers, the contempt alleged against his client is criminal, and that the general principle is that the Royal Court has no jurisdiction over non-residents in relation to alleged crimes committed by them wholly abroad. He also submits, as a wider submission, that even if the contempt alleged against the Appellant were to be categorised as civil, still the Royal Court could not properly take jurisdiction over the Appellant for what he is alleged to have done abroad, so that ultimately it is unimportant for the decision of this appeal for the contempt alleged to be given any particular categorisation: the conclusion is the same whether the contempt is regarded as criminal or civil.

114 In support of this argument Advocate Davidson drew attention to the following passage in the judgment of Lord Donaldson MR in *Derby & Co Ltd v Weldon (Nos.3 & 4)* [1990] Ch 65 at 82:

> *"Court orders only bind those to whom they are addressed. However, it is a serious contempt of court, punishable as such, for anyone to interfere with or impede the administration of justice. This occurs if someone, knowing of the terms of the court order, assists in the breach of that order by the person to whom it is addressed. All this is common sense and works well so long as the "aider and abettor" is wholly within the jurisdiction of the court or wholly outside it. If he is wholly within the jurisdiction of the court there is no problem whatsoever. If he is wholly outside the jurisdiction of the court, he is either not to be regarded as being in contempt or it would involve an excess of jurisdiction to seek to punish him for that contempt."*

115 The last sentence in the passage just quoted indeed supports the wider submission of Advocate Davidson. Lord Donaldson did not reach his conclusion concerning the position of foreign third parties in relation to English court orders by reference to whether or not an act alleged against the third party was to be classified as criminal or civil. Nevertheless that last sentence is telling. There is a distinction between an act not being a contempt at all, and an act being one which it would be an excess of jurisdiction for the court to seek to punish. The former would more naturally apply to an act which, being committed wholly abroad, did not involve any contempt of court; the latter would more naturally apply where the act did (or could) involve a contempt but, the alleged contemnor being out of the jurisdiction and the relevant act having been abroad, the contempt was not to be proceeded on. It might be thought that the territorial limits on criminal acts would point to a criminal contempt falling within the first category, while a civil contempt would be more likely to fall within the second category.

116 Lord Donaldson's conclusion about limitations on the court's ability to pursue non-party foreigners for acts committed wholly abroad cannot be dismissed as obiter or immaterial. Rather, the conclusion was central to the determination of the appeal in *Derby & Co Ltd v Weldon (Nos.3 & 4)*, in which the Court of Appeal developed the so-called "*Babanaft Proviso*" for inclusion in world-wide freezing injunctions in order to ensure that the proper limits to such an order, that is the limits to the jurisdiction which the English Court was asserting, are apparent. In this respect the case developed what had been considered in *Babanaft International Co SA v Bassatne* [1990] Ch 13 concerning the limits on the English court's jurisdiction to make orders binding on foreign non-parties.

117 We have considered with care the Lieutenant Bailiff's reasons for rejecting Advocate Davidson's narrow argument. As we have mentioned, the Lieutenant Bailiff noted that the continuation of any distinction being made between civil and criminal contempt has been

criticised as being without any principled justification. As an example of criticism of this kind reference may be made to part of the judgment of Lloyd LJ in *A-G v Newspaper Publishing Ltd* [1988] Ch 333 at 377:

> *"I would only add, before leaving the cases, that it would be an improvement of this branch of the law if aiding and abetting a breach of a court order were re-classified as a civil contempt rather than a criminal contempt. The best course would no doubt be to abolish what remains of the distinction altogether, in accordance with the recommendations of the Phillimore Committee, Report of the Committee on Contempt of Court (Cmnd. 5794). But if the distinction is to remain, it does not make sense that a stranger to the order, who aids and abets a breach, should be criminally liable while the person to whom the order is directed and who himself commits a breach should only be liable for civil contempt. That is the sort of nonsense which does no credit to the law, as was pointed out forcibly enough by Lord Atkinson nearly 75 years ago in Scott v Scott [1913] A.C. 417 ."*

118 It will be noted that the statement just quoted is, in fact, a recognition of the existence of the distinction, while deprecating its continuation, and conveys that at the time in English law the aiding and abetting of a breach of a court order was a criminal contempt.

119 For good measure, Advocate Davidson drew attention to the speeches in *A-G V Times Newspapers* which we have referred to above, including that of Lord Oliver, which characterise as criminal those contempts of court which involve intentional interference with the administration of justice, and which also suggest that aiding and abetting a party to a court order to act in breach of the order should be regarded as a particular type of such contempt and therefore also to be characterised as a criminal and not a civil contempt.

120 To like effect is the judgment of Tomlinson J in *R+V Versicherung A-G V Risk Insurance and Reinsurance Solutions* [2006] EWHC 1705 at paras 69-71. In that case Tomlinson J rejected both the submission that the relevant contempt was to be characterised as civil, not criminal, and the submission that the court had jurisdiction in relation to the relevant contempt it where all acts were committed overseas by foreign nationals. As he explained "*Subject to immaterial exceptions, the court has no jurisdiction in respect of acts done abroad, save insofar as they amount to a breach of an order of the court by a person who is already amenable to the jurisdiction of the court in respect thereof*".

121 Tomlinson J's decision does not stand in isolation. A recent example is that of Eady J in *Lakah Group v Al Jazeera Satellite Channel* [2002] All ER (D) 383 in which the same approach was taken.

122 Seeking to distinguish these cases and to support the Lieutenant Bailiff's decision that the relevant contempt alleged against the Appellant should not be classified as a criminal one, and that service of the Committal Notice abroad should be allowed, Advocate Richardson on behalf of the Respondent referred to a judgment, given following an ex parte hearing, in the case of *A&B v C* [2007] HCFI 815 in Hong Kong. We do not find the case helpful. In it Cheung J granted injunctive relief against a foreign third party who was outside the jurisdiction but was publishing on the internet material which that foreign third party had obtained following improper disclosure to it of material obtained in Hong Kong under a *Norwich Pharmacal* order. The case was not one in which there was any application for an order for the third party to be committed for contempt; such an application would follow, and in the opinion of Cheung J could follow, in the event of the third party failing to comply with the injunction directed at the third party.

123 In *A&B v C, supra*, Cheung J referred to the judgment of Waller LJ in *National Justice Compania Naviera SA v Prudential Assurance Co Ltd* [2000] 1 All ER 37. That case, relied upon by Advocate Richardson in his Skeleton Argument, concerned the question whether a non-party might be made liable for costs under section 51 of the Supreme Court Act 1981 even where outside the court's territorial jurisdiction. In his judgment Waller LJ was

concerned with the practical machinery for serving the non-party with suitable notice, and the applicable rules of court. At pages 44 to 45 he discussed, in this context, that fact that where a party to an action commits contempt by refusing to obey an order, the fact that the party is outside the jurisdiction is no bar to the exercise of the court's jurisdiction to commit the party for contempt. Then, at page 45, Waller LJ referred to an earlier decision of the Court of Appeal (*Mansour v Mansour* [1989] 1 FLR 418) in which service out had been allowed in respect of contempt alleged against a party to the proceedings, albeit one abroad, for non-compliance with an order); and he added, "*I venture to think that if a non-party committed a contempt of the English court the fact that the non-party was outside the jurisdiction physically would not prevent the English court having jurisdiction to proceed to commit for contempt*".

124 For three reasons we think that this single comment of Waller LJ's is of no assistance.

124.1 First, the comment was in the context of the discussion of a case, *Mansour v Mansour* [1989] 1 FLR 418, which (as he acknowledged) had not been cited to the Court. It had not been the subject of submissions from counsel, which was hardly surprising as a case on contempt of court by an overseas party to litigation was not obviously relevant: the case had demonstrated only that the absence of a party abroad would not prevent the court from entertaining proceedings to have the party committed for a contempt of court by that party.

124.2 Second, it seems clear that there had been no citation of relevant authority as to the case of contempt alleged against a foreign non-party for acts done abroad. The obvious example would be *Derby & Co Ltd v Weldon (Nos.3&4) above.*

124.3 Third, it is not apparent from Waller LJ's remark that he had in mind the case where the actions of the non-party foreigner had been committed abroad.

125 A further case relied upon by Advocate Richardson was *Dar El Arkan Real Estate Development Co v Refai* [2015] 1 WLR 135. That case turned on the operation of CPR Part 81 (a whole new code introduced into the CPR by statutory instrument (the Civil Procedure (Amendment No.2) Rules 2012 (SI 2012/2208)) in a case where a company, party to proceedings in England, had failed to comply with a court order. The application was to bring committal proceedings to have the managing director of the company committed to prison. The managing director was resident abroad.

126 In the *Refai* case it was held that the power in CPR r.81.4(3) permitted service on the managing director. That rule provides that "*If the person referred to in paragraph (1)*", namely a person who was disobeying a court order and against whom enforcement was to be sought by an order for committal, "*is a company ..., the committal order may be made against any director or other officer of the company...".* The decision in the *Refai* case was, therefore, that CPR r.81.4(3) gives the court substantive jurisdiction over a foreigner if the foreigner is within the description in the rule and is responsible for the relevant company's contempt. In this Bailiwick there has been no comparable legislation. It is therefore no help to consider how in *Refai* CPR Part 81 was analysed with a view to rationalising procedural provisions in the CPR concerning service of different types of application for different types of contempt.

127 We have referred to the Lieutenant Bailiff's decision concerning an argument on behalf of the Respondent that the Appellant might have been in breach of the Protocol Order as an agent of the Companies and thus a person to whom the Protocol Order was directed. However, in contrast to this argument, the Respondent's Skeleton Argument on this appeal submitted that "*the fact that the putative contemnor is a servant or agent is ... irrelevant*" for jurisdiction to be taken over a foreigner, who is a stranger to any court order, for acts carried out abroad. As it was explained, the court's ability "*to exercise a prescriptive jurisdiction over contempt carried out by a non-party who happens to be a servant or agent of a party*" is an indication "*that it is unobjectionable for a Court to exercise extraterritorial prescriptive jurisdiction*

over a breach of its own order" against a non-party. In support of this proposition the Respondents' Skeleton Argument relied on two cases.

128 The first case, *Re Demene Investments* [2013] NICH 2 (High Court of Justice in Northern Ireland), was said to show that the Court has jurisdiction over "*a contempt carried out by a non-party who happens to be a servant or agent of a party*". However in the case two individuals, who acted outside the jurisdiction in a way which was proscribed by a Mareva injunction against a defendant company "*and its directors and officers and servants or agents or any of them*", were at the time acting as agents of the company. They were, in other words, parties enjoined by the relevant order, even though not parties to the proceedings in which the order was made. The case was not one in which the individuals committed a contempt of court by aiding and abetting a breach of a court order: they were themselves guilty of the civil contempt of acting in breach of the order addressed to them.

129 The other case relied upon was *KJM Superbikes Ltd v Hinton* [2009] 1 WLR 2406. This was a case in which a witness, by the time of the case living in Australia, had made a false witness statement to be put forward in, and in fact put forward in, proceedings before the court in England to which he was not a party; and in due course he came into the jurisdiction and gave evidence in person at the trial of the proceedings. After the proceedings the successful party sought, and on appeal was given permission, to bring proceedings against the witness for contempt of court in relation to his false witness statement.

130 Moore-Bick LJ in his judgment made the point that contempt proceedings against the witness might not be fruitful. First, he clearly considered that the witness "*could not be required to come to this country to answer a charge of contempt; indeed, unless he chooses to instruct solicitors to accept service on his behalf, it will not be possible to serve the proceedings on him unless he comes to this country and becomes amenable to personal service.*" Second, he pointed out that "*The court ... will not be able to impose any practical sanction on [the witness] while he remains outside the jurisdiction."* But he went on to say that in general that should not weigh against giving permission for the contempt proceedings, as "*the integrity of the system as a whole would be undermined if it were thought that foreign witnesses were not subject to the same discipline as witnesses from this country.*"

131 Nevertheless the case is of no assistance to the question before us. The act of the witness which amounted to contempt of court was the making of false evidence intended to be and in fact presented to the English court. In other words the contemnor's relevant act had been in material part in England: it had not been wholly abroad.

132 We therefore cannot accept that there is any support for the sweeping argument, described above, contended for in the Respondent's Skeleton Argument by reference to these two cases.

133 The upshot of this discussion is that there is, we think, much force in Advocate Davidson's argument that the intentional interference with the administration of justice is to be classified in Guernsey customary law, as in English common law, as a criminal contempt, and that aiding and abetting breach of a court order is simply a particular form of that kind of contempt and therefore also to be classified as a criminal contempt, and that there is no offence where the relevant acts are carried out wholly abroad by a non-resident.

134 Having said this, the Lieutenant Bailiff was undoubtedly correct in his view that, while an understanding of Guernsey customary law may, on this question, be assisted by consideration of English common law, customary law is not English common law simply carried wholesale into Guernsey.

135 In the circumstances of the present case it is unnecessary to reach a conclusion as to what is the classification of the relevant contempt. That question can be resolved if and when it is essential for the decision of some future case. The present case can be decided on Advocate Davidson's wider ground, namely that however the relevant contempt might fall to be classified, still leave should not have been given for the Committal Notice to be served on the

Appellant out of the jurisdiction. The conclusion on Advocate Davidson's wider ground follows, whether it is said that the Appellant (being resident abroad, not a party to the Protocol Order, and not having done any act within the jurisdiction) is not to be regarded as being in contempt, or it is said that it would involve an excess of jurisdiction to seek to punish him for what he did abroad.

136 In reaching this conclusion we differ from the Lieutenant Bailiff, who considered that it was open to him to conclude that a case of a contempt alleged against a non-resident, not a person directly engaged by any mandatory order of the Royal Court, and who is out of the jurisdiction for things done by him out of the jurisdiction is properly within the conditions set out in Rule 8(2) of the RCCR, giving the Royal Court a longer reach than anything to which the English common law has to date aspired. As to this, we have not been shown anything in any decided case which calls in question the statement of principle given by Lord Donaldson in *Derby & Co Ltd v Weldon (Nos.3 & 4)* which we have set out above, or which remotely suggests that it would be appropriate for the Royal Court to assert an extra-territorial jurisdiction in such a case.

137 The point can be considered in the light of the assistance to be derived from the *Kyrgyz Mobil* case, which we have discussed above. The only recognised "gateway" identified before us by reference to which it might be said that the cause sought to be put forward against the Appellant is "properly justiciable", and that it is proper to serve the Appellant out of the jurisdiction, is the "necessary or proper party" gateway. However it cannot be right that the conclusion, that the Appellant is to be brought before the Royal Court to be made answerable for his own alleged contempt, turns on the circumstance that Mr Akers will be before the Royal Court for his, different, alleged contempt in disobeying the Protocol Order to which he was a party. In our judgment, whether or not the Appellant can be described as someone who might be a "proper party" to the contempt proceedings against Mr Akers, that circumstance is insufficient to make the case a proper one for service of the Committal Notice on the Appellant out of the jurisdiction, being quite contrary to the statement of principle in *Derby & C Ltd v Weldon (Nos.3 & 4).*

138 In his judgment the Lieutenant Bailiff referred to the judgment of Lord Sumption in *Abela v Baadarani* [2013] UKSC 44, [2013] 1 WLR 2043 at para 53, in which Lord Sumption deprecated the use of the adjective "*exorbitant*" when approaching the question whether service of process should be allowed out of the jurisdiction, this adjective as he saw it importing a "muscular presumption" against service out being permitted. While there may be unfortunate overtones in using such an adjective, nevertheless it is clear that the burden of justifying service abroad lies on the party wishing to effect it, and that to do so he must show that the conditions in rule 8(2) of the RCCR have been satisfied and that the case is clearly one in which it is appropriate for jurisdiction to be exercised. In deciding that question the Royal Court will need to keep in mind that it is taking an unusual step in extending its powers outside its territorial jurisdiction.

The Respondent's Notice

139 The Respondent's Notice states that the Lieutenant Bailiff was correct to conclude "*that the central issue concerns the jurisdiction of the Royal Court where the alleged contemnor has aided and abetted a breach by another*". Nevertheless, the Respondent's Notice also says that the judgment can be affirmed on the different ground (rejected by the Lieutenant Bailiff) that the Appellant "*falls to be treated as an employee or staff of GTUK or the joint liquidators"* or alternatively "*was acting as the servant or agent of the joint liquidators and/or the BVI Companies*". This ground was put forward in order to avoid any limitation, discussed above, as to what might otherwise be a long-arm jurisdiction for the Royal Court over non-party foreigners for things done abroad.

140 In our judgment this argument was rightly rejected by the Lieutenant Bailiff on the facts. There is no reading of the Protocol Order which makes GTUK, much less the Appellant, a party: certain companies together with their liquidators are parties within the description "the

Companies". The fact (if it be the fact) that GTUK might provide assistance from time is not sufficient to make them parties.

141 The different ground was not pressed before us by Advocate Richardson in his oral address. In this we think he was correct. It was bound to fail for the reasons given by the Lieutenant Bailiff. Further, it was bound to fail for the reason that it is not even alleged in the Committal Notice that the Appellant was a person by whom the Companies acted or who controlled the Companies' actions, so that if they acted in breach of the Protocol Order it was because he did.

Conclusion

142 For the reasons given above we conclude that the Lieutenant Bailiff should not have given leave for the Committal Notice to be served on the Appellant. We therefore allow the appeal and order that the order giving the Respondent leave to serve the Committal Notice on the Appellant out of the jurisdiction should be set aside.

143 Before parting with the case we would stress that our conclusion should not be taken as any sort of invitation for anyone to think that orders made by the Royal Court are not to be obeyed. The Royal Court has jurisdiction over parties to proceedings, wherever they may be; and they can expect to be required to comply with orders. This extends to persons, even if abroad, who have been made subject to an order requiring compliance. And anyone who sets out to assist in the flouting of an order can expect the Royal Court to treat him without sympathy, should he be brought before the Court for what he has done.