

Financial Remedies Case Law Update

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This is a decision from Mr Justice Poole in the High Court regarding the Defendant's argument in defence of an application to hold him in contempt of court.

The Defendant asserted that the order was not personally served on him and no alternative order for service was effective, as it was not on the face of that particular order, therefore he could not be held in contempt for his admitted breach.

[Collardeau v Fuchs: Contempt of Court \[2025\] EWFC 413](#)

Introduction

This is the judgment of Mr Justice Poole handed down on 28 November 2025 in regard to an application for committal of the Defendant husband, Mr Fuchs ('D'), to prison for contempt of court. The Applicant wife, Ms Collardeau ('A'), alleged that D breached two orders made, by the same judge on 28 March 2025, in long running financial remedy and enforcement proceedings.

D was the respondent to this order which bore a penal notice prominently on its first page and included:

"9. The respondent, either individually or as a member of the LLCs in which title to the US Properties are held, is enjoined from selling, disposing of, renting, pledging, transferring to any other purchaser or tenant, dealing with or otherwise diminishing the value of the US properties pending determination of these proceedings, or instructing or encouraging any third party to do the same.

10. The respondent shall not take any steps to impede the implementation of any order made by this court in respect of the US properties, including but not limited to impeding the domestication of any order made by this court abroad and/or interfering with the County Clerk where any of the US Properties are located recording a certified copy of any order made by this court."

The US properties were defined within the order to include a property in Meadow Lane, New York, which is referred to in Poole J's most recent judgment [Collardeau v Fuchs \[2025\] EWFC 307](#) at [3.f] as "ML1".

A alleged that D breached these orders in that (at [5]):

- a. On 25 June 2025 the Defendant sold ML1.
- b. On 23 June 2025, through his US attorneys, the Defendant filed two affirmations and a memorandum opposing the Applicant's US application dated 31 March 2025 for domestication of orders made by this Court.

D, through his counsel Mr Chamberlayne KC as he was not in attendance, eventually admitted that he had breached those orders but that this was not in contempt of court.

He put forward two arguments in defence of the committal application against him (at [8]):

- a. The order of 28 March 2025 was not personally served on him, as required, and no order for alternative service was effective. He relies heavily on the decision of Mostyn J in *Ahmed v Khan* [2022] EWHC 1748 (Fam). The application for committal is therefore defective.
- b. Paragraph 10 of the order of 28 March 2025 was ultra vires, and no contempt can be found against the Defendant for its breach.

Paragraph 10

Whilst D admitted to breaching paragraph 10 of the 28 March 2025 order, Mr Chamberlayne KC relying on the speech of Toulson LJ in *Deutsche Bank AG v Highland Crusader* [2009] EWCA Civ 725, [2010] 1 WLR 1023 said that the court "should not arrogate to itself the decision how a foreign court should determine the matter". Poole J determined that by not qualifying that D was prevented from impeding, *save on the grounds of lawful cause within proceedings*, the domestication of the court's orders, he had arguably overreached the court's jurisdiction. Therefore, the consequences of the order were not made clear to D at the hearing.

The judge was therefore persuaded that it would be wrong to proceed to a finding of contempt of court on the basis of breach of paragraph 10 as, in contempt proceedings, any such doubts about the ambit of the order and D's understanding and awareness of its ambit should be resolved in favour of D (at [23]-[24]).

As such, the issue for the court to decide was whether D's breach of paragraph 9 by way of selling the ML1 amounted to contempt of court.

Service

The relevant events that Poole J took into account when considering the issue of service were (at [13]-[16]):

- a. That Mrs Justice Gwynneth Knowles made an order on 8 August 2024 providing, at paragraph 27, that "service of all documents within these proceedings, including this order and the accompanying application, upon the respondent by email at [redacted email address] shall constitute good service upon the respondent" within these proceedings.
- b. D did not appeal that order for alternative service and continued to communicate using that email address.
- c. D was present, by remote link, as a litigant in person at the hearing before Poole J on 28 March 2025 and was fully aware of the orders made including those at paragraphs 9 and 10 of the order.
- d. Whilst he was not served personally with the order, he was served by email at the address at which Gwynneth Knowles J had ordered service could be effected.
- e. A set out the order of Gwynneth Knowles J as part of her application for committal which is the subject of this judgment.

The Law

In his argument that he was not in contempt because the order of 28 March 2025 was not personally served on him nor was there an effective order for alternative service, D relied on Mostyn J's comments in *Ahmed v Khan*, as follows (emphasis added) (at [17]):

*"[92] In my judgment, **removal of the fundamental safeguard in contempt proceedings of personal service of the original order is only properly achieved if the order allowing, say, email service of the original order states on its face that personal service of that order is waived** in accordance with FPR rule 37.4(2)(d) for the purposes of any subsequent contempt*

proceedings. The disclosure order of 13 December 2021 does not say that. I cannot accept that a routine disclosure order, made on the papers as box work, a term of which provides for email service of the order, has the effect of depriving a third-party discloser of this vital procedural safeguard in subsequent contempt proceedings, unless the court has specifically so provided in the order.

*[93] It is my conclusion, notwithstanding the terms of para 6 of the disclosure order, that **if the father wanted to pursue contempt proceedings against Mr Khan, he had to serve him personally with the disclosure order. He did not do so, and for this additional reason the contempt application must be struck out.***

However, Poole J disagreed with this analysis that an order for alternative service is only effective for the purpose of any later contempt proceedings if it says on its face that personal service is waived for the purposes of any subsequent contempt proceedings.

Poole J set out the procedural rules regarding alternative service as follows (at [10]-[12]):

FPR r37.4(2) provides that a contempt application must include statements of:

- a) the nature of the alleged contempt ...*
- b) the date and terms of any order allegedly breached or disobeyed;*
- c) confirmation that any such order was personally served, and the date it was served, unless the court of the parties dispensed with personal service.*
- d) if the court dispensed with personal service, the terms and date of the court's order dispensing with personal service.*

FPR r6.19(1) provides that:

"Where it appears to the court that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Part, the court may direct that service is effected by an alternative method or at an alternative place."

FPR r6.35 provides that r6.19 applies to "any document in proceedings as it applies to an application for a matrimonial or civil partnership order and reference to the respondent in that rule is modified accordingly."

The judge then went on to summarise his understanding of how these rules were applicable to the application before him (at [18]):

"FPR r 37.4(2)(d) does not require the Court to consider whether the procedural safeguard of personal service should be disapplied for an alleged contemnor. It provides only that "if the court dispensed with personal service", the terms and date of that order must be set out in the contempt application. It is not a provision allowing the court retrospectively to dispense with personal service."

"The power to order alternative service under FPR r6.35 and r6.19 exists whether or not the respondent or recipient of a served order later becomes a defendant in contempt proceedings. I can find no provision in the CPR or FPR, nor have I been directed to any authority to the effect that unless an order for alternative service expressly specifies that it is effective for the purpose of any future contempt proceedings, it is not effective for those proceedings."

Decision on Service

Poole J concluded that because the order for alternative service was expressed to apply to the service of all documents in the proceedings, was validly made, and remained in force, it therefore plainly also applied to the service of the 28 March 2025 order.

When A provided a statement that personal service was dispensed with in accordance with FPR r37.4, she ensured this was effective.

Furthermore, a number of orders and other documents had been served on Mr Fuchs by email between 8 August 2024 and 28 March 2025 with no objection having been taken to that permitted mode of service.

Retrospective Waiver of a Procedural Defect

In any event, if he was wrong about the effectiveness of the 8 August 2024 order in permitting alternative service, the judge was satisfied that the court had the power to retrospectively permit alternative service in contempt proceedings.

The Law

In doing so, the judge relied upon FPR PD37A para (2) which provides:

"The court may waive any procedural defect in the commencement or conduct of a contempt application if satisfied that no injustice has been caused to the defendant by the defect."

He also relied upon Popat v Khawaja [2016] EWCA Civ 362 in which (at [26]):

"the Court of Appeal held that the first instance judge hearing a contempt application had been entitled retrospectively to dispense with personal service of an earlier order. The Court found that CPR PD81 para 16.2, which was worded in exactly the same terms as the current FPR PD37A para (2), applied."

Poole J further relied upon the judgment of Nicklin J in MBR Acres v Maher and anor [2022] EWHC 1123 (QB) [2022] 3 WLR 999, an authority he found and allowed parties to make written submissions on, citing specifically the following paragraphs:

"[116] The Court does have a wide discretion to dispense with defects in service of an injunction order. Ms Bolton submitted that the key question is whether injustice would be caused by so doing Khawaja -v- Popat [2016] EWCA Civ 362 [40]. Ms Bolton also referred to the Court of Appeal decision in Davy International Ltd -v- Tazzyman [1997] 1 WLR 1256, 1262-1266 per Morritt LJ. Tazzyman is principally authority for the proposition that the power to dispense with service of an injunction order can be used retrospectively (including mandatory injunctions), but the decision contains a useful review of the authorities on when it would be just nevertheless to dispense with the requirement that an injunction order must be served. One category, which has been long recognised in respect of prohibitory injunctions, is where the Court is satisfied that the respondent knows of the terms of the injunction, for example because s/he was in Court when the injunction was granted (e.g. Turner -v- Turner referred to at 1262E and see cases discussed in [74] above). In Hill Samuel & Co Ltd -v- Littaur (referred to at 1264B), the Court of Appeal was satisfied that the defendant "knew precisely the terms of [the] order" and that it was just in the circumstances for the Judge to have dispensed with service of the injunction order.

*[117] In my judgment the authorities show that the key question, if the Court is considering retrospectively dispensing the requirement to serve an injunction order, is whether the Court is satisfied, to the criminal standard, that the material terms of the injunction order said to have been breached were effectively communicated to the defendant. The cases show that it is possible to demonstrate this by evidence in several ways, but the objective is clear, as are the statements of principle from the ECtHR (see [94]-[96] above). What is required is knowledge of the specific terms of the order, not its general character (cf. *Hall & Co -v- Trigg* [1897] 2 Ch 219 referred to at [75] above and *Churchman* referred to at [86] above)."*

Decision on Retrospective Waiver

Given that Nicklin J was fully satisfied that the power for the court to retrospectively dispense with personal service where D was aware of the order and had an opportunity to comply with it, and Poole J had already established that D had benefited from those conditions, he concluded that he would exercise the power to waive the defect in service and to deem service by email to have been effective.

Decision

Following his earlier determination that paragraph 9 was enforceable and that service had taken effect either by way of Gwynneth Knowles J's order or retrospectively, Poole J found on the criminal standard that D was in contempt of court by selling ML1 on 25 June 2025 in breach of paragraph 9 of the order of 28 March 2025.

He the adjourned the sentencing to a date to be fixed to allow D time to prepare his mitigation, to establish the effect of the partial payments he had already made to A, and to establish that the sale of ML1 has ultimately not disadvantaged her.

Conclusion

Though this was a first instance decision of the High Court, and therefore not binding, it serves as helpful guidance on what amounts to waiver of the requirement for personal service in contempt proceedings, whether that is pre-emptive or retrospective.



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