Neutral Citation No. [2024] EWHC 2132 (Ch)

Claim No. PT-2024-CDF-000003

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS IN WALES**
**PROPERTY, TRUSTS AND PROBATE LIST (ChD)**

**In the Estates of Cyril Hughes and Olive Hughes deceased**

Caernarfon Justice Centre
Llanberis Road
Caernarfon
LL55 2DF

7 August 2024

**Before:**

**HIS HONOUR JUDGE KEYSER KC**
**sitting as a Judge of the High Court**

**Between:**

**(1) LORNA HUGHES**
**(2) PAUL HUGHES**
**(3) PHILIP HUGHES**

**Claimants**

**-and-**

**(1) HEATHER MORGAN**
**(2) OLWENA CHIDLOW**

**Defendants**

**Rory Brown** (instructed by **Birketts LLP**) for the **Claimants**

**Ellie Twist** (instructed by **Edward Jones & Son**) for the **Defendants**

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**JUDGMENT**

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(Official Shorthand Writers to the Court)

**JUDGE KEYSER KC:**

1. This is my judgment on the claimants' committal application by Part 8 claim issued on 16 January 2024.

2. The basic facts are not disputed. The claimants and the defendants are five surviving children of Cyril and Olive Hughes, who died on 24 April 2014 and 18 February 2017 respectively. I shall refer to them by their forenames without intending any disrespect. There are two surviving sons of another child who died after his father and before his mother. Both Cyril and Olive died intestate. In the circumstances, each of the parties is entitled to one sixth of Olive's estate and each of the sons of the deceased child is entitled to one twelfth of Olive's estate. The total net value of the estates available for distribution is said to be perhaps in the region of £120,000 to £140,000.

3. On 13 April 2017, the defendants were granted letters of administration of Olive's estate. Edward Jones & Son, the firm of solicitors of which Mr Richard Williams is a partner, acted for the defendants in taking the grant. The grant showed that the net value of the estate did not exceed £35,000.

4. On 4 July 2017, the defendants were granted letters of administration of Cyril's estate, again Mr Richard Williams' firm acted. The grant shows that the net value of the estate did not exceed £60,000.

5. On 28 September 2021, on the application of the present claimants, the Probate Registry of Wales made two orders, one in each estate, in largely identical terms, requiring that the defendants should either (1) within 28 days of service of the order exhibit on oath a true and perfect inventory of the estate of the deceased and render a true and just account of the administration of the estate of the deceased or (2) write to court and the applicants within 14 days of the date of service of the order with evidence that the terms of the order had previously been met.

6. The only material difference between the two orders was that the order in respect of Olive's estate contained a costs order in favour of the applicants; the order in respect of Cyril's estate contained the same printed text for costs but it had been crossed through. The District Registrar clearly considered that one costs order was enough.

7. It is common ground that the orders were promptly and properly served.

8. On 16 May 2022, Mr Richard Williams informed the claimants' solicitors that the defendants had instructed someone to prepare estate accounts. That is consistent with my understanding of the evidence given before me today by the first defendant, which, though rather vague, was to the effect that instructions had been given to a local accountant in Llanrwst roughly some three years ago.

9. In February 2023, the claimants' new solicitors—that is, the solicitors now acting for them—wrote to the defendants' solicitors as the required inventory and accounts had not been provided. On 15 March 2023 Mr Richard Williams replied, denying that the

defendants were in breach of the orders and stating that the defendants had made all necessary documents available to the accountants but that full and accurate accounts could not be prepared without additional information from the claimants regarding certain funds held by the first claimant but the beneficial property of Olive. On 2 May 2023 the claimants' solicitor, Mr Nicholas Stotesbury, replied:

> "We are of the view that despite what you say your clients have breached the orders of the Probate Registry dated 28 September 2021. The reality is that your clients did not and do not require information from our clients in providing to the Court an inventory and account of their administration of the two estates. ...
>
> We are instructed that information relating to the Nationwide account has been previously supplied, nevertheless, with a view to moving forward, we enclose with this letter the following ..."

There was then reference to enclosed documentation relating to moneys being held by the claimants. The letter continued:

> "We believe 28 days from the date of this letter [that is, 30 May 2023] should be more than sufficient time for an accountancy firm to deal with this. Please confirm."

10. On 31 May 2023, Mr Stotesbury wrote again to Mr Williams:

> "We note that you have failed to acknowledge receipt of our letter to you of 2 May 2023. Furthermore, we have not received a substantive response let alone an inventory and account in the estates of Cyril and Olive Hughes.
>
> Against that background, please note that unless within 14 days from the date of this letter we receive the ordered inventory and account, we are instructed to proceed to enforce the orders of 28 September 2021 without further notice to you or your clients. In that eventuality, our clients will also seek recovery of their costs from your clients' personal resources."

11. Having received no response to that letter, the claimants' solicitor applied for and obtained the orders from the Probate Registry of Wales on which the present application is based. Those orders, again one in each estate, were issued on 22 August 2023. They were in fact replicas of the earlier orders, but this time each was endorsed in manuscript with a penal notice.

12. The evidence given by Mr Stotesbury, which is accepted to be correct, is that personal service of the 2023 orders was effected on 22 September 2023. By letter of 4 October 2023, Mr Stotesbury informed Mr Williams that the orders endorsing the penal notice had been served and that the defendants were required to comply by Friday 20 October 2023. In his affidavit in support of these proceedings, which was sworn on 9 January

2024, Mr Stotesbury deposed: “I have not received a response and no inventory and account has been produced by the defendant at the date of this affidavit.”

13. The claim was issued on 16 January 2024.

14. The response of the defendants was set out in the witness statement dated 23 February 2024 of Mr Richard Williams. He stated:

> "3. The defendants acknowledge that they have been unable as yet to have the inventory and accounts prepared in accordance with the order made by this Honourable Court.
>
> 4. It is the defendants' intention to ensure that the final inventory and accounts are finalised and served at the earliest opportunity and that the Court should not be required to take any further action against them by way of enforcement."

The witness statement gave no reason for or explanation of the defendants’ former inability to comply, nor of their apparent ability to comply now. As was apparent from the terms of the statement, the inventory and accounts still had not been prepared.

15. The committal application was listed for hearing on 31 May 2024.

16. In an email to Mr Stotesbury on 23 May 2024, Mr Williams said:

> "Following on from our telephoning discussion yesterday, I confirm by way of opening correspondence my clients' position. …
>
> I had anticipated that we would have completed settled estate accounts available during the course of today and served this upon yourselves. I had hoped that we could discuss a reasonable amount for the application to be disposed of, bearing in mind also that the issue of contempt is normally one for the court to adjudicate upon rather than for the parties. As things stand it is unlikely that these accounts will be available until Friday at the earliest and more likely Tuesday, which takes us uncomfortably close to the hearing date. I confirm that the legal basis upon which your application has been submitted is not disputed, and we would not seek to challenge your legal right to make an application of this nature."

17. On 30 May 2024, the day before the hearing of the committal application, the defendants made a joint affidavit. It exhibited a joint several accounts of both estates. Paragraphs 7 and 8 of the affidavit said:

> "7. We apologise for the late stage at which this account and inventory has been prepared. We instructed a firm of accountants to undertake the work in 2021 but for various reasons, they were unable to complete the work. We delivered all our bank accounts, vouchers and receipts to the

> accountants, and the accountants were unable to locate them, and this has contributed to the delay and difficulty in resolving matters. In the accounts it will be noted that there is a figure in Part II of 'Receipts' marked 'Miscellaneous Receipts' in the sum of £3,048.91. Without the information that was held by our accountants, we cannot be specific as to how this sum has been made out in its entirety, and we have pressed the accountants to take further steps to locate our papers. As and when such information becomes available, we will provide these further particulars to the estate beneficiaries without delay. We believe that this sum includes any funds held by our late mother with Barclays Bank together with various payments relating to her shareholdings, most particularly National Grid Plc.
>
> 8. We wish to see the administration of our parents' estates completed as soon as possible and 9 Hafod Ruffydd [the deceaseds' home] sold, so that the entire matter can be put behind us."

18. As the claimants had had no opportunity to consider the documents produced by the defendants, by a consent order made at the hearing on 31 May 2024 I adjourned the hearing of the committal application to a date to be fixed and ordered the defendants to pay the claimants' costs of the contempt application until and including the costs of that hearing in an agreed sum of £45,000.

19. The adjourned hearing was listed for 9 July 2024.

20. On 26 June 2024 Mr Stotesbury sent an email to Mr Williams, noting that he had not received a promised update and asking whether Mr Williams could confirm that his, Mr Stotesbury's, evidence was agreed and whether the defendants intended to file further evidence. Mr Williams replied with an apology, explaining that matters had been delayed by an issue with a client's health and that he hoped to reply substantively after a scheduled meeting on the following day. In a further email on 28 June 2024, Mr Williams indicated that the second defendant, Mrs Chidlow, had for the past fortnight been suffering from heart problems, for which she was being medicated. He said that he would confirm whether she could attend court. He said: "I am not in a position to confirm formally that we can approve your evidence. I hope that we can confirm the position early next week."

21. At the hearing on 9 July 2024 the defendants were represented by Miss Twist, who appears today. (On the first occasion they had been represented by Mr Richard Williams, who did not have a right of audience. On neither occasion did either of the defendants attend.) Miss Twist confirmed that the evidence of Mr Stotesbury was not challenged. She made an oral application to adjourn the contempt application and extend the deadline for providing evidence. I adjourned the hearing of the contempt application to today. The order provided in part:

> "3. The Defendants and each of them must attend the adjourned hearing on 7 August 2024 unless prevented from so doing by ill health.

> 4. If any Defendant is prevented from attending the adjourned hearing, she shall as soon as practicable file evidence from a medical attendant giving particulars of her prognosis, symptoms, and an explanation if it be the case what it is about those symptoms which in the medical attendant's expert opinion prevents the Defendant from attending court to answer questions. Any report should consider any adjustment that can be made to facilitate the Defendants' participation in any hearing.
>
> 5. Any application to adjourn must be supported by evidence and made as promptly as circumstances permit.
>
> …
>
> 7. The time within which the Defendants may (if so advised) file evidence in respect of the Contempt Application is extended to 4pm on 29 July 2024.
>
> 8. The Defendants shall by no later than 4pm on 5 August 2024 pay to the Claimants the costs thrown away by the late application to adjourn summarily assessed in the sum of £10,572 (inclusive of VAT)."

22. On Monday of this week, 5 August 2024, I refused an application by the defendants to adjourn the matter further on account of the ill-health of the second defendant. I also extended the time for the defendants to file evidence if they wished to do so, and as a result two statements have been filed: the first statement of the first defendant, Mrs Heather Morgan, and the fourth statement of Mr Richard Williams.

23. Mr Richard Williams' statement provides documents and information concerning the value of the estate.

24. Mrs Morgan's evidence frankly admits non-compliance with the requirements of the orders and admits that she is in contempt of court. I say at this point that her evidence generally is admissible against her sister also, but that her admission can bind only herself; indeed, I must assess whether the admission was correctly made in any event.

25. The fundamental point made by Mrs Morgan in her statement is that she and her sister allowed family tensions and conflict—that is, between themselves on the one hand and the claimants on the other—to cloud their judgment; thus, seeing this matter as a family dispute (of the sort with which one is unhappily rather too familiar), they failed properly to act in accordance with their obligations to the court and as personal representatives, albeit that they knew what those obligations were. More particularly, as regards the orders of the Probate Registry of Wales, Mrs Morgan said that on receipt of them she and her sister discussed the matter with their solicitor, Mr Richard Williams, and decided to instruct a firm of accountants in Llanrwst. She said that she had less direct contact with the professionals than did her sister, Mrs Chidlow. Earlier this year it became apparent that the accountants had lost or mislaid a substantial part of the paperwork. Mrs Morgan accepted that she could have made inquiries at an earlier stage; she said that she was not used to dealing with accountants.

26. Both Mr Williams and Mrs Morgan gave evidence before me. Mr Williams confirmed that both he and the defendants were well aware what was required by way of compliance with the orders of the Probate Registry and that there had not been compliance. He thought that the accountants had been instructed in around May 2023, after receipt of the letter dated 2 May 2023 from Mr Stotesbury and the enclosed documentation. That, of course, is significantly later than the date otherwise given, which was in around 2021.

27. I shall not recite everything that Mrs Morgan said in evidence. She confirmed that she received the original orders in 2021 and that she knew what was required of her and when it was required of her. She accepted that she did not comply herself and did not take steps to ensure that someone else did any necessary work to enable her to comply. She accepted that she had been personally served with the orders in 2023 endorsed with the penal notices. She said that she recalled receiving them and that she had understood them and had appreciated that they were a serious matter. In a rather confused passage of her evidence, she said that she could not remember whether she had checked with Mr Williams whether the orders had been complied with; she thought that she and her sister had probably spoken to him on the matter, as they normally do if things crop up, but she had no specific recollection. Similarly, she thought she had probably spoken to her sister about compliance, but she could not specifically remember doing so.

28. At one point in her evidence, Mrs Morgan said that she thought that one of the 2021 orders had been quashed because it had a line through it. She said that she had been told this by her sister, who had in turn been told it by Mr Williams. I make it clear that I do not accept that anyone ever thought that either order had been quashed. Mr Williams certainly knew that none of the orders had been quashed. His letter of 15 March 2023 refers to the costs order being "excised" from the order—that is, the order in Cyril's estate. As there is no reason at all why anyone should have believed that the orders actually made had been quashed, I do not believe that they did so believe. At all events, Mrs Morgan confirmed that she did not think that the 2023 orders had been quashed.

29. It was a feature of Mrs Morgan's evidence that she was unwilling or unable to give cogent or coherent explanations of anything. Her evidence contained a great deal of "I don't know", "I can't remember", "I can't explain" and such like. She said, for example, that she did not know why she and her sister had not instructed accountants in 2021, 2022 or 2023, although in fact her evidence appeared to be—consistently with what had previously been written—that they had indeed instructed accountants in 2021. Again, Mrs Morgan said that she and her sister had not checked the matter with the accountants, but she said that she did not know why they had not done so. And there is no explanation why, when the 2023 orders were received, it should not have been obvious that there had not been compliance with the 2021 orders. Indeed, I am quite satisfied it was always apparent to the defendants that nothing had been done to comply with the orders.

30. Mrs Morgan was cross-examined about her engagement with these proceedings. on 24 January 2024 I ordered that, if the defendants wished to adduce evidence at the hearing, they must file and serve witness statements by 23 February 2024. When asked why she had not produced such a statement, Mrs Morgan gave as the reason the unavailability of her solicitor, Mr Williams (as I understood it, on account of ill health). That makes little sense, not least because Mr Richard Williams did in fact file evidence in his own name.

Mrs Morgan was also asked why she had not attended the hearings in May and July 2024. Of course, she was not obliged to do so, but one might have thought that a committal application would have led her to turn up. Regarding the hearing in May, she said that she believed the hearing would be adjourned. That may be why Mr Richard Williams appeared on that occasion, though lacking rights of audience. Perhaps there was simply a misjudgement all round. As regards the hearing in July, Mrs Morgan said that she did not attend because her sister was unwell (which is no reason) and because she herself had a panic attack. I was not told in July of any panic attack and I have seen no medical evidence of it, though it may be that it occurred.

31. So much for the background. The committal application itself is put on the basis of non-compliance with the Probate Registry's orders made in 2023 and endorsed with the penal notices.

32. The burden of proving a contempt of court rests on the applicants.

33. Any contempt must be proved to the criminal standard of proof, namely proof beyond reasonable doubt. The court must be satisfied so that it is sure that all the essential ingredients of the contempt have been established. As Popplewell J explained in *Therium (UK) Holdings Limited v Brooke* [2016] EWHC 2421 (Comm):

> "28. Although the standard of proof is the criminal standard, it is not, however, necessary that the Court should be sure of any conclusion on a disputed piece of evidence before it can be taken into account. The Court may reach conclusions on the balance of probabilities in relation to disputed pieces of evidence. Such conclusions may be sufficient, when taken together with each other, to satisfy the criminal standard in relation to the essential ingredients which have to be proved to that higher standard."

34. In the present case, the allegations of contempt are allegations of breaches of orders of the court. The essential ingredients of such a contempt were stated as follows by Christopher Clarke J in Masri v Consolidated Contractors International Company SAL [2011] EWHC 1024 (Comm):

> "150. In order to establish that someone is in contempt it is necessary to show that (i) that he knew of the terms of the order; (ii) that he acted (or failed to act) in a manner which involved a breach of the order; and (iii) that he knew of the facts which made his conduct a breach: *Marketmaker Technology (Beijing) Co Ltd v Obair Group International Corporation & Ors* [2009] EWHC 1445 (QB)."

35. In the present case, as I have said, the first defendant, Mrs Morgan, candidly though belatedly admits that she was in breach of each order and that she is in contempt of court. In my judgment, the admission was rightly made.

36. As to the first element of the contempt, the first defendant knew the terms of the orders. The overwhelming and undisputed evidence is that the second defendant also knew the terms of the orders.

37. The second element, namely that the manner in which each defendant acted (or failed to act) involved a breach of the order, is also admitted and is evident. The defendants, who each of them had an individual responsibility for compliance, failed to file the account and inventory within the time period required by the order. That is the noncompliance. It should be said that the defendants failed by a very substantial margin to file the account and inventory in accordance with the 2023 orders: they did not do so until 30 May 2024 (assuming, as I do for present purposes, that what they then produced was compliant with the orders), which is (by my reckoning) 223 days late.

38. As regards the third matter, that the defendant in question knew of the facts which made her conduct a breach, I find that proved beyond reasonable doubt in respect of each defendant. I regard the matter as obvious. The closest that anyone has come to suggesting otherwise is Mrs Morgan's evidence that she believed, or assumed, that matters were in safe, professional hands. The very furthest the evidence is capable of going is that the defendants had a solicitor acting for them and had instructed an accountant in Llanrwst. However, I am entirely satisfied that each defendant knew full well that they had not produced the estate accounts and inventories and that no one else had done so on their behalf.

39. The truth of the matter is that, though knowing their individual and joint obligations, both as administrators and pursuant to the terms of the orders, the defendants disregarded those obligations, probably because they allowed their better judgement to be clouded by the circumstances of family conflict. In so doing, they went beyond simple disregard of their obligations as administrators and acted in a manner that constituted contempt of court.

40. Against each defendant I find the contempts as alleged to be proved.

*[After further submissions]*

**JUDGE KEYSER KC:**

41. I have to decide what, if any, penalty to impose.

42. I have been referred to the general guidance in Popplewell J's judgment in *Asia Islamic Trade Finance Fund Ltd v Drum Risk Management Limited* [2015] EWHC 3748 (Comm) at paragraph 7 and, in particular, the remarks at sub-paragraph (6):

> "The factors which may make the contempt more or less serious include those identified by Lawrence Collins J as he then was, at para 13 of the *Crystal Mews* case, namely:

(a) whether the claimant has been prejudiced by virtue of the contempt and whether the prejudice is capable of remedy;

(b) the extent to which the contemnor has acted under pressure;

(c) whether the breach of the order was deliberate or unintentional;

(d) the degree of culpability;

(e) whether the contemnor has been placed in breach of the order by reason of the conduct of others;

(f) whether the contemnor appreciates the seriousness of the deliberate breach;

(g) whether the contemnor has co-operated;

to which I would add:

(h) whether there has been any acceptance of responsibility, any apology, any remorse or any reasonable excuse put forward."

43. Taking these in turn:

(a) It seems to me that the claimants have been prejudiced. The actual contempt here only relates to the period since October 2023; I bear that in mind. However, the context of the delay in that period is relevant, because it exacerbates the prejudice. There was a long period of preceding delay since the 2021 orders. More than that: Olive Hughes died in February 2017, over seven years ago, and this is a modest estate. It really is quite ridiculous that we are where we are. There is significant prejudice, not only in terms of delay but also in terms of the time and money involved in addressing the delay.

(b) The defendants did not act (or fail to act) under pressure.

(c) I find it impossible to see that delay of this sort, in these circumstances, can be regarded as anything less than intentional or deliberate. I agree with Mr Brown's submission that the conclusion is irresistible that this was an intentional and deliberate failure to comply with the order.

(d) & (e) I take these factors together. The responsibility for compliance with the orders as well as for performance of the obligations as administrators lies squarely on the defendants' shoulders. The first defendant appears to have taken the attitude of leaving it up to her more capable sister. The second defendant has not put forward any reason at all that I can see. There has been some attempt to place the blame in part on Mr Richard Williams, the solicitor who has acted throughout for the

defendants. In her submissions in mitigation, Miss Twist rightly did not pursue that avenue. It is unnecessary for me to examine the conduct of the solicitor. If the defendants thought that their solicitor was being dilatory—and I am not suggesting that they ought to have thought that—, then they should have sought assistance from a different solicitor. It is no answer to say, "Oh well, I instructed a solicitor, and he didn't get on with it." As for the complaint that the accountants in Llanrwst lost documents, it is notable that no genuine particulars have been given, nor even evidence of communications with the accountants. I am afraid that I see a large element of passing the buck here. It may be that the accountant did lose or mislay documents; I do not know. But I do not accept that that is what has placed the defendants in breach of the orders. What has placed them in breach of the order is not doing what they were required to do. It must be emphasised that this is not a large or complicated estate. There is no excuse for what has happened.

(f) I am sorry to say that I do not see any good evidence that the defendants do appreciate the seriousness of their deliberate breach of the orders, though they may well appreciate that they are in hot water.

(g) I accept that belatedly—almost literally at the doors of the court—an account and inventory was provided in May 2024. I also proceed on the basis that that represents a proper effort at compliance, even if there are other particulars that remain to be given. So I accept that there has been cooperation, though at really the latest possible stage.

(h) There have been apologies: there was one in the joint affidavit in May 2024, and there is an apology by the first defendant in her witness statement made yesterday. However, it is a commonplace of criminal sentencing that it is easy to say "sorry"; by itself it means very little. What the court is looking for is some genuine, credible indication of remorse. Just putting "I apologise" in a witness statement or an affidavit constitutes little by way of significant mitigation. Apart from that, I see no sign of remorse, other than in the sense of being remorseful that one has found oneself in this position.

44. I have also been referred to the structured approach to sentencing that is set out in the supplement to the first edition of Grant and Mumford eds., *Civil Fraud*, at 35-098A:

> "(1) The court must consider the seriousness of the case, including the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order;
>
> (2) The court should then take account of aggravating and mitigating factors;
>
> (3) The court must then consider whether a fine would be sufficient. If it would, committal to prison cannot be justified, even if the contemnor's means are so limited that the amount of the fine must be modest;

> (4) A sentence of imprisonment should only be imposed where the court is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate. It is a measure of last resort;
>
> (5) A sentence of imprisonment must not be imposed because the circumstances of the contemnor mean that he will be unable to pay a fine;
>
> (6) When considering what period of imprisonment to impose, the court should again take into account personal mitigation;
>
> (7) It should then consider what reduction to make, if any, for any admissions made by the defendant;
>
> (8) Having decided on the term of any sentence the court will then finally consider whether that term can properly be suspended. It will take account of the fact that a suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. Generally matters of personal mitigation will have no role to play in determining the answer to this question. But the court can take account of the impact of a sentence of imprisonment on others when deciding whether or not to suspend the sentence."

45. I have considered the first stage (seriousness). The second stage (aggravating and mitigating factors) has also been dealt with, save for matters of personal mitigation, which I shall come back to.

46. I take the third matter (adequacy of a fine) and the fourth matter (threshold for custody) together. And, in considering the third matter, I bear in mind the fifth matter (prison must not be imposed just because someone is too poor to pay a fine) and, rather importantly, the eighth (that a suspended prison sentence remains a prison sentence and is not to be regarded a lesser form of punishment).

47. In the course of the hearing of the defendants' application to adjourn on Monday, I indicated that I was not minded to impose a prison sentence. Mr Brown, while not pressing for any particular form of sentence, makes the valid point that anything less, or other, than a suspended committal order lacks teeth (my expression, not his), because it does not provide the defendants with an incentive for further compliance in the administration of the estate. I see the force of that, and I think that there is much to be said in the present case for a suspended sentence of imprisonment. However, I remain of the view I previously expressed. Although my sympathy for the defendants is extremely limited, they are two relatively elderly ladies, neither of whom is in good health. Courts should avoid passing custodial sentences, even suspended sentences, on such people, if at all possible. That is even more the case when the prisons are overcrowded. While there would be some obvious merit in holding a suspended prison sentence over the defendants' heads, I do not feel compelled to such a course.

48. That leaves me with a fine as the only practical solution.

49. I have some information regarding the first defendant's means. I have none regarding the second defendant's means, although I might have wished for some. The first defendant has savings that are more than merely trivial, but they are not great (some £30,000). Her interest in her parents' estates has been wiped out by the previous costs orders, and it is likely that she will end up paying a significant amount of further costs after this hearing. I am very reluctant to do anything that will wipe out her remaining savings, because I obviously do not wish to leave her or anyone with nothing to fall back on.

50. Although in context it might seem derisory, the amount that I am going to order by a fine against each defendant is £1,500.

51. Mrs Morgan, would you just stand up, please, for a moment. I have spoken without requiring you to stand up so far.

52. I am going to impose on you a fine of £1,500. And I am going to pass the same fine on your sister.

53. Can I make clear that, as regards what remains to be done to administer the estate, you have obligations as an administrator, as does your sister, and you had jolly well better get on and do it properly, okay?

54. **MRS MORGAN:** Okay.

55. **JUDGE KEYSER:** And excuses such as, "This or that professional—I thought it was in their hands" or, "I left it up to my sister," won't wash. You understand that?

56. **MRS MORGAN:** I do.

57. **JUDGE KEYSER:** It is completely ridiculous that this has gone on for so long. It would be ridiculous even with a bigger estate, but this is a small estate with not many assets in it and not many things to be worked out. So you really must get on and do it. I am not criticising the claimants, by the way: but you have seen the attitude that the claimants now take. They lack patience with you. And you will not expect that either they or the court will exercise patience if there is any further delay. Do you understand?

58. **MRS MORGAN:** Yes, I do.

59. **JUDGE KEYSER:** Okay, you can sit down.

60. **MRS MORGAN:** Thank you.

*[After further submissions]*

**JUDGE KEYSER KC:**

61. On behalf of the defendants, it is accepted that an order for costs should follow the event.

62. In my judgment, those costs ought to be assessed on the indemnity basis rather than the standard basis. The extent to which that will make a difference in this case is unclear.

63. An award of costs on the indemnity basis of assessment is justified when there is something in the paying party's conduct that takes the case out of the norm (in the sense of an acceptable standard, not just what is common) and that the court feels appropriate to mark with a sign of disapproval.

64. I accept the three reasons advanced by Mr Brown, which, certainly cumulatively, take the case out of the norm. First is the unacceptable delay. Although it is true that this contempt does not itself consist in dilatory administration of the estate, nevertheless it is part and parcel of a failure to administer the estate, albeit a discrete part of that failure. I have already made my views known about the circumstances that have given rise to these proceedings. Second, there was a deliberate breach of the orders; I have also dealt with that. The third matter deserves some elaboration. Mr Brown puts it in terms of selective engagement with these proceedings. I shall be frank. When I saw this application for committal, I did not for one moment seriously think that we would end up here; I assumed that the issuing of the committal application would lead to prompt and proper steps to resolve the matter. That is obviously what should have happened. But here we are, more than six months later. I can scarcely believe it. I am afraid I do regard that as indicative of a failure by the defendants properly to engage with the proceedings. The proceedings might have been viewed as an opportunity for proper, albeit belated, compliance with the orders and proper engagement with the defendants' responsibility as administrators. Even at this late stage, getting the defendants seriously to engage with the proceedings has been like drawing teeth; at every stage, action has come at the last minute.

65. Accordingly, costs will be assessed on the indemnity basis.

66. Because of time constraints, and with considerable regret, I am not going to summarily assess costs. I should have like to do so, because I do not want people spending more money on a costs assessment exercise. But there is insufficient time to do a summary assessment properly, where the total costs sought, including the costs of the adjournment application, come to about £42,000.

67. I reserved the costs of the adjournment application. Miss Twist, do you resist an order for payment of those costs in principle?

68. **MISS TWIST:** Yes. There are quite a few items that we have taken issue with.

69. **JUDGE KEYSER:** I am not going to summarily assess them. I just ask the question, do you accept that you should pay the costs of the adjournment application?

70. **MS TWIST:** If you don't mind. *[After taking instructions]* Yes.

71. **JUDGE KEYSER:** Yes, thank you. Mr Brown, it seems to me that the costs of the adjournment application ought to be on the standard basis, not on the indemnity basis.

72. **MR BROWN:** My Lord, I don't oppose that.

73. **HHJ KEYSER:** Thank you.