Neutral Citation Number: [2026] CIGC (Civ) 14

Cause No: PA 1999-0004

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION
PROBATE AND ADMINISTRATION
IN THE ESTATE OF LAYMAN HOPKIN EBANKS

BETWEEN:

RONNIE EBANKS

Petitioner

-and-

(1) EFFIE MITCHELL-JOHONSON
(2) JEANNIE GREEN

Respondents

Appearances:	**Mr Ronnie Ebanks in person, with support from Ms Kathleen Ryan as his McKenzie friend**
	Ms Kattina Anglin of Perry Anglin for the First Respondent
	No appearance by or for the Second Respondent
Before:	**The Honourable Justice Jalil Asif KC**
Heard:	**31 July, 16 and 18 September 2025**
Judgment delivered:	**25 March 2026**

Civil procedure—committal for contempt—whether court can waive requirement for penal notice on order to be enforced by committal

Civil procedure—committal for contempt—whether to enforce warrant for committal or issue fresh warrant—whether compliance with order impossible—time limit for issue of warrant for committal—extension of validity of warrant for committal

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JUDGMENT

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A. Factual and procedural background

1. This matter has a long and complex procedural history, which it is necessary that I set out in order to explain the context for the hearings before me on 31 July, and 16 and 18 September 2025, and in respect of which I now give this judgment. It is also likely to be useful that I do so for the benefit of any judge in the future who may have to deal with further applications in this or any related matters.

2. In preparing this survey of the background history, I have drawn on the evidence before me and the previous written judgments in this matter of Mangatal J dated 21 September 2015 and of Williams J dated 16 October 2019.

3. The substantive proceedings are a probate and administration action concerning the estate of Mr Layman Hopkin Ebanks. Mr Ebanks died on 2 March 1992, leaving a widow and three children. Mr Layman Ebanks' children are the Plaintiff and the Respondents in these proceedings. Mr Ebanks' estate included a property at Registration Section West Bay, Block 4D, Parcel 277 ("**the Estate Property**"). Initially, letters of administration were granted in favour of Mr Ebanks' widow, Mrs Vera Ebanks. However, she died in October 1998 without having completed the administration of the estate. In 1999, Ms Mitchell-Johonson, the First Respondent, obtained a further grant of letters of administration in her favour so that she could complete the administration of Mr Ebanks' estate.

4. By 2014, Mr Ronnie Ebanks, the Plaintiff, had become dissatisfied with Ms Mitchell-Johonson's conduct as administratrix. By an originating summons dated 15 July 2014, Mr Ebanks applied to remove Ms Mitchell-Johonson as administratrix and sought an order that he be appointed as administrator in her place. At that time, Mr Ebanks was represented by Samson & McGrath and Ms Mitchell-Johonson was represented by Dinner Martin. On 15 October 2014, Williams J made interlocutory orders for Ms Mitchell-Johonson to provide an account of her dealings with Mr Layman

Ebanks' estate and accepted her undertaking not to transfer the Estate Property nor to grant any further charges over it. This latter requirement appears to have been included because Ms Mitchell-Johonson had granted a charge over the Estate Property in favour of JN Cayman to secure repayment of money she had borrowed in her personal capacity.

5. Mangatal J heard Mr Ebanks' originating summons on 12, 13 and 15 May 2015, and reserved her judgment. Mr Ebanks was an inmate at HMP Northward at the time, and the learned judge had concerns whether he was an appropriate person to be appointed as administrator for that reason. On 21 September 2015, the matter was listed before Mangatal J for judgment. Mangatal J made two Orders on 21 September 2015. The first was a Consent Order in the form of a draft that had been filed by the parties on 27 July 2015. The Consent Order is at the heart of the matters currently before the Court. So far as relevant, it provides as follows:

> *"**AND UPON THE RESPONDENT UNDERTAKING** to pay the debt owed to the Cayman Islands Government for the medical bills of Layman Hopkin Ebanks totaling CI$94,682.95*
>
> ***IT IS HEREBY ORDERED BY CONSENT that:-***
>
> 1. *[Ms Mitchell-Johonson] is removed as Administratrix of the Estate of Layman Hopkin Ebanks.*
> 2. *[Mr Ebanks] is appointed as Administrator of the Estate of Layman Hopkin Ebanks.*
> 3. *All existing charges against the Property are to be removed by [Ms Mitchell-Johonson] within 90 days of this Order.*
> 4. *Title to the property Registration Section West Bay at Block 4D, Parcel 277 ("the Property") is to be transferred from [Ms Mitchell-Johonson] into the Estate of Layman Hopkin Ebanks within 90 days of this Order or within 7 days of a Final Order, whichever date is later.*
> 5. *A new charge in favour of [Ms Mitchell-Johonson] is to be made against the Property at the time of transfer of title in such sum as the Court deems [Ms Mitchell-Johonson] to be a creditor of the Estate."*

The reference to existing charges over the Estate Property is to the charge in favour of JN Cayman granted by Ms Mitchell-Johonson.

6. The second Order made by Mangatal J on 21 September 2015 was not by consent and was Mangantal J's order on the aspects of Mr Ebanks' originating summons that remained in contention. So far as material, it provides:

> *"**AND UPON THE CONSENT ORDER** filed on 27 July 2015*

> ***AND UPON [MS MITCHELL-JOHONSON] UNDERTAKING*** *to pay the debt owed to the Cayman Islands Government for the medical bills of Layman Hopkin Ebanks totaling CI$94,682.95*
>
> ***IT IS HEREBY ORDERED that:-***
>
> 1. *[Ms Mitchell-Johonson], as at the date of the interim account of 1 March 2015, is a creditor of the Estate in the sum of CI$120,073.35*
> 2. *Costs of the action to [Mr Ebanks] from Ms Mitchell-Johonson to be taxed if not agreed on the standard basis."*

7. Mangatal J also delivered a written judgment on Mr Ebanks' originating summons on the same day. Her judgment indicates that she had ordered in May 2015 that the Second Respondent should be added to the proceedings. She records in her judgment that it was agreed by all parties that the Second Respondent had been paid out her share of the estate as a result of the transfer to her in or before 1998 of another property at Registration Section West Bay at Block 4D, Parcel 276. The Second Respondent therefore appears to have taken no part in the subsequent proceedings, although it is unclear whether she was formally removed as a party.

8. I do not have evidence before me regarding Mr Ebanks' conduct as administrator from 2015 onwards. However, he remained an inmate at HMP Northward for a large part of this period, so it is possible that this interfered with his ability to deal with the estate.

9. Mr Ebanks says that on 6 February 2019, he discovered from correspondence with the Land Registry that Ms Mitchell-Johonson had not complied with any of the requirements of the Consent Order, and that the sum charged against the Estate Property in favour of JN Cayman had increased to US $182,927. I will come back later to the reasons that Ms Mitchell-Johonson puts forward for these admitted failures on her part.

10. The judgment of Williams J dated 16 October 2019, which is the second key aspect to the matters now before me, provides the following information regarding events in 2019. On 31 July 2019, Mr Ebanks swore an affidavit in support of an application to commit Ms Mitchell-Johonson to prison for contempt of court as a result of her failure to comply with the Consent Order. Mr Ebanks' Notice of Motion was filed on 8 August 2019 and was listed for hearing on 15 October 2019. By that time, Ms Mitchell-Johonson was living in the United States of America. However, she still had Cayman

attorneys on the record as acting for her in relation this matter. On 29 August 2019, Mr Ebanks' attorneys served the Notice of Motion and affidavit in support upon Ms Mitchell-Johonson's Cayman attorneys. Ms Mitchell-Johonson's Cayman attorneys sent her a copy of the Notice of Motion by email on 10 September 2019. However, Ms Mitchell-Johonson failed to engage with them regarding their fees. On 2 October 2019, they warned her by email of the need to give her attention to Mr Ebanks' application to commit her and advised her to obtain assistance from other attorneys. Ms Mitchell-Johonson acknowledged that email.

11. On 10 October 2019, Ms Mitchell-Johonson's attorneys successfully applied to come off the record as acting for her in these proceedings. On 11 October 2019, Mr Ebanks' attorneys re-served the Notice of Motion and Mr Ebanks' affidavit on Ms Mitchell-Johonson directly by email to the email address that her former attorneys had used to reach her. On 14 October 2019, Ms Mitchell-Johonson confirmed to Mr Ebanks' attorneys that she had received the Notice of Motion and affidavit and indicated that she was applying for legal aid.

12. Mr Ebanks' Notice of Motion came before Williams J on 15 October 2019. Ms Mitchell-Johonson did not attend, whether in person or by video link, and she was not represented at the hearing. Williams J gave an extempore judgment, which was perfected on 16 October 2019.

13. Williams J summarised the relevant background, and made the following pertinent observation:

> *"4. The Final Order was filed on 21 September 2015, and therefore the date for compliance was within 90 days of 21 September 2015, sometime in December 2015, almost 3¾ years ago. As it was a consent order, Mangatal J who approved the Order and this Court are entitled to take the view that the 1st Respondent, who was represented by Counsel at that hearing, was indicating to the Court that she was willing and able to comply with the terms of the Order within the agreed time frame. No evidence has been placed by the 1st Respondent before this Court to refute that."*

He continued at paragraph 7 that:

> *"7. […] Correspondence was also received by the Petitioner's attorneys from JN Cayman's attorneys on 30 July 2019 stating that it was hoped that a sale of Block 1D, Parcel 58 would generate sufficient funds to redeem the mortgage which would leave the [Estate Property] unencumbered. […] This evidence establishes that after 21 September 2015 the 1st Respondent could and should have sold Parcel 58, which did not have negative equity, thereby releasing the charge on the [Estate Property] as agreed in the Order. She would thereby have had the ability to have the charge removed and to transfer the [Estate Property] if she had acted accordingly."*

I will refer to Ms Mitchell-Johonson's own property, which was also charged to JN Cayman, as **"Parcel 58"**.

14. Under the heading "*Procedural Formalities*" Williams J directed himself in paragraph 8 of his judgment as to the requirement for strict compliance with procedural rules, by reference to the English Court of Appeal's judgment in *Re L (A Child); In the Matter of Gous Oddin* [2016] EWCA Civ 173. Williams J then went through the efforts that had been made to bring the hearing and its seriousness to Ms Mitchell-Johonson's attention. He set out the details of the communications with Ms Mitchell-Johonson and her attorneys and was satisfied that Ms Mitchell-Johonson was aware of the hearing before him and of its serious nature, and that she was aware that she needed to address the Notice of Motion urgently and to seek legal assistance. Williams J recorded that he had checked with the Director of Legal Aid on 15 October 2019 and had been told that Ms Mitchell-Johonson did not have an outstanding application for legal aid. He also noted that Ms Mitchell-Johonson had not made any application to adjourn the hearing or to explain her non-attendance and had not provided any substantive response to the matters raised by Mr Ebanks' Notice of Motion.

15. Williams J considered carefully whether he ought to adjourn the hearing. He held that Ms Mitchell-Johonson had known of the hearing since 10 September 2019 and had failed to engage with it for five weeks, and that he was satisfied in the circumstances that it was appropriate to proceed to hear the Notice of Motion in Ms Mitchell-Johonson's absence.

16. However, it is right to record that Williams J did not note or address in his consideration of the procedural requirements the fact that the Consent Order did not include a penal notice. It is unclear from Williams J's judgment whether this was raised with him during the hearing but it seems unlikely, otherwise I feel it is likely that he would have commented upon it, if only to say why the need for a penal notice should be waived.

17. Williams J then considered the substance of Mr Ebanks' complaints and concluded that he was sure that Ms Mitchell-Johonson had failed to comply with paragraphs 3 and 4 of the Consent Order dated 21 September 2015 in that she had not removed all charges against the Estate Property within 90

days or at all and had not transferred title to the Estate Property to Mr Ebanks. In his conclusory paragraphs, Williams J said this:

> *"20. […] I find that, over the past 3¼ years, there has been ample opportunity for [Ms Mitchell-Johonson] to comply with the Order which she had agreed would and could be complied with within 90 days of 21 September 2015. Having regard to the 30 July 2019 correspondence from JN Cayman, it is evident that there was sufficient equity in the property at Block 1D, Parcel 58, which if she had sold the same, would have enabled her to comply with the Order and release the Charge and then transfer the Property. She has had the ability to comply with the Order after September 2015.*
>
> *"21. Having regard to her non-compliance with the terms of the Order over many years and having regard to the information before me, I am satisfied that [Ms Mitchell-Johonson] has wilfully failed to comply with the Order."*

18. Williams J therefore held that Ms Mitchell-Johonson should be committed to prison for contempt of court for 28 days. However, he suspended the committal for 28 days in order to give Ms Mitchell-Johonson a final opportunity to comply with the Consent Order. He also gave Ms Mitchell-Johonson liberty to apply to extend the suspension or to discharge the committal order. This was on the basis that it appeared that JN Cayman was seeking to exercise its power of sale of Parcel 58 due to Ms Mitchell-Johonson's default on her loan, which might allow the release of the charge over the Estate Property.

19. Mr Ebanks' attorneys filed the Order embodying Williams J's decision on 16 October 2019. Williams J also signed a warrant for Ms Mitchell-Johonson's committal dated 15 October 2019.

20. On 4 November 2019, Ms Mitchell-Johonson was granted legal aid limited to dealing with the application to commit her for contempt. The grant of legal aid indicates that Ms Mitchell-Johonson's application was submitted before 28 October 2019 but does not indicate precisely when it was made. Ms Mitchell-Johonson's evidence in her affidavit is that she submitted her application to the Legal Aid office on 14 October 2019. However, that is difficult to reconcile with the positive finding by Williams J on 15 October 2019, following his enquiry with the Director of Legal Aid that morning, that Ms Mitchell-Johonson had not made any application for legal aid by that date. To the extent that it may be relevant, I conclude that Ms Mitchell-Johonson submitted her application for legal aid no earlier than 14 October 2019 and, if it was submitted on 14 October 2019, it was not considered

or determined by the legal aid office until after Williams J had completed the hearing on 15 October 2019.

21. Having obtained legal aid, Ms Mitchell-Johonson engaged Phillip Ebanks as her attorney at law. On 12 November 2019, Ms Mitchell-Johonson swore an affidavit in support of an application for a further suspension of the warrant for committal stating that she had been diagnosed with cancer in March 2015 and had undergone a course of chemotherapy. She said that she had lost her job in February 2018 due to her ill health. She said she had left the Cayman Islands on 28 October 2018 to live in the USA and was applying for a green card and therefore could not leave the USA until her application had been decided. She said that, for these reasons, she had a reasonable excuse for not complying with the Consent Order. Ms Mitchell-Johonson also provided some details regarding her application for legal aid.

22. Mr Ebanks consented to Ms Mitchell-Johonson's application for a further suspension of the warrant for 28 days, which was embodied in an Order dated 15 November 2019. At the same time, Mr Ebanks exchanged correspondence with the attorneys for JN Cayman, who indicated on 26 November 2019 that JN Cayman had now obtained an updated valuation of Parcel 58 and did not agree to release its charge over the Estate Property because the value of Parcel 58 was insufficient to cover the full amount that Ms Mitchell-Johonson owed.

23. It appears that Mr Ebanks did not pursue the matter following receipt of this information until 2024. As Ms Mitchell-Johonson was not within the Cayman Islands and does not appear to have returned to the Cayman Islands since October 2019, the warrant for her committal appears never to have been executed.

24. In 2023, Mr Ebanks' attorneys successfully applied to come off the record. In April 2024, in light of the lack of progress with the matter since November 2019, the Court contacted Mr Ebanks to enquire whether he intended to pursue it and fixed a hearing on 11 July 2024 of its own motion for a review. Mr Ebanks indicated that he did intend to proceed and was seeking to obtain legal aid and legal representation. The review hearing before me on 11 July 2024 was not effective as Mr Ebanks

had not given notice of the hearing to Ms Mitchell-Johonson (or to the Second Respondent) and the court did not have any contact details for them. I suggested to Mr Ebanks that as a first step, he might wish to file and serve a Notice of Intention to Proceed given the time elapsed since the last step in the proceedings.

25. On 27 August 2024, Mr Ebanks filed a Notice of Intention to Proceed. The matter was listed for hearing on 31 October 2024, but this was again ineffective as Mr Ebanks had still not served Ms Mitchell-Johonson with the notice of hearing. On 4 November 2024, the Court notified the parties that the matter would be listed for a further hearing on 5 December 2024. At the hearing on that date, Ms Mitchell-Johonson appeared by video link from the USA and, at her request, I adjourned the matter for two months to allow her the opportunity to obtain legal advice.

26. The proceedings came back before me on 6 May 2025 for directions. Mr Ebanks appeared in person, with Ms Kathleen Ryan acting as his McKenzie friend. Ms Mitchell-Johonson was represented by Ms Kattina Anglin. I ordered that Mr Ebanks file an affidavit to support his application to enforce the warrant for committal. Ms Anglin indicated during the hearing that Ms Mitchell-Johonson wished to make an application to set aside the warrant for committal. I therefore ordered that Ms Mitchell-Johonson should issue, file and serve any such application by 10 June 2025 as well as any supporting evidence. On 27 May 2025, Ms Mitchell-Johonson filed her application to set aside the warrant for committal and supporting evidence.

27. The matter was next before me on 31 July 2025, when it was listed for a final hearing. However, it very quickly became apparent that Ms Anglin, who appeared on behalf of Ms Mitchell-Johonson, wished to argue certain grounds of challenge to the warrant for committal which were not raised in Ms Mitchell-Johonson's summons and which had not been notified to Mr Ebanks or to Ms Ryan. These related to alleged procedural defects in how the warrant was obtained from Williams J. I considered it would be unfair to Mr Ebanks to allow Ms Anglin to raise these new matters at that late stage. Ms Anglin therefore applied for an adjournment, which I granted to 16 September 2025 for Ms Mitchell-Johonson to amend her summons and ordered that Ms Mitchell-Johonson should pay the costs thrown away by the adjournment.

28. The substantive hearing therefore look place on 16 and 18 September 2025, when I reserved judgment. In the course of preparing my reserved judgment, I considered it important to provide the parties with the opportunity to make further submissions on two English cases referred to within a paragraph of the editorial notes in *The Supreme Court Practice 1999*, which was relied upon by Ms Anglin. Ms Anglin provided some further written submissions on 10 February 2026 and Ms Ryan indicated on 25 February 2026 that Mr Ebanks does not wish to make any further submissions in response.

B. The applications by the parties

29. My initial understanding from the hearings in 2024 and early 2025 was that Mr Ebanks wished to enforce the warrant for Ms Mitchell-Johonson's committal that was signed by Williams J on 15 October 2019. However, his affidavit sworn on 20 May 2025 suggests that he wishes to apply instead for a fresh warrant for Ms Mitchell-Johonson's committal. So far as material, his affidavit says:

> *"I, **Ronnie, Rodney Ebanks**, of HMP Northward Prison, make this affidavit in support of my application to commit the First Respondent, **Effie Mitchell-Johnson**, to prison for a period of 28 days or until lawfully discharged, if sooner. This application is made pursuant to a Notice of Motion dated 8 August 2019 and filed on 9 August 2019, seeking an order for the committal of the 1st Respondent for contempt of court.*
>
> *This application arises from the 1st Respondent's failure to comply with the Order of the Grand Court dated **21 September 2015** ("the Order"). Under that Order, the Court directed—by consent—that the 1st Respondent be removed as Administratrix of the Estate of the late Layman Hopkin Ebanks. At paragraph 3 of the Order, the Court specifically directed the 1st Respondent to remove all existing charges against the property registered as **West Bay Block 4D Parcel 277**, within 90 days. As of today's date, she has failed to comply with that Order.*
>
> *In my affidavit dated 31 July 2019, filed in support of the Notice of Motion, I asserted that the 1st Respondent had willfully refused or neglected to comply with the Court's directive. I repeat that assertion: the 1st Respondent has failed or refused to remove the charges as required.*
>
> *[...]*
>
> *In conclusion, I respectfully request that the Court:*
>
> 1. ***Commit the 1st Respondent to prison for 28 days** or until lawfully discharged for contempt of court;*
> 2. ***Order that all existing claims or liabilities** against West Bay Block 4D Parcel 277, arising from the 1st Respondent' s unlawful actions, be **deemed personal liabilities** of the 1st Respondent and be **removed from the Estate**."*

I will return to Mr Ebanks' application after considering Ms Mitchell-Johonson's summons.

30. Ms Anglin issued and filed Ms Mitchell-Johonson's amended summons on 7 August 2025. The grounds for relief that Ms Mitchell-Johonson specifies in her amended summons are as follows:

> *"1. The Warrant For Committal, issued by the Honourable Justice Richard Willams on 15th October 2019, be set aside on the grounds that:-*
>
> *a. The Warrant for Committal is defective due to non-compliance with:*
>
> *i. GCR O45r7, which stipulates the prerequisites to enforcement of an order under GCR O45r5, specifically that Justice Mangatal's Order dated 21 September 2015 did not have the requisite penal notice required by GCR O45 r7(4)(a), that Order being the Order the Petitioner sought to enforce by way of Warrant of Committal under GCR O 52;*
>
> *ii. The defect occasioned by the procedural irregularity set out at paragraph 1(a)(i) above is of a nature and degree that the defect is not curable.*
>
> *b. The Consent Order subsequently proved to be impossible for the Respondent to comply with.*
>
> *c. The administrator of the estate failed to take reasonable steps to discharge the mortgage at the Respondent's expense."*

31. I heard Ms Mitchell-Johonson's application to set aside the warrant for committal on 16 September 2025, when the parties did not complete their arguments, and reconvened on 18 September 2025 to complete the hearing.

C. Ms Mitchell-Johonson's application to set aside the existing warrant for committal

32. Ms Anglin, who appears on behalf of Ms Mitchell-Johonson, raises three reasons why she says the warrant for committal should be set aside. The first is that GCR O.45, r.7(4) requires that any order sought to be enforced by committal must be endorsed with a penal notice. She says, correctly, that the Consent Order approved by Mangatal J and dated 21 September 2015 is not endorsed with a penal notice.

33. The second reason that Ms Anglin puts forward is the assertion that it was impossible for Ms Mitchell-Johonson to comply with the Consent Order. The third reason advanced is that Mr Ebanks allegedly failed to pursue alternative remedies that were open to him to achieve repayment of Ms Mitchell-Johonson's debt to JN Cayman and the removal of JN Cayman's charge over the Estate Property.

C.1 The requirement for a penal notice

34. Enforcement of orders generally is governed by GCR O.45. Where the person against whom the initial order is made is a natural person, GCR O.45, r.5(1) allows enforcement of that order to proceed by way of an application for committal to prison for contempt of court. GCR O.45, r.7 sets out certain pre-conditions to enforcement under GCR O.45, r.5, including that the order to be enforced must have been served personally on the respondent and that the order must have been endorsed with a penal notice. The relevant provisions of GCR O.45, r.7 are as follows:

> *"(2) Subject to O.24, r.20(3), O.26, r.6(3), and paragraphs (6) and (7) of this rule, an order shall not be enforced under rule 5 unless —*
>
> *(a) a copy of the order has been served personally on the person required to do or abstain from doing the act in question; and*
>
> *(b) in the case of an order requiring a person to do an act, the copy has been so served before the expiration of the time within which the person was required to do the act.*
>
> *[…]*
>
> *(4) There must be indorsed on the copy of an order served under this rule a notice informing the person on whom the copy is served —*
>
> *(a) in the case of service under paragraph (2), that if the person neglects to obey the order within the time specified therein, or, if the order is to abstain from doing an act, that if the person disobeys the order, the person is liable to process of execution to compel the person to obey it;*
>
> *[…]*
>
> *(6) An order requiring a person to abstain from doing an act may be enforced under rule 5 notwithstanding that service of a copy of the order has not been effected in accordance with this rule if the Court is satisfied that, pending such service, the person against whom or against whose property it is sought to enforce the order has had notice thereof either —*
>
> *(a) by being present when the order was made; or*
>
> *(b) by being notified of the terms of the order, whether by telephone, telegram or otherwise.*
>
> *(7) Without prejudice to its powers under O.65, r.4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so."*

35. Ms Anglin accepts that the Consent Order was personally served on Ms Mitchell-Johonson. However, she argues that the requirement in GCR O.45, r.7(4) that the order must include a penal notice has not been complied with: there was no penal notice endorsed on the Consent Order. Ms Anglin contends that Williams J was therefore wrong to have authorised the warrant for Ms Mitchell-Johonson's committal on 15 October 2019, and the order for committal should be set aside because the strict requirements of GCR O.45, r.7(4) were not complied with. As I have previously indicated, the requirement for a penal notice to be endorsed on the order which is sought to be enforced is

not addressed in Williams J's judgment and I infer that it was not raised during the hearing on 15 October 2019.

36. Ms Anglin accepts that Ms Mitchell-Johonson knew of the terms of the Consent Order and knew what it was that the Consent Order required her to do. She acknowledges that Ms Mitchell-Johonson must have known that she had not complied with the Consent Order. However, Ms Anglin says that that is not the same as knowing what the potential consequences of failure to comply could be, including that Ms Mitchell-Johonson might be committed to prison for contempt. However, Ms Mitchell-Johonson's evidence is notably silent on this point. In neither her affidavit sworn on 12 November 2019, immediately following Williams J's order authorising the issue of the warrant for committal, nor in her affidavit sworn on 27 May 2025 in support of her summons which is now before me, does Ms Mitchell-Johonson say anything at all regarding her understanding of the potential consequences if she failed to comply with the Consent Order. In particular, she does not say that she was unaware or had not been advised at the time that she agreed the Consent Order that she might be subject to enforcement for breach of it and that such enforcement might take the form of committal to prison. If this were her case, then I would expect her to say so.

37. If the Consent Order simply required Ms Mitchell-Johonson to abstain from doing something, then it would be possible for Mr Ebanks to invoke GCR O.45, r.7(6) and to request that I waive the requirement for service of a copy of the Consent Order with a penal notice. However, the Consent Order imposed positive obligations upon Ms Mitchell-Johonson and so GCR O.45, r.7(6) is not available to Mr Ebanks.

38. As set out earlier in this judgment, GCR O.45, r.7(7) states:

> *"(7) Without prejudice to its powers under O.65, r.4, the Court may dispense with service of a copy of an order under this rule if it thinks it just to do so."*

This rule provides the Court with discretion to dispense with service of the order to be enforced where that is just. In my view, service is a significantly more important procedural step in terms of bringing the order to the attention of the respondent for whom committal is sought than giving the respondent notice of the potential consequences of disobedience in the form of penal notice included in an order of which they have notice or with which they have been served. It seems to me

that it is implicit from the breadth of GCR O.45, r.7(7) that the Court can dispense with the need to include a penal notice on the order to be enforced, where that is just, since the more limited waiver of the requirement for a penal notice is encompassed within the wider discretion to waive service of the order itself, including the penal notice.

39. Against that interpretation of GCR O.45, r.7(7), the editorial notes in *The Supreme Court Practice 1999* suggest the opposite is the case. Paragraph 45/7/7 of *The Supreme Court Practice 1999*, on which Ms Anglin relies, states:

> *"**Indorsement of penal notice or order**—It is a necessary condition for the enforcement of a judgment or order under r.5 by way of sequestration or committal, that the copy of the judgment or order served under this rule should have the requisite penal notice prominently indorsed thereon.*
>
> *[...]*
>
> *The Court has a discretion under O.45, r.7(6) to dispense with the failure to incorporate a penal notice in a judgment or order requiring a person to abstain from doing an act but it has no such discretion to dispense with the penal notice where the judgment or order requires the person to do an act (*Dempster v Dempster *(1990) The Independent, November 9, CA).*
>
> *The Court had no discretion to dispense with the requirement for the display on the front of the copy order in a prominent manner of the warning that disobedience would be a contempt of court punishable with imprisonment (*Moerman-Lenglet v Henshaw *(1992) The Times, November 23)."*

In the course of preparing my reserved judgment, I considered it was important to look more closely at the two cases referred to in paragraph 45/7/7 of *The Supreme Court Practice 1999*.

40. *Dempster v Dempster* (09/11/90) *The Independent*, is said by the editors of *The Supreme Court Practice 1999* to be authority that the court may dispense with a penal notice where the order to be enforced is to refrain from doing something but not where it is a mandatory order requiring the respondent to do an act. *Moerman-Lenglet v Henshaw* (23/11/92) *The Times*, appears to go further and is summarised by the editors of *The Supreme Court Practice 1999* as saying that there is no discretion to dispense with a penal notice.

41. I was able to locate these two cases on Lexis and provided copies to the attorneys in this matter. The note of *Dempster* that is available on Lexis is clearly a summary of the English Court of Appeal's judgment in that case rather than a full transcript and is of limited utility as a result. It appears from the note that *Dempster* was a Court of Appeal decision in a matrimonial case concerning access to

the children of the family, which was proceeding in the County Court. The judge made an order for the father to allow the mother access to the children, but the order did not specify a date by when the father had to comply. The order did not include a penal notice. The father refused to comply. The judge considered that he had discretion to make a committal order against the father despite the absence of a penal notice in the contact order and made such an order. The father appealed. The Court of Appeal is recorded as having held that committal cannot be ordered unless the order specifies a time for compliance, which the order in question did not. In addition, the Court of Appeal noted that the arrangements for access were in an agreement between the parties rather than being prescribed by the court and concluded that enforcement of the access arrangements was not within the scope of the committal regime for that reason. Both of these grounds more than adequately justify the Court of Appeal's decision to allow the father's appeal. Finally, the note states that:

> *"The dispensing provision contained in Ord 29, r 1(6) [of the County Court Rules] applied only to a judgment or order which required a person to abstain from doing an act. As the order had not required the father to abstain from doing anything, the order was incapable of founding a committal for breach"*

This appears simply to reiterate the effect of RSC O.45, r.7(6), which is in the same terms as GCR O.45, r.7(6). Further, and in any event, notwithstanding the reliance on the case in *The Supreme Court Practice 1999*, this aspect of the Court of Appeal's decision does not appear to be part of the *ratio decidendi* of *Dempster* having regard to the other reasons why the Court of Appeal held that a committal order could not be made on the facts. I therefore consider that *Dempster* does not assist in determining whether or not the Court can waive the requirement for a penal notice to be included on an order which is sought to be enforced by way of committal.

42. The version of *Moerman-Lenglet v Henshaw* available on Lexis does appear to be a transcript of the judgment of Chadwick J (as he then was). I am therefore inclined to give it more weight than the summary of the judgment in *Dempster*. Having seen the judgment in *Moerman-Lenglet v Henshaw*, Ms Anglin submits that if a defective penal notice cannot be saved, as Chadwick J concluded in that case, then *a fortiori* the position cannot be saved where there is no penal notice on the order at all. Ms Ryan did not wish to add to what was said on Mr Ebanks behalf /on this topic during the hearing in September 2025.

43. *Moerman-Lenglet v Henshaw* concerned the administration of an estate. The plaintiff, who was the executor, had difficulty in obtaining documents and an account from the deceased's literary executors. She obtained an order that the defendant deliver up various specified documents relating to the estate *"within seven days after service of the order upon [the defendant]"*. The plaintiff served a copy of the order on the defendant and had endorsed the order with a penal notice. However, due to a change in the Rules between the date when the order was obtained and when it was served, the plaintiff used a form of penal notice that was out of date and was incorrectly worded. In response to the plaintiff's application to commit the defendant for failure to comply with the order, the defendant raised the point that the penal notice was defective and argued that the application for committal must fail. Chadwick J explained that RSC O.45, r.7(6) was not available because the order required the defendant to do something positive rather than to refrain from doing something. Chadwick J then considered whether he should dispense with service of the order under RSC O.45, r.7(7). He concluded that he should not because the order to be enforced specified that the steps to be taken by the defendant had to be taken *"within seven days after service of the order"*. Service of the order was therefore the trigger for the defendant's obligations crystallising: dispensing with service of the order would mean that those obligations had never arisen, and there would be no breach for which the defendant could be committed. Accordingly, Chadwick J held that it would not be appropriate to dispense with service of the order under RSC O.45, r.7(7). However, it is clear that Chadwick J's decision turned on the wording of the order that was to be enforced in that case and that he was not laying down any principle or rule of law that a defective or missing penal notice will always prevent the court from waiving the requirement that the order be served or waiving the requirement that the order be endorsed with a penal notice. Notably, Chadwick J does not appear to have been asked to waive the requirement for the order to be endorsed with a penal notice as a lesser form of relief and he did not address whether that would be permissible within the wider scope of RSC O.45, r.7(7).

44. I am reinforced in the conclusion that it is possible to waive the failure to include a penal notice in the order by a passage in the judgment of HHJ Pearce in the English case of *Avery-Gee v Coppen* [2022] EWHC 2958 (Ch), which was relied on by Mr Ebanks. The learned judge said at paragraph 8:

> *"8. The following propositions are either clear from the terms of the Civil Procedure Rules or are well established in authority:*
>
> *8.1. CPR Part 81.4(2)(d) requires that any application for committal on the grounds of the alleged breach or disobeying of an order includes a statement that the order included a penal notice.*
>
> *8.2. There is no set form of words for a penal notice, though the White Book 2022 notes the wording in the previous version of CPR81: " If you the within-named [ ] do not comply with this order you may be held to be in contempt of court and imprisoned or fined or your assets seized."*
>
> *8.3. The absence of a penal notice is not necessarily fatal to the application to commit, but the non compliance with the rules can only be waived where the court is satisfied that no injustice is caused to the defendant thereby (see paragraph 81.4.4 of the White Book 2022, and in particular the judgments of Kenneth Parker J in* Serious Organized Crime Agency v Hymans *[2011] EWHC 3599 and Miles J in* Business Mortgage Finance 4 plc v Hussain *[2022] EWHC 449)."*

Paragraph 8.3 of this judgment thus indicates that the position in England now appears to mirror the conclusion that I have reached as to the law of the Cayman Islands.

45. In the present case before me, there are a number of factors that support the conclusion that it would be just to waive the requirement for a penal notice, if that is permissible, or to waive the requirement for service of the Consent Order on Ms Mitchell-Johonson. These include:

45.1 The order in question is a consent order, made by agreement between Mr Ebanks and Ms Mitchell-Johonson, where it would be unusual to include a penal notice because the assumption underlying a consent order is that the parties have agreed to and intend to comply with it.

45.2 Mr Ebanks and Ms Mitchell-Johonson were represented by attorneys at the time that the draft Consent Order was prepared in July 2015 and when it was made an order of the court on 21 September 2015. There is no question of inequality of power on either side or exploitation of Ms Mitchell-Johonson by Mr Ebanks. In addition, the two-month period between July and September 2015 provided Ms Mitchell-Johonson with ample opportunity to repent at leisure if she wished for any reason to try to back out of the terms of the draft consent order before it was made an order of the court. She did not.

45.3 The Consent Order imposed obligations on both Mr Ebanks and Ms Mitchell-Johonson. It can reasonably be inferred that Mr Ebanks and Ms Mitchell-Johonson would have been advised by their respective attorneys regarding their obligations and rights under the Consent Order,

including the possibility that action might be taken by or against them if the other party failed to comply with the terms of the Consent Order.

45.4 There was substantial compliance with the requirements of GCR O.45, r.7 by the Plaintiff apart from the presence of a penal notice on the Consent Order, which is accepted on behalf of Ms Mitchell-Johonson.

45.5 It is difficult to see that there is any prejudice to Ms Mitchell-Johonson, who has been aware of the content of the Consent Order at all times and has also known at all times that she has failed to comply with it. The most that can be said on her behalf is that she may not have appreciated that the potential consequence of that failure to comply might be her committal to prison although, as I have already noted, she does not say that herself anywhere in her evidence.

46. On the other hand, Ms Anglin has not advanced any considerations relevant to whether it would be unjust to waive the requirement for service of the Consent Order on Ms Mitchell-Johonson or to waive the requirement for the Consent Order to be endorsed with a penal notice.

47. In the circumstances, refusing to allow Mr Ebanks to seek Ms Mitchell-Johonson's committal because the Consent Order does not include a penal notice would be a triumph of form over substance.

48. I therefore conclude that it is just to exercise the power impliedly encompassed within GCR O.45, r.7(7) to waive the requirement for the Consent Order to be endorsed with a penal notice before Mr Ebanks can apply for Ms Mitchell-Johonson's committal for breach of the Consent Order. Alternatively, if that is not permissible, I would waive the requirement for a copy of the Consent Order to be served upon Ms Mitchell-Johonson pursuant to GCR O.45, r.7(7) given that it is a consent order negotiated on Ms Mitchell-Johonson's behalf by her attorneys at law, to which she freely agreed. It follows from this that I reject Ms Anglin's submission that the committal warrant should be set aside on this basis.

C.2 Impossibility of compliance

49. By way of recap, the relevant paragraphs of the Consent Order dated 21 September 2015 are as follows:

> *"3. All existing charges against the Property are to be removed by [Ms Mitchell-Johonson] within 90 days of this Order.*
>
> *4. Title to the property Registration Section West Bay at Block 4D, Parcel 277 ("the Property") is to be transferred from [Ms Mitchell-Johonson] into the Estate of Layman Hopkin Ebanks within 90 days of this Order or within 7 days of a Final Order, whichever date is later."*

50. Ms Anglin argues that at the time that Williams J made the committal order on 15 October 2019, the evidence was that JN Cayman *"hoped"* that the proceeds of sale of Parcel 58 owned by Ms Mitchell-Johonson would be sufficient to discharge the charge against the Estate Property. However, in November 2019 it became clear that the charge against the Estate Property would not be discharged because there was insufficient equity in Parcel 58 to repay the full amount that Ms Mitchell-Johonson owed to JN Cayman. Ms Anglin submits that the changes in Ms Mitchell-Johonson's circumstances, namely that she developed cancer in March 2015 and became unemployed in 2018 made it impossible for Ms Mitchell-Johonson to comply with the Consent Order. Ms Anglin relies on the statements of Briggs J (as he then was) in the English case of *Sectorguard plc v Dienne plc; Hare v Legion Group plc* [2009] EWHC 2693 (Ch) at paragraphs 32, 33 and 61:

> *"32. […] I accept the thrust of Mr Grant's second submission that failure to perform an impossible undertaking is not a contempt. The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order […]*
>
> *33. Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court.*
>
> *[…]*
>
> *61. Impossibility of performance is plainly a good cause for the release of an undertaking. If the court had known that Undertaking 5 was impossible of performance when it was proffered, it would not have accepted it, nor made an order to the same effect. […]"*

Adopting those statements, Ms Anglin submits that Williams J should not have concluded that Ms Mitchell-Johonson was in contempt and that I should not do so now.

51. I do not accept Ms Anglin's submission. My reasons for that conclusion are as follows.

51.1 The terms of the Consent Order are not conditional or qualified in any way. They impose a clear obligation on Ms Mitchell-Johonson: (a) to remove all charges that were registered against the Estate Property on 21 September 2015; and (b) to transfer title to the Estate Property to Mr Ebanks within 90 days of the Consent Order or within 7 days of a Final Order, whichever is later.

51.2 There is no evidence that the steps that Ms Mitchell-Johonson agreed to take were impossible at the time that Ms Mitchell-Johonson agreed to the Consent Order or within the 90 days following.

51.3 There is no evidence that the steps that Ms Mitchell-Johonson agreed to take were impossible at the date of the hearing before Williams J on 15 October 2019, there is simply an assertion by Ms Anglin that the equity in Parcel 58 had become insufficient to repay Ms Mitchell-Johonson's debt to JN Cayman by that date. That information, assuming it is true, does not say anything about Ms Mitchell-Johonson's ability to make up any shortfall by further borrowing, whether secured over any other property that she owned at that time or unsecured, in order to achieve the discharge of the charge against the Estate Property and, then, its transfer to Mr Ebanks.

51.4 Subject to what is said below regarding JN Cayman apparently foreclosing on the Estate Property, there is no evidence that the steps that Ms Mitchell-Johonson agreed to take are impossible even now. Ms Mitchell-Johonson has not provided any details regarding her financial circumstances beyond her assertion that she is unemployed. She has not provided any information about her income, outgoings, savings and liabilities since September 2015. She has not provided any information about her ability between September 2015 and September 2025 to borrow funds from other sources, if necessary, in order to repay her debt to JN Cayman, whether in whole or in part, to discharge the charge in its favour against the Estate Property. By analogy with cases where a litigant asserts impecuniosity in the context of security for costs, in my view it is incumbent on Ms Mitchell-Johonson to provide full, detailed and cogent evidence of her lack of means if she wishes to persuade the court that it is impossible for her to do what she agreed in September 2015 to do and agreed should be made

the subject of the Consent Order. Ms Anglin asserted in submissions that Ms Mitchell-Johonson could not have borrowed money from a bank or commercial lender because she was unemployed and undergoing treatment for cancer, and that Ms Mitchell-Johonson could not borrow from friends or family for the same reason. However, there is no evidence before me to support the assertion that Ms Mitchell-Johonson could not raise sufficient funds from other sources, particularly that she could not borrow from friends or family.

51.5 In my judgment, whilst it might be financially difficult for Ms Mitchell-Johonson to find the funds to discharge the charge against the Estate Property, that is not the same as saying that compliance with the Consent Order by Ms Mitchell-Johonson is impossible in the sense meant by Briggs J in *Sectorguard*. The dispute in that case concerned the alleged misuse of a confidential customer list owned by H's former employer. H had given an undertaking to disclose the identity of all customers on the list that had been contacted by his new company. At the time that H gave that undertaking, he believed it was possible to provide that information. However, he later discovered that the two employees who had been responsible for writing to the customers had not kept any record of the letters sent out and had destroyed the copies of the customer list in their possession (as demanded by H's previous employer) so that it was literally impossible for H to determine who had been contacted. That is a very different factual situation to that of Ms Mitchell-Johonson.

52. I therefore reject Ms Anglin's submission that the committal warrant should be set aside on the ground of impossibility of performance by Ms Mitchell-Johonson.

C.3 Failure to pursue alternative remedies

53. Ms Anglin submits that Mr Ebanks could and should have issued a writ of sequestration of Ms Mitchell-Johonson's assets pursuant to GCR O.45, r.4 instead of applying to commit her to prison for contempt. She says that Mr Ebanks could thereby have obtained an order for sale of Parcel 58 at a time when it was possible that the proceeds of sale would have been sufficient to repay Ms Mitchell-Johonson's liability to JN Cayman and to enable the charge over the Estate Property to be discharged. Ms Anglin submits that Mr Ebanks' duty as executor to protect the assets of the estate required Mr Ebanks to pursue this course.

54. Linked with this, Ms Anglin contends that Mr Ebanks should have been collecting the rents from the Estate Property and using Ms Mitchell-Johonson's share of those rents to pay down her debt to JN Cayman in order to reduce the sum charged against the Estate Property and to allow the charge that remained against the Estate Property following the sale of Parcel 58 to be discharged.

55. I do not follow Ms Anglin's argument. GCR O.45, r.4 concerns the enforcement of judgments or orders for the delivery of goods or payment of their value. The Consent Order in this case did not concern delivery of goods at all. GCR O.45, r.4 is irrelevant. GCR O.45, r.5(1)(i) does indicate that sequestration of assets can be sought where the respondent fails to comply with other kinds of orders. On the assumption that Ms Anglin intends to rely upon that different provision, I still do not consider that it provides an answer. It is Ms Mitchell-Johonson's case that by no later than November 2019 her debt to JN Cayman had grown to exceed the value of Parcel 58, so that a sale of Parcel 58 on its own would not generate sufficient capital to discharge the charge of the Estate Property. Ms Mitchell-Johonson's case must therefore be that Mr Ebanks should have sought and obtained an order for sequestration of Parcel 58, should have sought and obtained an order for sale of Parcel 58, and should have closed a sale of Parcel 58, all before November 2019. Given that Mr Ebanks' unchallenged evidence is that he only discovered Ms Mitchell-Johonson's failure to comply with the Consent Order in February 2019, it seems highly unlikely that he would have been able to take all of these steps within 9 months. Moreover, it would be completely unfair to hold that Mr Ebanks should have taken all of these steps before November 2019 such that he is disentitled to pursue the committal of Ms Mitchell-Johonson for contempt.

56. As to Ms Anglin's argument that Mr Ebanks should have used Ms Mitchell-Johonson's share of the rents from the Estate Property to reduce or pay off Ms Mitchell-Johonson's liability to JN Cayman and to clear the charge as a result, that assumes that Ms Mitchell-Johonson had a crystallised right to receive part of the rents. However, the obligation upon an executor is to collect in the assets of the estate and to distribute those to the beneficiaries once that has been done. I do not consider that Ms Mitchell-Johonson had any crystallised right to receive a share of the rents from the Estate Property, such that she can complain that Mr Ebanks should have used those rents to repay her debt to JN Cayman. In any event, Mr Ebanks responds, and copies of the correspondence are in the bundle

to support his position, he was not able to engage with JN Cayman's attorneys because he is not Ms Mitchell-Johonson and JN Cayman's attorneys would not release any information to him regarding her debt.

57. Secondly, in terms of potential alternative relief that Ms Mitchell-Johonson says Mr Ebanks should have pursued, Ms Anglin argues that Williams J should not have made a committal order but should instead have made an order giving Ms Mitchell-Johonson additional time for compliance with the Consent Order and should have endorsed that second order with a penal notice. She says that Mr Ebanks could then have pursued enforcement of that second order by way of committal if necessary. There are three immediately obvious difficulties with this argument:

57.1 Ms Mitchell-Johonson did not make any application to Williams J for additional time to comply with the Consent Order despite being well aware of the hearing before him for five weeks and despite having been served with the materials for that hearing at least twice. It does not seem to me that Mr Ebanks was under any responsibility to ask Williams J not to order the relief that Mr Ebanks had sought in his Notice of Motion but instead to order completely different relief along the lines now contended for by Ms Anglin.

57.2 Similarly, it does not seem to me that Williams J was obliged to refuse the relief sought by Mr Ebanks on 15 October 2019 and instead to order completely different relief that Mr Ebanks was not asking for in the absence of any application by Ms Mitchell-Johonson.

57.3 Ms Mitchell-Johonson's case is that it has always been impossible for her to discharge the charge against the Estate Property due to her lack of funds. On that basis, it follows that Ms Mitchell-Johonson would still not have complied with any such renewed or extended order made by Williams J, and so it would not have made any difference to Ms Mitchell-Johonson's overall position.

58. Accordingly, I reject Ms Anglin's submission that Mr Ebanks should not have proceeded to seek enforcement of the Consent Order and that he should have pursued either or both of the alternative options proposed by Ms Anglin on behalf of Ms Mitchell-Johonson.

C.4 Whether an order for committal should have been made or should be made now

59. Ms Anglin submits, correctly, that an application for committal should be the last resort and committal is not to be ordered for trivial breaches. She refers to the English case of *Adam Phones Ltd v Goldschmidt* [1999] 4 All E.R. 486, in particular the passage in Jacob J's judgment at 495, where he said:

> *"I think, therefore, that there are cases in which even if a technical breach is proved and the respondent had mens rea, the court will none the less dismiss the application with costs in favour of the respondent. Contempt proceedings seek the imprisonment of the respondent. For any such proceeding to be instituted there must be something more involved than a mere technicality. In another division of the High Court, namely the Family Division, it has been well recognised that, in the words of Arlidge, Eady and Smith p 740: '... the process of contempt should not be invoked in aid of a civil remedy where some other method of achieving the desired result is available.'"*

However, I do not consider that Ms Mitchell-Johonson's failure to discharge the charges and to transfer title to the Estate Property to Mr Ebanks, as she agreed to do, are trivial breaches of the kind that Jacob J had in mind. To the contrary, I consider that they are significant breaches in that:

59.1 Ms Mitchell-Johonson was (and is) in breach of a consent order, which she had agreed that the court would make and which she would perform, which is an important aggravating factor;

59.2 the Consent Order was agreed to correct wholly inappropriate conduct by Ms Mitchell-Johonson during her appointment as administrator of Mr Layman Ebanks' estate, which appears to involve a serious breach of duty in that she created a charge over the Estate Property to secure her own personal indebtedness to JN Cayman;

59.3 there is no good explanation for Ms Mitchell-Johonson's failure to do what she agreed to do, namely to discharge the charge in favour of JN Cayman and to transfer the Estate Property to Mr Ebanks within 90 days, and her resulting breach of the Consent Order: whilst I appreciate that Ms Mitchell-Johonson developed cancer and subsequently, in 2018, lost her job, that does not explain her failure to attend to the matter during 2015-2018;

59.4 Ms Mitchell-Johonson's breach spanned a period of 3¾ years up to the date of Williams J's committal order; and Ms Mitchell-Johonson has still not complied with the Consent Order more than 10 years after she agreed to it;

59.5 Ms Mitchell-Johonson's breach has affected the administration of Mr Layman Ebanks' estate – I consider there is a public interest in ensuring that the estates of deceased persons are promptly and efficiently administered, so that the estate can be finalised and the beneficiaries can receive their proper entitlements promptly;

59.6 Ms Mitchell-Johonson's breach has had a significant financial impact on the value of Mr Layman Ebanks' estate as a result of the interest accruing in favour of JN Cayman and eroding the value of the estate, with a corresponding effect on the value to be received by the other beneficiaries of the estate; it is at least questionable whether Ms Mitchell-Johonson is in a financial position to make good those losses to the estate and it appears probable that she is not given the nature of her position in response to Mr Ebanks' complaints about her breach of the Consent Order.

60. Secondly, Ms Anglin relies on the events that apparently occurred in connection with the case of *Adams v Mendoza* (unreported, 17/05/22) as a justification why this court should not make a committal order. Briefly, Walters J (Acting) made a committal order against Mr Mendoza on 17 March 2022 for seven days for breach of an order within the civil proceedings between Mr Adams and Mr Mendoza. According to an article on the Cayman News website, on which Ms Anglin relies, when Mr Mendoza surrendered at Fairbanks Detention Centre, the RCIPS raised concerns about the order because no charge or criminal offence was listed on the documents. The RCIPS then took Mr Mendoza to HMP Northward, where the Governor of the prison apparently refused to admit him without a charge on the warrant. Mr Mendoza is said to have been taken back to Fairbanks Detention Centre. He was then released after the RCIPS sought advice from the Office of the Director of Public Prosecutions.

61. Ms Anglin says that Ms Mitchell-Johonson should similarly not be subject to committal to prison. She says that the warrant issued by Williams J fails to state the charge on which Ms Mitchell-Johonson is to be imprisoned. Ms Anglin submits that Ms Mitchell-Johonson will therefore not be required to serve any sentence imposed, as was the case with Mr Mendoza.

62. If the report on the Cayman News Service website regarding Mr Mendoza is factually accurate then it demonstrates a shocking lack of understanding and knowledge on the part of the RCIPS, the Governor of HMP Northward and/or the Office of the Director of Prosecutions regarding the powers of a judge of the Grand Court to commit persons to prison for a civil contempt of court. The duty of the RCIPS and the Governor of HMP Northward to comply with orders made by the Grand Court unless and until they are set aside should not be open to debate. I am confident that, if provided with a warrant for committal for contempt authorised by a Grand Court Judge, the RCIPS and the Governor of HMP Northward will perform the tasks necessary to put that order into effect. If they do not, then they will be answerable to the Grand Court and, I am sure, would be required to attend forthwith to explain their failure to do so.

63. Accordingly, I reject Ms Anglin's submission that Ms Mitchell-Johonson would not have to serve any sentence of imprisonment for contempt as a result of enforcement of the warrant authorised by Williams J or of any warrant for committal that the Grand Court was minded to authorise now.

C.5 Summary of conclusions on Ms Mitchell-Johonson's objections to enforcement of Consent Order by committal

64. In summary:

64.1 I reject Ms Mitchell-Johonson's case that the absence of a penal notice on the Consent Order was a fatal procedural failure that means that Williams J could not properly and should not have made the committal order dated 15 October 2019 and that I should set it aside. I accept that GCR O.45, r.7(4) requires that an order to be enforced by way of committal should be endorsed with a penal notice. However, the court has power to waive that requirement pursuant to GCR O.45, r.7(7) either: (a) by way of an implied power to waive the absence of a penal notice encompassed within the broader power given to the court by that rule to waive service of the order in question; or (b) as a result of the direct operation of the power to waive service of the order. On any view, this is an appropriate case to exercise that power to waive the formal defect in the Consent Order.

64.2 I reject Ms Mitchell-Johonson's case that it was impossible for her to comply with the Consent Order such that she should be excused from the consequences of her failure to do so. At least until about October 2019, there is no evidence from Ms Mitchell-Johonson, on whom the burden lies, to show that she could not have borrowed money from others, so far as needed, in order to repay JN Cayman sufficient to release the charge over the Estate Property and so that Ms Mitchell-Johonson could transfer title to the Estate Property to Mr Ebanks.

64.3 I also reject Ms Mitchell-Johonson's case that Mr Ebanks should have pursued one of the alternative remedies identified by Ms Mitchell-Johonson rather than seek to enforce the Consent Order.

C.6 Three different difficulties with enforcing the committal order now

65. However, my rejection of Ms Mitchell-Johonson's case in opposition to enforcement of the committal warrant does not mean that Mr Ebanks is now free to enforce the committal warrant or to obtain the grant of a new committal warrant. There are three reasons for this, one of which is procedural, which raises two sub-issues, and two of which are substantive.

66. The first procedural issue was identified only during oral argument on 18 September 2025, and did not feature in the parties' skeleton arguments. It is that GCR O.46 limits the validity of a writ of execution, which includes a warrant for committal. GCR O.46 is relevant in two different ways. The first is that GCR O.46, r.8 provides that a writ of execution is only valid for 12 months from the date when it is sealed by the Clerk of Court unless renewed, and that any application for renewal must be made before the writ of execution has expired unless the court allows the application to be made on a later date. It seems to me that the principles to be applied in this situation should be the same as those applicable under GCR O.6, r.8 to the extension of the validity a writ of summons, which is an analogous situation. On the facts of this case and having regard to the law on renewal of a writ of summons, the Court would not now retrospectively extend the validity of the warrant for committal by 5½ years from 16 October 2020, when it expired. This is because, notwithstanding the nature of Ms Mitchell-Johonson's breaches of the Consent Order, there is no good reason for Mr Ebanks' delay from October 2019 until December 2024 in seeking to enforce the warrant for committal or failing promptly to seek an extension to its validity.

67. The second aspect of GCR O.46 that prevents the issue of a new warrant for committal is GCR O.46, r.2. This provides that a writ of execution to enforce a judgment or order will not issue more than 6 years after the judgment or order in question without the leave of the court. In this case, the order to be enforced is the Consent Order, which was made on 21 September 2015, 10½ years ago. In these circumstances, Mr Ebanks would have to show a very strong case for the appropriateness of pursuing committal before the Court would be willing to entertain an application for a new warrant for committal to be issued this long after the Consent Order was made.

68. The first substantive difficulty, which is not addressed in the written skeleton arguments, is that Ms Anglin told me in the course of oral argument that JN Cayman has now foreclosed on the Estate Property and, at the time of the oral argument, was in the course of selling it. Assuming that that is factually correct, and that the sale has now completed, it will now be impossible for that different reason for Ms Mitchell-Johonson to perform her obligation under the Consent Order to transfer title to the Estate Property to Mr Ebanks. This does seem to me to be the kind of impossibility that should lead to the Court refusing to issue a new warrant for committal.

69. In addition, my understanding is that Ms Mitchell-Johonson remains in the USA, with no intention of returning to or visiting the Cayman Islands. In those circumstances, it seems to me that it would be futile for the Court now to issue a fresh warrant for committal because Ms Mitchell-Johonson is not in the jurisdiction and is unlikely to be in the jurisdiction in the near future, with the result that it is unlikely that any warrant for committal could successfully be executed.

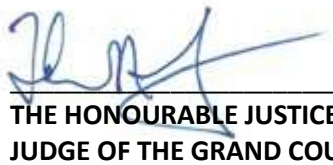
70. Returning to Mr Ebanks' desire to enforce the warrant for Ms Mitchell-Johonson's committal signed by Williams J on 15 October 2019 or to obtain a fresh warrant now, for the reasons I have already set out, my view is that both of those applications should be dismissed, both because of the time that has elapsed since the Consent Order was made and since the warrant for committal was authorised by Williams J, and because of the likely futility now of ordering enforcement of the warrant or issuing a fresh warrant. That is not to minimise Ms Mitchell-Johonson's disgraceful conduct regarding her performance of the Consent Order, but the Court must bear in mind the Rules regarding the issue of warrants of execution and the practical utility of what it is being asked to do.

In addition, even assuming that Ms Mitchell-Johonson were to return to the Cayman Islands so that a warrant for her committal could be enforced, at this stage that would not serve the purpose of encouraging her to comply with the Consent Order, it could only have punitive effect, making it of substantially less value in achieving the proper administration of Mr Layman Ebanks' estate.

71. In light of the conclusions that I have reached, it seems to me that Mr Ebanks and any other beneficiaries would be well served if Mr Ebanks now seeks to complete the administration of Mr Layman Ebanks' estate without further delay. In doing so, it seems to me that he would be entitled to set off that part of Ms Mitchell-Johonson's debt to JN Cayman that has been enforced against the Estate Property and has reduced the value of the estate correspondingly against the sum of CI $120,073.35, which Mangatal J held was the extent to which Ms Mitchell-Johonson is a creditor of the estate, plus interest. If that exceeds the amount identified by Mangatal J, then Mr Ebanks can pursue a claim against Ms Mitchell-Johonson for the balance, if so advised.

72. Within 14 days of handing down of this judgment, Mr Ebanks and Ms Mitchell-Johonson, or their attorneys, should indicate: (a) whether they wish to be heard on costs and any consequential matters, providing their agreed available dates and time estimate for a hearing; or (b) whether they will submit written submissions on those points within a further 14 days. In either case, Mr Ebanks and Ms Mitchell-Johonson, or their attorneys, should provide a draft order, agreed if possible, in advance of the hearing or with their written submissions.

Dated 25 March 2026



THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT