

THE COUNTY COURT AT STOKE-ON-TRENT

Claim No. B00TF1161

Bethesda Street  
Hanley, Stoke-on-Trent

Wednesday 8<sup>th</sup> March 2017

Before:-

HIS HONOUR JUDGE RAWLINGS

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B E T W E E N :-

THE LEGAL OMBUDSMAN

Claimant

-and-

MR. IAN JOHN THOMAS

Defendant

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J U D G M E N T  
(As Approved)

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## J U D G M E N T

### JUDGE RAWLINGS:

- 1 The purpose of my order of 10<sup>th</sup> February was really to allow Mr. Thomas yet another opportunity to comply with the court's order. He had, on 9<sup>th</sup> February written to the court, the day before the hearing, to say that he was very sorry not to have complied with the court order, he was very embarrassed, and that on receipt of the address for Mr. Jukes he would comply straight away and, therefore, my order gave him that opportunity. It set out the address to which he should send the file and the chronology and it said that he should do that within seven days of receipt of that order by him. He was personally served with my order of 10 February and he should have complied with it by 23<sup>rd</sup> February by sending to Mr Jukes his is file and a chronology of action undertaken by Mr Thomas on behalf of Mr Jukes.
- 2 He has written to the court again late yesterday asserting that he complied yesterday with the court order by sending Mr Jukes file and a chronology to Mr Jukes yesterday. He has not attended this morning. By purporting to comply yesterday and not attending this morning, there is no visibility as to whether he has complied or not and compliance with the order would be mitigation of his admitted breach of the court's order. If he did comply with the order yesterday, it does not mean that he is not in breach of the court order but it would be a powerful point in mitigation of the sanction that I impose on him for that breach. I gave Mr Thomas, the opportunity, on 10 February to comply with the court order requiring him to deliver to Mr Jukes his file and a chronology so that his compliance could be taken into account when I decided what sanction to impose on Mr Thomas. We used up court time on 10<sup>th</sup> February when I should have been dealing with his committal and I adjourned the matter over to today, so to my

mind he has had the opportunity to demonstrate that he has complied with the court's order and he has failed to purge his contempt by not doing what he said he would do in his letter of 9<sup>th</sup> February which was to provide the file and chronology straight away once he had the address of Mr Jukes. He has, by his letter of yesterday, purported to comply in such a way that I cannot know whether he has complied or not.

3 I am not, therefore, minded to adjourn yet again in order for it to be ascertained whether or not compliance has now taken place. I am minded to deal with Mr Thomas's contempt today in light of what has happened in the past and in light of, in my view, Mr. Thomas's failure to take steps towards purging his contempt by complying with and showing that he has complied with the order. That is the opportunity I gave him on 10<sup>th</sup> February and he has not availed himself of that opportunity. I am not inclined to adjourn this matter again (with the attendant loss of judicial time and cost) in order to give Mr Thomas yet another opportunity to demonstrate that he has complied with the order. Therefore, I will deal with the matter today.

4 Do you have anything to say in relation to the indication I have given?

(Solicitor for the Claimant briefly addressed the court)

5 Right. Thank you. In that case I will provide my decision in relation the question of whether or not there has been a contempt in this case by Mr. Thomas and if I find that there has been a contempt, I will deal with the appropriate sanction to be applied.

6 The first point is to say, is that Mr. Thomas has been given every opportunity to attend this morning. The time is now, having heard submissions from Mr. Hayre and having discussed the question of whether or not it is appropriate for me to deal with Mr. Thomas's contempt today, just gone a quarter to 12. The time listed for the hearing was

11am. Mr. Thomas has, therefore, been given an extra three quarters of an hour to arrive and has not done so. I am also told that there is no detail of any message having been left with the court staff to the effect that Mr. Thomas is trying to make his way to the court but has been delayed in any way. I will, therefore, first turn to the background to the matter.

7 On 19<sup>th</sup> June 2014 the Claimant, that is the Legal Ombudsman, issued a Decision in relation to a complaint made by a Mr. Jukes about the service provided to him by the Defendant, Ian John Thomas trading as a sole practitioner as Thomas & Co., Solicitors. The Legal Ombudsman recorded in his Decision that Mr. Jukes had instructed Mr. Thomas in 2004 to pursue a Claim for negligence against a solicitor that Mr. Jukes had previously instructed. It appears from the ombudsman's report that in November 2008 the Claim had gone to some form of trial but Mr. Thomas had not reported to Mr. Jukes on any developments or any outcome following that trial. Mr. Jukes complained about the lack of updating on any progress and asked that his file be released to him. On 18<sup>th</sup> February 2014 Mr. Thomas agreed with the Legal Ombudsman to release his file within 14 days and to provide a chronology to Mr. Jukes of the action that he had taken in relation to his Claim since November 2008.

8 By 19<sup>th</sup> June 2014 the file had still not been released by Mr. Thomas and no chronology had been provided, in spite of his agreement to do that. The Legal Ombudsman found that there had been poor service by Mr. Thomas and he directed that Mr. Thomas should, firstly, provide Mr. Jukes with his file and a chronology and, secondly, pay some £300 in compensation to Mr. Jukes. That decision was not complied with by Mr. Thomas. On 18<sup>th</sup> November 2014 the Legal Ombudsman applied to the court to allow him to enforce the Ombudsman's award of £300 and on 3<sup>rd</sup>

December 2014 the court issued an order for the recovery of £300 from Mr. Thomas which Mr. Thomas complied with by paying that sum on 9<sup>th</sup> January 2015. However, the chronology and the file were still not forthcoming. On 23<sup>rd</sup> March 2015 the Legal Ombudsman applied for an order that Mr. Thomas should provide Mr. Jukes with his file and with a chronology and on 25<sup>th</sup> March 2015 the court made an order that Mr. Thomas should provide Mr. Jukes with his file and with a chronology. That order was served by first class post on Mr. Thomas. Mr. Thomas again failed to comply with the order of 24<sup>th</sup> March 2016 and the Legal Ombudsman applied on 5<sup>th</sup> January 2016 for a penal notice to be attached to that order.

9 Subsequently, on 7<sup>th</sup> April 2016 an order was made by District Judge Chapman with a penal notice attached requiring that the file and chronology be sent by Mr. Thomas to Mr. Jukes within 21 days of the service of that order upon Mr. Thomas. The order was personally served on Mr. Thomas by a process server named Stephen Marlow on 17<sup>th</sup> August 2016, as appears from his Affidavit of Service dated 22<sup>nd</sup> November 2016. Mr. Thomas again failed to comply with that order notwithstanding that it had a penal notice attached to it stating that he was liable to imprisonment if he did not comply with it.

10 On 1<sup>st</sup> December 2016 the Legal Ombudsman applied for Mr. Thomas's committal to prison for failure to comply with the order of 7<sup>th</sup> April served on him on 17<sup>th</sup> August 2016. On 13<sup>th</sup> January 2017 the committal application was personally served upon Mr. Thomas as appears from an Affidavit of Service of Michael Seymour dated 20<sup>th</sup> January 2017. That application was returnable on 10<sup>th</sup> February 2017. At that stage Mr. Thomas was, therefore, aware that the Legal Ombudsman was applying for his imprisonment as a result of his failure to comply with the order of 7<sup>th</sup> April 2016.

- 11 On 9<sup>th</sup> February 2017, the day before the hearing to consider Mr. Thomas's committal Mr. Thomas wrote to the court by a letter received by fax by the court on 9<sup>th</sup> February. In that letter Mr. Thomas expressed regret saying that he had buried his head in the sand and he had no wish to continue to do so. He said that he had attempted to comply with the court's order in the week before he wrote his letter on 9<sup>th</sup> February 2017 by sending the file to Mr. Jukes but that when he approached the Legal Ombudsman indicating that he would do so, the Legal Ombudsman had asked him to hold off doing so until the Ombudsman could confirm Mr. Jukes's present address. Mr Thomas said in his letter that he stood ready to comply with the order as soon as the Legal Ombudsman provided an address and at the end of the letter he said, "Accordingly, I respectfully invite the court not to impose any sanction or, alternatively, to stay proceedings until a date after an address has been provided by the Claimant".
- 12 The hearing on 10<sup>th</sup> February 2017 took place before me. Mr. Thomas did not attend that hearing. He ought to have done so. His letter did not say that he would not attend but it appears that he considered that his letter of 9<sup>th</sup> February 2017 was a sufficient explanation of his position for the court. It was not. He ought to have attended. I could have imposed a sanction on Mr. Thomas at the hearing on 10<sup>th</sup> February 2017. He was in serious breach of the court's order of 7<sup>th</sup> April 2016 which he had received by personal service on 17<sup>th</sup> August 2016 which had a penal notice attached to it. I chose not to impose any sanction on Mr. Thomas on that date, nor to consider whether he had breached the order, in order to give him an opportunity to do what he said he would do in his letter of 9<sup>th</sup> February 2017 and that is to send the file and chronology to Mr. Jukes as soon as he was provided with Mr. Jukes's address. I wished to consider what

sanction it was appropriate to provide for in relation to Mr. Thomas and the question of his contempt once he had been given that further opportunity.

13 The terms of my order of 10<sup>th</sup> February 2017 were very specific. Firstly, I recorded that Mr. Thomas had not attended, although he had been served with the application for his committal. Secondly, I noted that, on the face of it he had not complied with the order of District Judge Chapman of 7<sup>th</sup> April 2016 by providing the chronology and file. Third, I ordered that the application to commit him to prison be adjourned over to today, Wednesday 8<sup>th</sup> March 2017 and I directed that arrangements be made to serve the order I made on that day, personally upon Mr Thomas. Fourth, I provided that within seven days of the service of my order upon Mr. Thomas, he must send the file and chronology to Mr. Jukes by recorded delivery at the address set out in that order of 14 Old Vicarage Road, Dawley, Telford, Shropshire, TF4 3NQ. Therefore, on receipt of that order Mr. Thomas would have the address for Mr. Jukes which he had said in his letter of 9<sup>th</sup> February 2017 he would send the file and chronology to Mr Jukes, immediately upon that address being confirmed to him. Fifth, I directed that within 10 days of service of the order upon Mr. Thomas he should file with the court a witness statement providing evidence that he had sent the file and chronology by recorded delivery to Mr. Jukes's address or to set out reasons why he had failed to do so. Sixth, I gave permission to Mr. Thomas to file with the court and serve upon the Claimant a statement setting out reasons as to why he had failed to comply with the order. I did not require him to provide that statement. I gave him permission to do so.

14 In bold type in the sixth paragraph of my order I provided that Mr Thomas must attend at the court on 8<sup>th</sup> March 2017 at 11am regardless of whether or not he had complied with paragraph 3 of my order and he should be prepared to provide an explanation to

the court as to why, if he accepted he had not complied with the order, he did not comply with it and to make submissions as to why he should not be imprisoned for his contempt, in failing to comply with the order. The Claimant was given permission to file a witness statement at least three days prior to today's hearing to confirm whether or not it accepted that Mr Thomas had complied with the order by sending the file and chronology.

15 The order of 10<sup>th</sup> February 2017 was served personally on Mr. Thomas on 16<sup>th</sup> February 2017 and I have an Affidavit of Service of Mr. Michael Seymour dated 17<sup>th</sup> February 2017 which confirms that. On 2<sup>nd</sup> March 2017 Elizabeth Smith, who is a paralegal employed by the Legal Ombudsman, confirmed that she had received on 24<sup>th</sup> February 2017 an e-mail from Mr. Jukes's wife confirming that they had not received any documents from Mr. Thomas. In accordance, as I have said, with my order of 10<sup>th</sup> February, those documents should have been sent by no later than the previous day, that is by 23<sup>rd</sup> February 2017, and, therefore, received by 24<sup>th</sup> February. Finally, at 4.52pm yesterday, that is 7<sup>th</sup> March 2107, Mr. Thomas faxed a witness statement to the court which purported to be in compliance with paragraph 4 of my order of 10<sup>th</sup> February 2017 saying that at 4.13 yesterday he sent the file and chronology by recorded delivery to Mr. Jukes and he exhibited a certificate of posting which appears to show that a package was sent to building number 14 and postcode TF4 3NQ which is the postcode to Mr. Jukes's address set out in my order of 10<sup>th</sup> February. I say purportedly because, as I have indicated, paragraph 4 of my order of 10<sup>th</sup> February would require that step, the sending of the file and chronology, to have taken place by 23<sup>rd</sup> February 2017. Therefore, in sending the file and chronology yesterday, if that is what Mr. Thomas has done, he was not complying with my order.



- 16 Sending or purporting to send the file and chronology yesterday is a further breach of a court order, that is my court order of 10<sup>th</sup> February 2017. It has in practical terms denied me the ability to know whether or not, even now Mr. Thomas has complied with the order of 7<sup>th</sup> April 2016.
- 17 Finally, as I have indicated, Mr. Thomas has not attended the hearing this morning, notwithstanding, as I have read out, paragraph 6 of my order of 10<sup>th</sup> February made it very clear that he must attend, whether or not he had complied or purported to comply with my order. Mr. Thomas was clearly warned that he should attend this morning in order to make submissions as to why he should not be imprisoned for his contempt and as to why he had not complied with the order. Mr. Thomas, therefore, knew on receipt of that order that I intended this morning to decide whether or not he was in contempt of court and to decide what sanction should be applied and that he should attend in order to contest the question of whether or not he had breached the order if he wished to do so and to make submissions in relation to the sanction.
- 18 As to breach of the order of 7<sup>th</sup> April 2016 I am satisfied beyond reasonable doubt of the following points. Firstly, that Mr. Thomas was served with the order of 7<sup>th</sup> April 2016 with a penal notice attached to it on 17 August 2016 (as appears from the affidavit of service of Stephen Marlow dated 22 January 2017) so he knew what it was that he was bound to do and by when and that he may be committed to prison if he failed to do so. What he had to do was to send the file and chronology to Mr. Jukes. Secondly, I am satisfied beyond reasonable doubt that Mr. Thomas has breached the order of 7 April 2016 with penal notice attached. As to breach of the order Mr. Thomas has not contended that the file does not exist. He has not contended that he has lost it. He does not contend that he is unable to create a chronology. In his letter of 9<sup>th</sup> February 2017

he accepts that he has the file and that he failed to comply with the order of 9 April 2016 by sending the file and chronology to Mr. Jukes and he accepted he did not even attempt to do so until the week before he sent that letter on 9<sup>th</sup> February 2017 (by contacting the Legal Ombudsman to confirm that he was ready to send the file/chronology).

19 As to the committal application, that was served on Mr. Thomas personally on 13<sup>th</sup> January 2017, as appears from Mr. Seymour's Affidavit of Service of 20<sup>th</sup> January 2017. My order of 10<sup>th</sup> February 2017, which included details of today's hearing date, where the hearing would take place and the time of the hearing, was served personally on Mr. Thomas on 16<sup>th</sup> February 2017 as appears from Mr. Seymour's affidavit in this case of 17<sup>th</sup> February 2017. So all of the elements are in place to show that Mr. Thomas knew what he must do, when he must do it by and he knows about the application to commit him and about today's adjourned hearing and that he must attend whether or not he had (or considered he had) complied with the order of 7 April 2016.

20 So the question I need to ask myself, as I did on the last occasion, is whether I should adjourn this hearing to find out whether or not Mr. Thomas has now as of yesterday complied with the court order by sending the file and an appropriate chronology or any chronology to Mr. Jukes. I will not adjourn again. I have given Mr. Thomas every opportunity to comply with the court order of 7 April 2016, by my order of 10<sup>th</sup> February 2017. I provided him with the address to which the file and chronology should be sent and I directed that he should do so within seven days of service of my order on him (in accordance with his letter of 9<sup>th</sup> February 2017 he said he would do so immediately on receipt of that address). Therefore, I am not inclined to give him yet another opportunity to show that he has complied with the order. If he wished to put

compliance forward in mitigation then he should have ensured that the file and a chronology were sent in accordance with my order of 10<sup>th</sup> February 2017 and not waited until the day before the hearing to purportedly send them in such a manner that I cannot be sure whether he has complied with the order or not.

21 Mr. Thomas has expressed no desire to obtain legal representation. He has simply not attended at either of the two hearings for his committal, neither that on 10<sup>th</sup> February 2017 nor today. He appears to be a solicitor, on the face of it he will be aware not only from the content of the court orders, including my order of 10<sup>th</sup> February 2017 (particularly paragraph 6) but also from his profession as to the sanctions that he faces and the seriousness of repeated breaches of court orders.

22 Having found, therefore, that there is a breach in this case I turn to the question of sanction. As to matters that make this matter serious;

(a) On any view, there has been a serious breach of the court's order to which a penal notice was attached on 7<sup>th</sup> April 2016. Mr. Thomas was served with that order on 17<sup>th</sup> August 2016. He did not comply with it, if he has at all, until at least yesterday, nearly six months after he ought to have complied;

(b) He has also failed to comply, firstly, with the Legal Ombudsman's direction of 19<sup>th</sup> June 2014 that he should deliver the chronology and file to Mr. Jukes. He has failed to comply with the court's order of 25<sup>th</sup> March 2015 that he provide the file and chronology to Mr. Jukes within 21 days of the service of that order upon him, which was served by first class post. Even when served with the committal application on 13<sup>th</sup> January 2017 he still failed to even try to comply, or purport to comply, with that order until a week before 10<sup>th</sup> February 2017 when he contacted

the Legal Ombudsman suggesting that he would provide the file and chronology once the legal ombudsman confirmed Mr. Juke's address;

- (c) Despite the assurances given by Mr. Thomas in his letter of 9<sup>th</sup> February 2017, that he would on receipt of confirmation of Mr. Jukes's address, send the file and chronology to Mr. Jukes, he was served with my order of 10<sup>th</sup> February 2017 personally on 16<sup>th</sup> February 2017 with Mr Jukes addressing in it, but failed to comply with my order by sending the file and chronology to Mr. Jukes by recorded delivery within seven days of service of that order on him, (i.e. by 23<sup>rd</sup> February 2017). Even on his own evidence he made no attempt whatsoever to do so until late yesterday afternoon;
- (d) He has not attended the hearing this morning and in terms of matters that he might put forward in mitigation of the sentence that I may impose upon him, he has put forward no matters other than those set out in his letter of 9<sup>th</sup> February 2017 to which I will return.
- (e) According to the background appearing in the Legal Ombudsman's Decision of 19<sup>th</sup> June 2014 the file and chronology relate to a negligence Claim that was apparently the subject matter of a trial in November 2008, that is a period of over eight years ago. Mr. Jukes still does not know what has become of his Claim. That is an extraordinary state of affairs and clearly raises strong suspicions, certainly in Mr. Jukes's mind but also in the mind of the court, that something has gone awry in relation to Mr. Thomas's handling of the Claim or in the way in which Mr. Thomas has accounted to Mr. Jukes for the outcome of that Claim. Sending him the file and chronology yesterday, if that is what Mr. Thomas has in fact done, does nothing to

dispel those suspicions. In any event, the effect on Mr. Jukes of being unable to ascertain the outcome of his Claim over many years is likely to have been severe;

- (f) Mr. Thomas is a solicitor and officer of the court. He can be expected to know the importance of informing his clients of the outcome of cases and, more importantly, the need to comply with court orders and the seriousness of failing to do so. As I have indicated, he has failed to comply with multiple court orders including that of 7<sup>th</sup> April 2016 to which the penal notice was attached and which is the subject matter of the application for his committal and he has failed to attend at either hearing of the committal application for which no excuse has been proffered; and
- (g) Notwithstanding the content of Mr. Thomas's letter of 9<sup>th</sup> February 2017 in which he apologised for failing to send the file and chronology and he refers to putting his head in the sand, I can only find that his breaches of the court order of April 2016 were both conscious and deliberate. Mr Thomas promised in his letter of 9 February 2017 that he would send the file and chronology to Mr Jukes as soon as he had confirmation of his address but he failed to do this when he was personally served with my order of 10<sup>th</sup> February 2017 (which contained the address) on 17<sup>th</sup> February 2017.

Those are all aggravating factors.

23. So far as mitigation is concerned, by purporting to comply yesterday in a manner that prevents the court from checking whether Mr Thomas has in fact complied, Mr. Thomas has deprived himself of the opportunity to say that he has now complied with the court's order and that that matter should be taken into account in mitigation of his breach. Mr. Thomas's letter of 9<sup>th</sup> February 2017, as I have already indicated, apologises, says that he has put his head in the sand and promises prompt compliance as soon as he has Mr.

Jukes's address. Insofar as that letter might be regarded as mitigation, it is entirely undermined by Mr. Thomas not even purporting to comply with my order of 10<sup>th</sup> February 2017 and failing to follow what in effect was a promise in his letter of 9<sup>th</sup> February 2017 to send the file and the chronology to Mr Jukes, on receipt of that address. He did so instead yesterday (if he has done so) many days after he received the order of 10<sup>th</sup> February 2017.

24. Such flagrant breaches of a court order when there is no excuse by a professional means, in my judgment, that a custodial sentence is inevitable. Having considered the seriousness of the breaches and the matters that I have already referred to, I consider that the appropriate sentence to pass is that Mr. Thomas should be imprisoned for the period of 28 days. There are, in my judgment, no grounds for suspending that order in order to ensure compliance with the court of 7<sup>th</sup> April 2016 in view of Mr. Thomas's assertion that he has already complied with the order. That will, therefore, be an immediate period of imprisonment of 28 days and I will direct that a warrant be issued for Mr. Thomas's arrest in view of his failure to attend today.

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