Neutral Citation Number: [2021] EWHC 3076 (Ch)

Case No: BL-2021-MAN-000051

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
BUSINESS LIST (Ch)

Manchester Civil Justice Centre
1 Bridge Street West, Manchester M60 9DJ

Date: 17 November 2021

Before :

His Honour Judge Cawson QC
Sitting as a Judge of the High Court

- -

Between :

THE LAW SOCIETY OF ENGLAND AND WALES	**Claimant**
- and -	
MR JAKUB WOJCHIECH PAWLAK	**Defendant**

- -
- -

Tom Longstaff (instructed by **Stephensons Solicitors LLP**) for the **Claimant**
Omololu Thomas (instructed on a direct access basis) for the **Defendant**

Hearing date: 4 November 2021

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

HHJ CAWSON QC

His Honour Judge Cawson QC:

F. Introduction

1. By an amended application dated 2 July 2021 ("**the Amended Application**"), the Claimant, the Law Society of England and Wales, applies to commit the Defendant, Jakub Wojciech Pawlak, to prison for contempt of court.

2. The Claimant alleges that the Defendant acted in contempt of court by breaching the terms of:

   a. Paragraphs 1 and 3 of an Order that I made in the present proceedings on 28 May 2021 ("**the May Order**"); and

   b. Paragraph 2 of an Order that I made in the present proceedings on 7 June 2021 ("**the June Order**").

3. The May Order and the June Order were made following the intervention by the Claimant into the Defendant's legal practice in March 2021. Amongst other things, these Orders required the Defendant to deliver up client files, and/or to provide a proper explanation as to any inability to do so in a witness statement. The substance of the case of contempt against the Defendant is that he acted in breach of the Orders by failing to either deliver up client files, or provide a proper explanation as to any inability to do so.

4. At the effective final hearing of the Amended Application on 4 November 2021, the Claimant was represented by Mr Tom Longstaff ("**Mr Longstaff**") of Counsel, and the Defendant by Mr Omololu Thomas ("**Mr Thomas**") of Counsel. I am grateful to them both for their helpful submissions.

5. In this judgment I determine whether or not the Defendant acted in contempt of court as alleged. At the conclusion of the hearing on 4 November 2021 I indicated that if I found that the Defendant was in contempt of court, then I proposed to deal with penalty or sentence at the hearing at which judgment was handed down. However, on reflection, and for the reasons referred to below, I have decided that if I should find the Defendant guilty of contempt, then I should adjourn the question of penalty or sentence to a subsequent hearing.

F. Background

6. It is necessary to set out the background to the Amended Application in some detail.

7. The Claimant is the statutory regulator of Solicitors in England and Wales, delegating its regulatory powers to the Solicitors Regulation Authority **("SRA")** for the purposes of regulating and supervising the conduct of Solicitors and certain other lawyers (including prior to the exit of the UK from the European Union, Registered European Lawyers, and Foreign Lawyers practising in this jurisdiction), and protecting members of the public who have cause to deal with Solicitors and firms conducting legal work on their behalf.

8. Under s. 35 of, and Schedule 1 to the Solicitors Act 1974 (as amended) ("**the 1974 Act**"), the Claimant, in exercising such regulatory role, enjoys certain powers conferred by Part II of Schedule 1 to intervene in a practice in the circumstances therein set out. The powers exercisable on intervention as set out in Part II of Schedule 1 of the 1974 Act include the following powers under paragraph 9 of Part II, namely:

    a. To require the production or delivery to any person appointed by the Claimant of documents relating to the practice;

    b. To seek an order from the High Court requiring the production or delivery of documents; and

    c. To seek from the High Court an order authorising a person appointed by the Claimant to enter premises to search for and take possession of documents, and other property which the Claimant reasonably requires for the purpose of accessing information contained in such documents.

9. The Defendant is a Polish citizen, and a Registered Foreign Lawyer, registered with the SRA under s. 89 of the Courts and Legal Services Act 1990. He was previously, as from 23 February 2018, a Registered European Lawyer registered with the SRA under reg. 17 of the European Communities (Lawyer's Practice) Regulations 2000. In the latter capacity, the Defendant practised as sole proprietor of the law firm *"JP Legal Law"* ("**JP Legal**"), which was regulated by the SRA and traded from 85 Wellington Road South, Stockport ("**85 Wellington Road South**").

10. The Defendant commenced to practice as JP Legal on 26 June 2018. Pursuant to his SRA authorisation, he was appointed as the Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, and Money Laundering Reporting Officer. He had sole access to the bank account of JP Legal, which held client money.

11. Following the end, on 31 December 2020, of the transitional period that took effect following the exit of the United Kingdom from the European Union on 1 January 2020, the Defendant was no longer able to occupy a regulated position within JP Legal, and became a Registered Foreign Lawyer. As such he was no longer authorised to operate a law firm in England and Wales as he no longer met the eligibility requirements to practice as a recognised sole practitioner within the meaning of rules 1.1(c), 8.2(d), 9.1 and 9.4 of the SRA Authorisation of Firms Rules 2018.

12. Although the Defendant, in correspondence with the SRA in February 2021, said that he was in negotiation with a UK Solicitor to take over the Compliance Officer roles within his practice so as to enable him to apply for authorisation to practice, in paragraph 3 of a witness statement dated 4 June 2021 and paragraph 5 of a witness statement dated 18 June 2021, the Defendant has maintained that he ceased carrying out any legal activities, and closed the practice from 1 January 2021. It is, however, the Claimant's case that the Defendant has continued to provide legal services through JP Legal after 1 January 2021,

13. On 2 March 2021, a *"Notice Recommending Intervention"* was issued by an Investigating Officer for the SRA, Mr Jonathan Atherton ("**Mr Atherton**"), following an investigation that had commenced well prior to 1 January 2021, on 22 July 2020.

14. On the basis of the information reported by Mr Atherton, and having considered the Defendant's representations in respect of the Notice Recommending Intervention, on 18 March 2021 the SRA's Adjudication Panel took the decision to intervene in the Defendant's practice, on the following grounds set out in the Decision of the Adjudication Panel dated 18 March 2021 ("**the Decision**"), namely:

> *"a) There is reason to suspect dishonesty by [the Defendant] in connection with his practice which is or was a business carried on by him as a sole trader (paragraph 5(3)(ba)(ii) Schedule 14 Part II Courts and Legal Services Act 1990).*
>
> *b) The Defendant has failed to comply with the SRA Accounts Rules made under section 32 of the Solicitors Act 1974 (paragraph 5(3)(c) Schedule 14 Part II Courts in Legal Services Act 1990)*
>
> *c) It is necessary to intervene to protect the interests of clients (or former or potential clients) of [the Defendant] (Paragraph 5(3)(j) Part II Schedule 14 Courts and Legal Services Act 1990)."*

15. The Decision itself set out the reasons for deciding to intervene in considerable detail. The reasons included concerns as to whether the Defendant had, in fact, as he maintained that he had, closed his practice in an orderly way on 1 January 2021.

16. It is the Claimant's case that the decision to intervene having been made, the Defendant failed to cooperate with the intervention process, necessitating the making of an application for orders pursuant to paragraphs 9(5), (5A), and (6) and 10 of Part II of Schedule 1 the 1974 Act. The detail of the Claimant's case in respect thereof was set in the witness statement of Sean Joyce ("**Mr Joyce**") dated 14 May 2021 made in support of the Claimant's application for the above relief, that first came before me on a without notice basis on 28 May 2021. Mr Joyce is a member of Stephensons Solicitors LLP ("**Stephensons**"), the firm of Solicitors acting for the Claimant in relation to the intervention and in respect of the present proceedings. He is identified as *"Agent"* in the May Order to whose address delivery up as provided for by the May Order was to be made.

17. Mr Joyce, in this witness statement, referred, amongst other things, to:

    a. The fact that the Claimant had experienced significant difficulties in persuading the Defendant to cooperate with the intervention into JP Law, that started with an unsuccessful attempt by Ms Heather Andersen ("**Ms Andersen**"), a solicitor and intervention officer for the SRA, on 22 March 2021, to obtain the Defendant's practice files;

    b. An unsuccessful attendance at the Defendant's offices at 85 Wellington Road South on 23 March 2021, followed by a series of email exchanges between the Claimant and the Defendant during the course of which the Defendant accused the Claimant trying to break into his property, and also claimed that his practices client files had been stolen from a removal van on 19 March 2021 (although a Police report provided in relation to this alleged theft only referred to the theft of high value tools);

    c. An intervention notice attached to the Defendant's offices having been removed, and further difficulties having been experienced in accessing the Defendant's files during a further visit to the latter on 6 April 2021.

18. The relevant parts of the May Order (as made on 28 May 2021) provided as follows:

> *"1. Within 2 days of service of this Order (which may, for purposes of this paragraph, be effected by service in accordance with the Service Provisions or by any method in accordance with the Civil Procedure Rules), the Defendant must make available or deliver up to the Agent all Documents and Required Materials in his possession or control by taking the following steps:*
>
> *1.1 The Defendant must leave at the Agent's Address, for collection by the Agent:*
>
> *1.1.1 all and any client files of the Practice;*
>
> *1.1.2 a list of all files of the Practice transferred to any 3rd party;*
>
> *1.1.3 full disclosure of all financial/accounting information relating to the Practice including but*

not limited to bank statements, bank reconciliations, bookkeeping, ledgers.

1.2 The Defendant must notify the Agent in writing that he has made available or delivered up to the Agent all documents and required materials as listed at 1.1 – 1.1.3 by way of email to ajg@stephensons.co.uk

1.3 The Defendant must provide all necessary usernames and passwords to give effective access to the Required Materials that he delivers up to enable them to be searched, accessed and the contents (or data accessible therefrom) imaged by the Claimant;

1.4 If the Defendant knows or believes that any of the Documents are in the possession or under the control of any person other than the Defendant, he must notify the Agent by e-mail to ajg@stephensons.co.uk, identifying such persons (together with (if known) their addresses and contact information). Further, the Defendant shall, on the request of the Agent, deliver to any person in possession of such Document a letter of authority (in such terms as the Agent may reasonably require) instructing such persons to produce and deliver the Document to the Agent"

...

3. If the Defendant is unable to comply with any of the steps set out in paragraph 1 above, within 2 days of service of this Order (which may, for purposes of this paragraph, be effected by service in accordance with the Service Provisions or by any method in accordance with the Civil Procedure Rules), the Defendant must serve upon the Agent a signed witness statement with a statement of truth explaining the steps that he has taken to comply, why he has been unable to do so and when he will be able to do so.

...

19. In this Order, the following terms have the following meanings:

16.1 "Agent" – Sean Joyce c/o Stephensons Solicitors LLP, Wigan Investment Centre, Waterside Drive, Wigan, Greater Manchester, WN3 5BA or such other solicitor as may be appointed for the purpose by the Claimant.

16.2 "Agent's Address" – Stephensons Solicitors LLP, Wigan Investment Centre, Waterside Drive, Wigan, Greater Manchester, WN3 5BA, or such other address as may be appointed for the purpose by the Claimant.

16.3 "Documents" - all documents of whatsoever nature, whether in hard copy or soft copy, connected with the Practice or with any trust of which the Defendant is or was a trustee.

16.4 "Practice" – the practice / former sole practice of the Defendant.

..."

19. The May Order granted further relief, including under paragraphs 9(6) and 10 of Part II of Schedule 1 to the 1974 Act, and provided for a return day on 7 June 2021.

20. Paragraph 16 of the May Order permitted service thereof, and all other documentation by email to the Defendant at jakob1981p@gmail.com ("**the Defendant's Gmail Account**"), an email address that the Defendant has consistently used during the course of the present proceedings. The May Order was served on the Defendant by sending the same to him at this email address together with the other documentation required to be served therewith.

21. It is clear that the Defendant received the May Order because, on 4 June 2021, he made a witness statement headed: *"Witness Statement of Mr Jakub Wojciech Pawlak in response to the Penal Notice Order dated on 1 June 2021"*. This latter reference to 1 June 2021 is a reference to the date on which the May Order was sealed by the Court. Further, in paragraph 6 of this witness statement dated 4 June 2021 the Defendant confirmed that he had received *"the Penal Notice bundle on 3 June 2021"*.

22. Much of the witness statement dated 4 June 2021 commented upon information provided to the Claimant by one particular informant, a Chris Tang ("**Mr Tang**"), who had provided information to the Claimant that the Claimant had relied upon in deciding to intervene in the Defendant's practice and in making the application that I heard on 28 May 2021. The Defendant has strongly denied the allegations made by this informant, and the position is that Mr Tang has subsequently retracted the allegations that he made. Whilst the Claimant has some concerns regarding the circumstances in which Mr Tang came to retract his allegations, the Claimant no longer seeks to rely upon the allegations in question, and the Claimant's position is that the retraction of these allegations does not detract from its overall case against the Defendant, which the Claimant says is amply supported by other evidence. In cross examining Alistair Gregory ("**Mr Gregory**"), a partner in Stephensons, at the hearing of the Amended Application on 4 November 2021 in the circumstances referred to below, Mr Thomas put it to Mr Gregory that the allegations made by Mr Tang were the main reason or effective cause of the intervention, and the subsequent obtaining of injunctive relief, but Mr Gregory emphatically denied that this was the case.

23. It is to be noted that the Defendant has not sought to have the May Order set aside in consequence of the retraction of the relevant allegations by Mr Tang.

24. The Defendant dealt with the May Order at paragraph 34 et seq of his witness statement dated 4 June 2021. These paragraphs purport to comply with paragraph 3 of the May Order on the basis that the Defendant was unable to comply with any of the steps required by paragraph 1 of the May Order for the reasons set out therein. The Defendant specifically commented as follows as to the terms of the May Order:

    a. As to paragraph 1.1.1, he repeated his contention, previously made in correspondence, that the files were stolen on 19 March 2021 on route to a storage place, adding that he had: *"spoken to the deliveryman, Jay Ahmed on 3 June 2021*

and I have pleaded with him to search for the files and speak to the neighbours to see if they know or aware of the stolen files and to contact the police to make further enquiries." He exhibited an email sent to a Mr Ahmed on 3 June 2021.

b. As to paragraph 1.1.2, he referred to some 13 property files having been transferred to A. Vincent Solicitors ("**A. Vincent**") in London, and he stated that he had not transferred any other files to any other solicitors, adding: *"There are no other files to transfer."*

c. As to paragraph 1.3, he merely commented: *"noted"*.

d. As to paragraph 1.4, he said: *"I will comply with this paragraph. There are no other documents in possession or under the control of any person other than the Defendant."*

e. As to paragraph 2, he said: *"I am now in Poland. My last and current address is 85 Wellington Road South … I live at no other address in the UK and I have occupied 85 Wellington Road South … since October to present. My lease is still valid with the landlord in respect of 85 Wellington Road South."*

25. There were also exchanges of correspondence before and after the service of the Defendant's witness statement dated 4 June 2021, in the course of which the Defendant provided a copy of what purported to be an email dated 6 June 2021 from Jay Ahmed suggesting that, when he had reported the theft to the police, he did not mention the Defendant's files because: *"I am claiming for my tools which was in my van."*

26. At the return day on 7 June 2021, which held remotely by MS Teams, the Defendant was represented by Chima Umezuruike of Counsel ("**Mr Umezuruike**"), but the Defendant did not himself join the call.

27. By paragraph 2 of the June Order (made on 7 June 2021), I ordered as follows:

> *"2. By 4pm on 11 June 2021 the Defendant shall file a witness statement which properly complies with paragraph 3 of the Order, and which provides so far as the Defendant is able, a full and proper account (supported by documentary evidence) of:*
>
> *2.1 The Practice files, Documents (including all electronic documents) and Required Materials at the time JP Legal ceased to trade;*
>
> *2.2 Which Practice files, Documents, and Required Materials have been transferred to other practices and/or organisations, on which dates, and on which terms;*
>
> *2.3 The circumstances in which the remaining Practice files, Documents and/or Required Materials were or were to be placed into storage, and the reasons why;*
>
> *2.4 The details of alleged theft of the Practice files, Documents and/or Required Materials, the enquiries made thereafter, and the outcome of those enquiries;*

> *2.5 During the time the Defendant resided in the United Kingdom, the addresses at which he traded (and during which dates), and the addresses at which he resided (and during which dates).”*

28. I further ordered, amongst other things, that there should be a further hearing on 23 June 2021.

29. On 18 June 2021 the Claimant issued an application to commit the Defendant for contempt of court alleging that the Defendant was in breach of both the May Order and the June Order. The application was supported by an affidavit of Mr Joyce dated 18 June 2021, which further referred to a second witness statement of Mr Gregory, also dated 18 June 2021. Although the application had alleged breach of both of the Orders, the focus of the application and the evidence is support was upon a breach of paragraph 2 of the June Order based on an alleged failure of the Defendant to make a witness statement as provided for thereby.

30. The Defendant did, albeit belatedly (i.e. after 11 June 2021) and after the issue of the contempt application, file a witness statement dated 18 June 2021 that purported to comply with paragraph 2 of the June Order. This witness statement repeated the Defendant’s complaints with regard to the informant relied upon by the Claimant, Mr Tang, but at paragraphs 5 to 13 thereof purported to deal with the matters identified in paragraphs 2.1 to 2.5 of the June Order as follows:

    a. At paragraphs 5 to 8, the Defendant dealt with paragraphs 2.1 and 2.2 of the June Order as follows:

        i. He stated that he closed the practice on 1 January 2021;

        ii. He stated that the practice was dealing mainly with conveyancing and immigration matters when it was trading, and referred to the fee earner dealing with conveyancing matters moving to A. Vincent, and the 13 ongoing conveyancing matters having been transferred to that firm;

        iii. He said that he had provided the Claimant with a full list of the files transferred to A. Vincent, and that he could confirm that no other file was transferred *“to any other solicitors’ firm anywhere in the world.”*

        iv. He maintained that apart from the 13 files transferred to A. Vincent, all other files left in the practice were closed files, and he said that he decided to put the closed files and the practice’s equipment and machines, including computers, laptops, printers and all electronic devices into storage. He said that, for this purpose, he instructed Jay Ahmed of Nurin Removals by telephone on or about 18 March 2021. He said that Jay Ahmed informed him that he removed the close files and equipment from the practice’s offices in the early hours of 19 March 2021 but that … *“The removal van in which he placed the Closed Files and Equipment for onward transmission to the storage place, was burgled and the burglars removed all the Closed Files, Equipment and his tools from the said van. As I do not have a list of the Closed Files and the Equipment, I am not in a position to provide this information to this Honourable Court. There are no steps that I can reasonably take now that can assist me with providing the said this information to the court.”*

b. At paragraphs 9 to 11, he dealt with paragraphs 2.3 and 2.4 of the June Order as follows:

i. He said that the reason for placing the closed files and equipment into storage was: .. *"to keep them in a safe place as the Practice had ceased trading and I was contemplating giving up the Practice's office premises."*

ii. He said that he was not able to assist with further detail with regard to the theft of *"Practice files, Documents and/or Required Materials"* from the removal van, not having been in the van himself when the theft occurred, and he referred to Jay Ahmed's email dated 6 June 2021, stating that: *"I am not in a position to add to what Mr Ahmed has told the Police and the Claimant about the theft of the Closed Files and Equipment from his removal van on 19 March 2021."*

c. At paragraphs 12 and 13, he dealt with paragraph 2.5 of the June Order as follows:

i. He said that the practice had traded from 85 Wellington Road South from 2019 to January 2021, and he gave details of addresses in Manchester and Liverpool where the practice had traded from 2018 to 2019;

ii. He said that he always stayed in hotels in England throughout the period that the practice was trading from 2018 to January 2021, but that he was unable to assist the court with *"all the hotels I stayed in, their addresses and the period of each stay."*

31. It is the Claimant's evidence that, on 21 June 2021, it received an email from Ian Spencer ("**Mr Spencer**"), a Clerk at Exchange Chambers in Leeds, who, aware of the intervention, reported that he had received instructions from JP Legal on 27 January 2021 and 10 May 202, the emails being sent from the addresses info@jplegallaw.com and jing@jplegallaw.com. Mr Spencer reported that on the basis of these instructions, Counsel had attended a trial on 11 May 2021. Mr Spencer said that client was convicted, and that on 21 June 2021, he had been contacted by *"Ali"* to arrange attendance at a sentencing hearing. Mr Spencer said that he enquired with regard to the intervention in to JP Legal, but that he was told: *"don't worry about it, we've got funds on account, send me the details and we'll pay you."*

32. Having received this information, Mr Gregory, by an email dated 21 June 2021, sought an explanation in relation thereto from the Defendant. In the same email, Mr Gregory expressed the view that the Defendant's witness statement dated 18 June 2021 fell *"well short"* of complying with paragraph 2 of the June Order, and he raised a series of questions in respect of its contents.

33. In a response sent the following day, and with regard to the matters raised by Mr Spencer, the Defendant simply responded: *"This is inaccurate"*. However, in a further email dated 23 June 2021, the Defendant did provide a fuller explanation, asserting that the practice could not have instructed Counsel after it ceased trading in January 2021, and that he had only became aware of the matters raised by Mr Spencer that day, 22 June 2021. He said that Samuel Ali was a former employee of the practice, and that: *"He must have been using the firm's email address and details to be corresponding with third parties after I closed the Practice in January. I have*

contacted him today and warned him." He went on to say that the info@JPLegallaw.com email address had been accessible up until May 2021, and had been used by him for communication with the SRA, but that it had been *"removed permanently"* thereafter.

34. The contempt application first came before the Court on 23 June 2021, the same date as that fixed for further consideration of the injunctive relief granted to the Claimant. Given that the Court now had before it a contempt application, the hearing on 23 June 2021 was listed to be heard in public at a face-to-face hearing in order to comply with CPR 81.8(1).

35. The Defendant did not attend the hearing. Apart from claiming to be in Poland in his witness statement dated 4 June 2021, the Defendant has not advanced any reason for not attending this or any subsequent hearing of the contempt proceedings, save that at the hearing on 4 November 2021, Mr Thomas suggested that there were *"Covid considerations"* behind the Defendant remaining in Poland. However there is no evidence of the Defendant having any particular vulnerability in respect of Covid-19, and travel between the UK and Poland has been possible at all relevant times. Further, as the Defendant has himself said, he has, in the past, been used to staying in hotels in the UK for the purposes of his practice. There is therefore no good reason why the Defendant could not have attended this or subsequent hearings either in person or, at the very least, by video link. I consider that I am entitled to conclude that he has deliberately chosen not to do so.

36. The Claimants' representatives, including the Claimant's Counsel, Mr Longstaff, did attend Court on 23 June 2021. Although the Defendant did not himself attend, either in person or remotely, he instructed Mr Umezuruike to attend remotely by video link. I acceded to an application that Mr Umezuruike attend by CVP video-link, having been informed that Mr Umezuruike[1] was in Nigeria, where, as I understand it, he had been confined during the Covid-19 pandemic.

37. In the light of the development in respect of the information provided by Mr Spencer, at the hearing on 23 June 2021, the Claimant sought permission to amend its contempt application, and the evidence and statement of facts in support thereof. I acceded to this application, and gave the Claimant permission to amend the contempt application (including the evidence in support thereof and the statement of facts in support), and to include any additional grounds on which it intended to be rely, the amended application being required to be filed at court and served on the Defendant by 4pm on 2 July 2021.

38. At the hearing on 23 June 2021, and by my Order of that date, I gave further directions in relation to the Amended Application, including the following, namely that:

    a. The requirement for personal service of the May Order, the June Order and the Order dated 23 June 2021 in accordance with CPR 81.4(c)-(d) be dispensed with, and that service by email at the Defendant's Gmail Address be permitted;

    b. The Claimant be permitted pursuant to CPR 81.5 to serve Amended Application by email at the Defendant's Gmail Address, and that that email address might be

[1] Mr Umezuruike is a member of the English Bar, and a tenant at Clerksroom Chambers.

used for giving the Defendant notice of the adjourned hearing date of the Amended Application;

c. The hearing of the Amended Application should take place in public at a face-to-face hearing on the first available date after 27 August 2021;

d. There be permission to apply in the event that any legal representative should intend to appear remotely;

e. The Defendant should, not less than seven days prior to the hearing, inform the Claimant's solicitors whether it was his intention to attend the hearing, either in person or remotely;

f. Whilst the Defendant was reminded of his right to remain silent, it was provided that he should file and serve on the Solicitors for the Claimant any evidence on which he wished to rely, together with copies of all relevant documentation, by no later than 4pm on 30 July 2021;

g. The Claimant should, no later than seven days before the hearing, file and serve on the Defendant any further evidence in response, together with copies of all relevant documentation.

39. The Claimant duly filed and served the Amended Application by 4pm on 2 July 2021. The Amended Application was accompanied by a *"Brief chronological summary of facts relating to the application for contempt of court"* ("**the Contempt Summary**"), an affidavit of Mr Joyce dated 1 July 2021, and a witness statement of Mr Gregory dated 1 July 2021. The affidavit of Mr Joyce explained that it sought to incorporate the facts relied upon in Mr Gregory's witness statement dated 1 July 2021, and that Mr Joyce was making the affidavit because Mr Gregory was in self isolation as a result of a member of his immediate family testing positive for Covid-19.

40. The allegations made by the Amended Application, are most helpfully encapsulated within the Contempt Summary.

41. So far as the May Order is concerned:

a. Paragraph 18.1 of the Contempt Summary, contained a summary of the basis upon which it was alleged that the Defendant was in contempt of Court, it being alleged therein that the he was in contempt of court by virtue of him having failed:

i. To deliver up all Documents and Required Materials in his possession or control by delivering up all and any client files of the Practice and providing full disclosure of all financial/accounting information relating to bank statements, bank reconciliations, bookkeeping ledgers;

ii. To provide all necessary usernames and passwords to give effective access to the Required Materials to enable them to be searched, accessed and the contents (or data accessible therefrom) imaged by the Claimant;

iii. To notify the Agent for the Claimant of the identity of persons who are in possession or control of the Documents; and

iv. To file a signed statement explaining why he was unable to comply with paragraph 1 of the May Order, the steps taken to comply, and when he would be able to do so.

b. Earlier, in paragraph 10 of the Contempt Summary, it was alleged that the Defendant was in breach of paragraph 1 of the May Order in that he had neither delivered up to the Claimant the client files and other practice documents of JP Legal, and nor had he confirmed that they were in the possession of any third party, or provided contact details for any third party.

c. Further, earlier, in paragraph 11 of the Contempt Summary, it had been alleged that the Defendant was in breach of paragraph 3 of the May Order in that he had not filed and served a witness statement which properly explained why he was unable to comply with the requirements imposed on him by the paragraph 1 of the May Order.

d. Paragraphs 16 and 17 of the Contempt Summary alleged that the information provided by Mr Spencer on 21 June 2021 had brought it to the Claimant's attention that JP Legal continued to trade as a law firm, and that the Defendant had therefore failed to deliver up to the Claimant live practice files belonging to JP Legal which the latter continued to progress despite the intervention in March 2021. Paragraph 17 further alleged that the Defendant had failed to provide the correct details of the individuals in possession of those files, and/or who continue to represent clients on behalf of JP legal.

42. So far as the June Order is concerned:

a. Paragraph 18.1 of the Contempt Summary, contained a summary of the basis upon which it was alleged that the Defendant was in contempt of court, it being alleged therein that the he was in contempt of court by virtue of having failed to file a witness statement by 4pm on 11 June 2021 which properly complied with paragraph 3 of the May Order, providing a full account (supported by documentary evidence) of each of the matters described in sub-paragraphs 3.1 to 3.5 of the May Order;

b. Earlier, in paragraphs 14 and 15 of the Contempt Summary, it was alleged that:

i. The Defendant had failed to file a witness statement by 11 June 2021 in breach of paragraph 2 of the June Order (paragraph 14); and

ii. Whilst the Defendant did belatedly file a witness statement in purported compliance with paragraph 2 of the June Order, his witness statement dated 18 June 2021 did not comply therewith because it failed to provide a proper explanation of each of the matters set out in sub-paragraphs 2.1 to 2.5 thereof (paragraph 15).

43. The allegations were summarised in Mr Joyce's affidavit, and dealt with in more detail in Mr Gregory's witness statement dated 2 July 2021. It is fair to say that whilst this evidence does particularise the allegations of contempt as contained in the Contempt Summary, it does not, at least in clear express terms, set out why exactly it is said that the Defendant's witness statements dated 4 June 2021 and 18 June 2021

did not comply with paragraph 3 of the May Order and paragraph 2 of the June Order respectively, apart from alleging that they had failed to provide a proper explanation of the matters required to be dealt with therein.

44. In paragraphs 18 to 21 of his witness statement dated 1 July 2021, Mr Gregory dealt with the information provided by Mr Spencer on 21 June 2021, and the subsequent correspondence with the Defendant relating thereto, and paragraph 21 he said this: *"Whilst submissions will be made in due course, it is the position of the Claimant that the failure of the Defendant to deliver up the client files of JP Legal, and/or to provide the Claimant details of the individuals who are operating those files on behalf of JP Legal, is a further contempt of court"*.

45. The Amended Application, the Contempt Summary, Mr Joyce's affidavit (with exhibit) and Mr Gregory's witness statement were served on the Defendant using the Defendants Gmail Address as attachments to an email dated 2 July 2021 (2.13pm).

46. The Amended Application was initially listed to be heard on 13 October 2021.

47. The Defendant did not file or serve any evidence in response to the Amended Application, whether by 30 July 2021 as provided for by the Order dated 23 June 2021, or at all. Further, although the Defendant did state in an email dated 1 October 2021 that there was one particular issue with regard to his address that he would be raising *"in front of the judge on the day of the hearing"*, he did not, at any time prior to the hearing on 13 October 2021 formally inform the Claimant's Solicitors as to whether it was his intention to attend the hearing, either in person or remotely.

48. However, the Claimant did file and serve further evidence, namely Mr Gregory's third witness statement dated 5 October 2021. This witness statement referred to and exhibited a spreadsheet of cases that his firm have dealt with following the intervention into the Defendant's practice, showing what are said to be a total of 54 potentially live files. Further documentation was exhibited to Mr Gregory's third witness statement relating to these cases, including:

    a. Correspondence with Capsticks Solicitors LLP ("**Capsticks**"). This related to a case where JP Legal had sent a letter of claim dated 21 September 2020 to Capstick's client, NHS Resolution. In an email dated 21 April 2021, Kerri Knight of Capsticks said this: *"I contacted the firm on 31 March 2021 to request confirmation that service of the Letter of Response would be accepted by email. I was advised by telephone to send it to the generic info@jplegallaw.com email address. The last telephone contact from the firm was between our trainee Sabrina Mahmood, and the principle (sic) of the firm, Yaqub (sic) Pawlak."* She went on to say: *"During that telephone call, Yacub Pawlak refused to provide the records or discuss the other matters and asked that we simply respond to the Letter of Claim."*

    b. An email dated 14 April 2021 from Wai Lam Leung in which he said: *"I'm one of the potential clients of JP Legal Law firm. I don't know they were closed down by 23/3/2021. However, one of the staff from the JP Legal Law firm has asked me to send all of my personal details and documents including driving licence, passport, bank statements and etc. And unfortunately, I have sent all of them to*

JP Legal law firm. And they also asked me to pay the lawyer fees yesterday. So can I please what should I need to do at this stage?"

c. Correspondence from the Home Office in relation to immigration cases where the Home Office is responding to enquiries submitted by JP Legal, and which such correspondence has been received by Stephensons by reason of the fact that JP Legal's post is being redirected to the latter pursuant to the May Order. Although many of the responses relate to enquiries submitted prior to 1 January 2021, at least one response relates to a much more recent enquiry. Thus Mr Gregory identifies as being of particular concern a letter from the Home Office dated 6 September 2021 addressed to JP Legal Law at 85 Wellington Road South relating to a Mrs Qin Hu, which begins by expressing thanks for an enquiry of 14 July 2021 requesting permission to work.

49. In short, this further evidence is said by the Claimant, when taken with the information provided by Mr Spencer on 21 June 2021, to demonstrate that the Defendant, or somebody acting with his authority or knowledge (at least), continued to deal with client matters, in which case there must have been live client files in relation thereto which the Defendant, in breach of paragraph 1 of the May Order, had failed to deliver up to the Claimant or provide an explanation in respect of. It is said that this evidence is inconsistent with what the Defendant had said in his witness statements dated 4 June 2021 and 18 June 2021 about all files (apart from those transferred to A. Vincent) being closed files, and with all the closed files having been stolen on 19 March 2021.

50. The hearing was listed on 13 October 2021 as a face-to-face hearing. Arrangements were made for CVP video link facilities to be available if required. As already mentioned, the Defendant did not himself attend, either in person or by video link.

51. Although he did not, himself, attend, the Defendant again instructed Mr Umezuruike to appear on his behalf. I acceded to a late request for Mr Umezuruike to attend by CVP video link, Mr Umezuruike again appearing from Nigeria.

52. Prior to the hearing on 13 October 2021, Mr Umezuruike helpfully filed a fairly detailed Skeleton Argument that made clear that the Defendant would not be filing any further evidence in response to the Amended Application, and that he would not be attending the hearing, and this Skeleton Argument set out the basis upon which the Defendant contended that the Claimant had failed to establish its case to the requisite criminal standard on the evidence, and in particular given what the Defendant had said in his witness statements dated 4 June 2021 and 18 June 2021.

53. In addition, Mr Umezuruike took a number of technical points, including one that I determined, namely an argument that the terms of the Amended Application, and in particular paragraph 12 thereof, only permitted the Claimant to argue that there had been a breach of paragraph 2 of the June Order, and not any breach of paragraphs 1 and 3 of the May Order. I rejected this submission as I considered that it was clear from the Amended Application taken as a whole (including paragraphs 5 and 7 thereof), in particular when read together with the accompanying Contempt Schedule and evidence, that it was being alleged that there had been a breach of both Orders including, in particular, paragraph 1 of the May Order.

54. Mr Umezuruike also, quite properly and correctly, took the point that the order dated 23 June 2021 only permitted the Claimant to serve evidence in response to evidence filed by the Defendant, and not to rely on further evidence that was not responsive to evidence filed by the Defendant. He also further took the point that the further evidence that the Claimant sought to rely upon ought to have been by way of affidavit, and not in the form of a witness statement, in order to comply with CPR 81.4(1), which provides that unless and to the extent that the court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation. In response to these points, the Claimant sought permission to rely on Mr Gregory's further witness statement.

55. Unfortunately, the video link with Mr Umezuruike was not at all good, with Mr Umezuruike dropping out of the link on numerous occasions, to the extent that it became virtually impossible sensibly to continue, certainly with any prospect of completing the hearing of the Amended Application within the day that it had been listed. On this basis, I concluded that the hearing should be adjourned, and relisted. I therefore adjourned the hearing to 2 and 3 November 2021, with a two day time estimate, indicating that, given the difficulties that had been encountered, and whilst I would not wholly exclude the possibility of attendance of Counsel by video link, I would expect any attendance by Counsel on behalf of the Defendant at the adjourned hearing to be in person to avoid the difficulties that had been encountered being repeated. Mr Umezuruike, as I recall, indicated that he had been double vaccinated for Covid-19, and therefore ought be in a position to return to the UK, although he observed that the Defendant would have the alternative option of instructing alternative Counsel already in the UK.

56. Before the hearing concluded, I was also invited to deal with two further technical points taken by Mr Umezuruike. In the event, given that the Amended Application was to be adjourned and given the difficulty in properly comprehending Mr Umezuruike's submissions with the repeated breakdown in the video link, I decided that I should only express a provisional view in relation to these issues in order to assist the parties. In short, as reflected in the recitals to the Order dated 13 October 2021, I expressed the preliminary view that paragraph 2 of the June Order did not supersede paragraph 1 of the May Order, but that paragraph 3 of the May Order probably was superseded by paragraph 2 of the June Order. These are issues that I will return to as necessary.

57. Although I may not have permitted the Claimant to rely upon Mr Gregory's third witness statement had the hearing proceeded that day, as the Amended Application had to be adjourned, and as the Defendant would therefore now have an opportunity to prepare and give evidence in response thereto, I gave permission to the Claimant to rely upon Mr Gregory's third witness statement provided that it was verified by an affidavit from Mr Gregory served on the Defendant by no later than 4pm on 15 October 2021. I also directed that Mr Gregory should, at the same time, verify by affidavit his witness statement dated 1 July 2021, the Contempt Summary, and also the contents of the email exchange with the Defendant on 21 June 2021 and 22 June 2021, because I was informed that the contents of Mr Gregory's email dated 21 June 2021 encapsulated why the Claimant maintained the Defendant was in breach of paragraph 2 of the June Order.

58. Further:

a. Whilst again reminding the Defendant of his right to remain silent, I directed that the Defendant should be permitted by 4pm on 27 October 2021 to serve witness evidence in response to the matters referred to in Mr Gregory's further witness statement, and provide copies of any documents which he wished to rely upon; and

b. I directed that if any of the Claimants' witnesses were required to attend the final hearing cross examination, then written notice should be provided by the Defendant or his legal representative to the Claimant's solicitors by no later than 4pm on 29 October 2021, along with a list of the issues on which those witnesses would be cross examined.

59. Following this hearing, the Defendant did give notice of an intention to cross-examine Mr Gregory. Whilst the notice purported to identify the issues upon which Mr Gregory was to be cross examined, the Claimant maintains that it is deficient in this respect, but ultimately no point has turned on this.

60. Following the hearing on 13 October 2021, Mr Gregory made a second affidavit dated 15 October 2021. This does, albeit in somewhat convoluted way, verify the contents of Mr Gregory's witness statements dated 1 July 2021 and 5 October 2021, the Contempt Summary, and Mr Gregory's email 21 June 2021.

61. The Defendant did not, however, file or serve any evidence in response to Mr Gregory's further witness statement dated 5 October 2021, or his second affidavit dated 15 October 2021.

62. The Defendant, again, did not attend the adjourned hearing of the Amended Application, listed to commence on 2 November 2021, either in person or by video link. Nor was he represented by Counsel, and no request was made or received for either himself, or Counsel instructed on his behalf, to attend by video link.

63. However, at 4.45pm on 1 November 2021, the Defendant emailed me directly, from the Defendant's Gmail Account, copying in Mr Longstaff and Mr Umezuruike, and saying: *"I would be grateful if the hearing listed for 2 and 3 November 2021 could be adjourned so as to give me time to raise funds for legal representation."* The Defendant emailed me again at 12.18am on 2 November 2021 setting out further information in support of the hearing later that day being adjourned. The Defendant referred to, and exhibited a chain of email correspondence between himself and Sam Morgan, the Public Access Senior Clerk at *"Clarksroom"*, of which Mr Umezuruike is, as referred to above, a member, showing that the Defendant was in communication with the latter by 18 October 2021, but that between then and a final email from Sam Morgan at 5.31pm on 1 November 2021, a barrister at an acceptable fee, or one that the Defendant could afford, and who had time to prepare, could not be arranged notwithstanding that the Defendant had put Clerksroom in some funds the previous Friday. The Defendant then sent me a third email at 12.25am on 1 November 2021 saying: *"I apologise for sending another email but I forgot to mention on my last email that if the judge granted my request for an adjournment I am able to instruct a barrister at any time so long that I have a notice period of at least 2 weeks"*.

64. The Defendant's emails provided no explanation as to why the Defendant, himself, could not attend the hearing, either in person or remotely.

65. In arguing that I should refuse an adjournment on 2 November 2021, Mr Longstaff said that the Claimant was very concerned by the delays that had already occurred in relation to the disposal of the contempt application, and had a very real concern that the Defendant was flouting the intervention, and the orders made by way of the May Order and the June Order to give effect thereto, by continuing to conduct casework. Mr Longstaff further made the point that no formal application had been made to adjourn, and that the Defendant had provided no explanation as to why he could not, himself, have attended, either in person or by video link to explain his position.

66. Having regard to the authorities touched upon in paragraph 71 below to the effect that committal proceedings should only proceed in the absence of the respondent in *"exceptional circumstances"*, and out of a concern that the Defendant might be making a genuine attempt to obtain legal representation, but had been frustrated by events from doing so, I considered that the Amended Application should be adjourned, but only for a short period, namely until 4 November 2021, in the light of the Claimant's concerns.

67. Again, the Defendant did not attend the further adjourned hearing on 4 November 2021, but he was represented by Counsel, Mr Thomas, who was present in person at Court. Mr Thomas had been provided with Mr Longstaff's Skeleton Argument for the hearing on 4 November 2021, and had an electronic copy of the hearing bundle. He did not have his own Skeleton Argument, but said that he relied on, and adopted Mr Umezuruike's Skeleton Argument prepared for the hearing on 13 October 2021.

68. There was no application for an adjournment, and the hearing proceeded. Mr Longstaff opened the Amended Application at some length identifying the key aspects of the evidence relied upon by the Claimant and making it clear that the Claimant sought to draw inferences from the failure of the Defendant to serve evidence in response to the Amended Application and the evidence relied upon by the Claimant.

69. Mr Longstaff then tendered Mr Gregory for cross-examination. Mr Gregory verified on oath that the contents of his witness statements and affidavit in support of the Amended Application, as well as the Contempt Statement, and his email dated 21 June 2021, were true to the best of his knowledge and belief, and was then cross-examined on a number of issues by Mr Thomas. There was no re-examination.

70. Thereafter, I enquired of Mr Thomas as to whether it was the intention of the Defendant to give evidence, indicating to him that there was now an opportunity for the Defendant to do so. I reminded Mr Thomas that the Defendant was entitled to remain silent, but that the Court was entitled to draw inferences if the Defendant chose to remain silent. I adjourned for a short period of time to enable Mr Thomas to consider his position, and if necessary take instructions from the Defendant. When the hearing resumed, I was informed by Mr Thomas that the Defendant did not intend to give evidence.

71. Thereafter, Mr Longstaff briefly addressed the Court again, followed by Mr Thomas, who articulated the Defendant's case as set out below and was given the last word.

F. Absence of the Defendant

72. When a respondent to a contempt application does not attend the hearing, the Court is generally faced with the choice of proceeding in the respondent's absence, or adjourning and issuing a warrant for the respondent's arrest. As already touched upon, it is only in exceptional circumstances that the Court will proceed in a respondent's absence. The relevant legal principles to be applied were recently considered, and helpfully set out, by Cockerill J in *XL Insurance Company SE v IPORS Underwriting Ltd* [2021] EWHC 1407 (Comm) at [43] et seq.. A key consideration is as to whether the respondent has voluntarily decided not to attend, such as to waive his right to appear.

73. I did give consideration at the first hearing of the contempt application on 23 June 2021 as to whether to adjourn and issue a warrant for the Defendant's arrest. However, irrespective of any difficulty in enforcing the warrant given that the Defendant has no residential address in the UK and had said that he was in Poland, it seemed clear to me then, as has been confirmed by the Defendant's conduct in respect of subsequent hearings, that he had taken the conscious decision not to appear in person, and to appear by Counsel.

74. In the circumstances, I considered the appropriate course to be to proceed in the Defendant's absence in person, given that he was represented by Counsel. I considered the position afresh at the hearings on 13 October 2021 and 4 November 2021, determining that the appropriate course was to proceed on the basis that the Defendant had chosen not to attend save by Counsel, which at least meant that he was legally represented.

F. Principles to applied in determining a contempt application

75. The correct approach to be adopted by the Court on the application to commit for contempt of court was helpfully summarised by Warby J (as he then was) in *Pirtek (UK) Ltd v Jackson* [2018] EWHC 1004 (QB) at [36] and [37]:

> *"Principles*
>
> *[36] The applicant on a committal application bears the burden of proving to the criminal standard of proof that the respondent had proper notice of the order in question and that he has disobeyed it. The necessary state of mind must be established to the same standard. The applicant must prove that the respondent (i) knew of the terms of the order, and (ii) acted in a way that involved a breach, and (iii) he "knew of the facts which made his conduct a breach". But an applicant does not have to prove that the respondent knew that what he was doing was a contempt of court. See [Bennett v] McCann [[2013]EWHC 283 (QB) at] [127].*
>
> *[37] To prove contempt, an applicant may rely on hearsay evidence: Daltel Europe Ltd v Makki [2006] 1 WLR 2704; Masri v Consolidated Contractors International Company SAL [2011] EWHC 1024 (Comm) [157]. The approach to be taken to circumstantial evidence is the same as it is in a criminal court: Masri [146]. The Court may also be invited to draw inferences, including drawing adverse inferences from the respondent's silence. But, as in a criminal*

> *case, such an inference may not be the sole basis for finding against the respondent; and the inference should not be drawn unless it is fair to do so and the Court is satisfied that the applicant has established a case that calls for an answer, and that the only sensible explanation for the respondent's silence is that he has no answer, or none that could withstand proper scrutiny: Masri [147]."*

76. It is incumbent upon me to consider separately whether contempt is established to the requisite standard in respect of each of the allegations of breach alleged, as emphasised by the Court of Appeal in *Hewlett Packard Enterprise Co v Sage* [2017] EWCA Civ 973, [2017] 1 WLR 4599. However, Mr Longstaff draws my attention to what was said in *Gulf Azov Shipping Co Ltd v Chief Idisi* [2001] EWCA Civ 21, per Lord Phillips MR at [18]:

> "*It is not right to consider individual heads of contempt in isolation. They are details on a broad canvas. An important question when that canvas is considered is whether it portrays the picture of a Defendant seeking to comply with the orders of the Court or a Defendant bent on flouting them. It is right that the individual details of the canvas should be informed by the overall picture. But, having said that, each head of contempt that has been held proved must be established beyond reasonable doubt*"

77. In *Kea Investments Ltd v Watson* [2020] EWHC 2599 (Ch) Nugee LJ noted at [13] that it is well-established that the burden of proof lies on the applicant and that the standard of proof is to the criminal standard, i.e. the court must be sure. But he went on at [16] to say (emphasis added): "*although each essential element of a charge of contempt must be proved to the criminal standard, it is not necessary that every fact relied on in support of the charge must itself be proved beyond reasonable doubt*".

78. The mental element required to establish contempt of court has recently been considered by the Court of Appeal in *Atkinson v Varma* [2020] EWCA Civ 1602, [2021] Ch 180. In this case the Court of Appeal applied the line of authority to the effect that if knowledge of the order is proved, and it is also proved that the contemnor knew that he was doing or omitting to do certain things, then it is not necessary to prove that he knew that his actions put him in breach of the order. It is enough that, as a matter of fact and law, his actions did put him in breach of the order – see per Rose LJ at [54] and [55]. It is not therefore necessary for the Claimant to prove that the Defendant knew that his actions put him in breach of the Order.

79. As to the ability of the Court to draw inferences, Mr Longstaff referred me to the following helpful passage from the judgment of Sir Michael Burton, sitting as a Judge of the High Court, in *Super Max Offshore Holdings v Malhotra* [2020] EWHC 1023 (Comm), where, at [8] and [9], he said this:

> *"8. This is a contempt application, and the Defendant is entitled to elect, as he has done, not to give evidence and hence not to be cross-examined, and the Claimants must prove their case beyond reasonable doubt, and if an innocent explanation remains a reasonable possibility, the Defendant is entitled to the benefit of the doubt (see Daltel v Makki [2005] EWHC 749 (Ch) at [30] and JSC BTA Bank v Ablyazov [2012] EWHC 237 (Comm) at [8-9]). However, the Claimants are entitled to rely on the absence of explanation by the*

> *Defendant when explanation is required (and especially when notice has been given by the Claimants of an intent to do so, as it was here). I have drawn guidance from Arlidge, Eady & Smith on Contempt (5th Ed) at 15-55A and from Averill v U.K. [2001] 31 EHRR 36 at [43] and from the words of Popplewell J in Therium (UK) Holdings Ltd v Brooke [2016] EWHC 2421 (Comm) at [29], referring to Inplayer Ltd v Thorogood [2014] EWCA Civ 1511 at [40], and the inference that may be drawn by the Court that " a deliberate decision not to give evidence by a person charged with contempt in relation to matters within his own knowledge has been made because he does not believe that his case will withstand scrutiny when tested by cross-examination, provided the case against him is such that it calls for an answer ", and of Whipple J in VIS Trading Co Ltd v Nazarov [2015] EWHC (QB) 3327 to similar effect.*
>
> *9. … Silence cannot be a basis for finding a case of contempt of court proved, but if there is otherwise a case to answer I am entitled to draw an adverse inference from the absence of evidence from a witness such as the Defendant who could have given relevant evidence in explanation or answer. This applies also to the absence of evidence from other witnesses who could have produced some explanation in rebuttal of the Claimants' case (Imam-Sadeque v Bluebay Asset Management (Services) Ltd [2012] EWHC 3511 (QB) at [9] per Popplewell J). That was a civil case, but, subject to caution, I apply the same approach to a number of witnesses, particularly those who, although abroad, came to give evidence to support the Defendant before Popplewell J."*

80. This approach is consistent with the approach taken by the Court of Appeal in another case referred to by Mr Longstaff, namely *Khawaja v Popat* [2016] EWCA Civ 362 at [29], per McCombe LJ.

81. The Supreme Court has recently considered the circumstances in which the Court might properly draw inferences from a failure to give evidence in *Efobi v Royal Mail Group Ltd* [2021] 1 WLR 3863. At [41] Lord Leggatt said this:

> "*… So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."*

82. In the context of proceedings for contempt of court, with the necessary parallels with criminal proceedings, I consider that my task remains to identify, apart from any inferences that might properly be drawn, whether there is a case to answer, and to then consider whether, in the light of such inferences as can properly be drawn, I can be sure that the Defendant acted in contempt of court as alleged.

E. The Claimant's case

83. The Claimant's case is that there is clear evidence that, contrary to what he said in his witness statements dated 4 June 2021 and 18 June 2021, the Defendant, and his firm, JP Legal, continued to work on cases after 1 January 2021, and that he did not close all the files that were not transferred to A. Vincent. Consequently, it is the Claimant's case that when I made my Order dated 28 May 2021, there were *"Documents"* and *"Required Materials"* containing client files and other records that could and should have been left with Mr Joyce at Stephenson's offices as provided for by paragraph 1.1 of the May Order, within two days of service thereof, and the further obligations under sub-paragraphs 1.2 and 1.3 should have been performed. Thus the Claimant submits that I should reject the Defendant's evidence that all paper client files and computers and laptops etc. had been stolen on 19 March 2021, such that he was unable to comply with any of the steps provided for by paragraph 1 of the May 2021 Order by reason thereof, sand that I should find that he acted in breach of paragraph 1 as alleged.

84. Further, it is the Claimant's case that even to the extent that the Defendant was unable to comply with paragraph 1 of the May Order, he has failed to provide a proper explanation respect thereof pursuant to either paragraph 3 of the May Order, or paragraph 2 of the June Order, and in particular the latter, which required him to *"properly"* comply with paragraph 3 of the May Order and to provide, so far as the Defendant was able, a full and proper account, supported by documentary evidence, as to the specific matters referred to in sub-paragraphs 2.1 to 2.5 of the June Order. The Claimant maintains that particularity as to these breaches is provided by consideration of Mr Gregory's email dated 21 June 2021.

85. The Claimant stresses that the breaches alleged are serious matters. This is on the basis that the Claimant's role is to protect the public from recalcitrant lawyers regulated by the SRA, and that the Court should be concerned that the Defendant has carried on dealing with clients despite not being authorised to do so, and given that he has, so the Claimant maintains, sought to deliberately frustrate the intervention into his practice, in failing to cooperate or engage with the process.

86. Crucial therefore to the Claimant's case is that it should be able to satisfy me, so that I am sure, that the Defendant and his firm continued to practice and deal with clients after I January 2021, notwithstanding what the Defendant said in his witness statements dated 4 June 2021 and 18 June 2021, and that he did so after the date of the alleged theft on 19 March 2021, such that there must have been in existence client files, in paper and/or electronic format (on laptops and computes), that ought to have been delivered up in the manner provided for by paragraph 1 of the May Order.

87. The Defendant's evidence, in his witness statements dated 4 June 2021 and 18 June 2021, was that all files were closed and that no files were handed over to anybody else, apart from the conveyancing cases to A. Vincent, and that: *"there are no other documents in the possession or under the control of any other person other than [himself]"*. This is said by the Claimant to be inconsistent with the various explanations, subsequently given when confronted with evidence that the Defendant/JP Legal had continued to trade, that others had been dealing with clients, and thus necessarily using the files of the practice relating to that client, e.g. the Samuel Ali referred to by the Defendant in his email dated 23 June 2021, who had

had dealings with Mr Spencer in May and June 2021. If contrary to what is said in his witness statements, somebody else had control of the files, then the Claimant says that the Defendant would have been in a position to identify the person or persons in question, and so in failing to identify the same to the Claimant would have been in breach of paragraph 1.4 of the May Order.

88. As to the evidence that the Defendant did continue to practice and deal with clients after 1 January 2021, and after up to and after 28 May 2021, the Claimant relies upon the following in particular:

    a. The Defendant having informed the SRA in early February 2021 that he was in discussion with a Solicitor to take on the compliance role in the practice.

    b. Notwithstanding having supposedly ceased to trade as from 1 January 2021, the Defendant's website remained live thereafter, as did the info@jplegallaw.com email address, which continued to be used until at least May 2021, as evidenced by the 10 May 2021 email referred to by to Mr Spencer.

    c. The statement relating to the Defendant's practice bank account shows a payment on 24 February 2021 to an employee, Tzy Wei Lee, for £2,000 described as *"Feb WAGE"*, and another payment to an employee, Wen Jing Tu, for £2,003.33 described as *"Jan WAGE"*. In his email dated 22 June 2021, the Defendant sought to suggest that these were payments of old past debts rather than liabilities for wages that had accrued after 1 January 2021, but if that is the case no explanation has been provided as to why there are the references to *"Feb"* and *"Jan" – "WAGES"*. I note that one of the email addresses referred to by Mr Spencer was: jing@jplegallaw.com .

    d. The information provided by Mr Spencer on 21 June 2021 to the effect that *"Ali"* of JP Legal had approached him on 21 June 2021, actions which the Defendant passed off as those of a rogue employee, without explaining how *"Ali"* could have come to, and been able to act in the way that he did holding himself as JP Legal and using a firm email address as late as May 2021.

    e. The evidence in relation to the spreadsheet prepared by Stephensons referred to in Mr Gregory's third witness statement, which is said to evidence the existence of ongoing files, contrary to the Defendant's evidence is his witness statements that all files not transferred to A. Vincent were closed files.

    f. Particular reliance is placed upon:

        i. The evidence in the form of the email from Kerri Knight of Capsticks that a trainee actually spoke to the Defendant about a case in late March or April 2021, which the Defendant has failed to explain;

        ii. The correspondence received from the Home Office, which is said to provide clear evidence of ongoing rather than closed files, and includes the response in the form of a letter dated 6 September 2021 addressed to JP Legal in respect of an enquiry dated 14 July 2021; and

iii. Wai Lam Leung's email dated 14 April 2021 referring to very recent conversations with representatives of JP Law, and requests for money made by the latter.

g. The explanations given in respect of the alleged theft of files and computers and other equipment on 19 March 2021 lack, so the Claimant maintains, credibility given, in particular, the following:

i. The absence of any documentation relating to a contract with Jay Ahmed/Nursi Removals for the removal of the files etc, e.g. an invoice, and evidence of payment related thereto;

ii. The denial by the Defendant of any relationship with Jay Ahmed, despite there being evidence in the bank statements of a number of other payments to him that remain unexplained;

iii. The circumstances in which the alleged theft took place outside Jay Ahmed's home when the files were, supposedly, being taken to an address only a short distance away;

iv. The Police report that has been produced that only refers to the theft of tools from Jay Ahmed's van despite the fact that, on the Defendant's case, not only files, but computers and laptops were stolen as well. Whilst Jay Ahmed's email dated 6 June 2021 refers to him not mentioning the files *"because I am claiming for my tools which was in my van,"* this does not really, it is said, explain why other items that were stolen were not mentioned in reporting the matter to the Police.

v. It is said that it has not properly been explained why the files etc. were being transferred to a residential address, if the ultimate destination was something different.

89. The further point is made that a number of specific questions were raised of the Defendant in Mr Gregory's email dated 21 June 2021, which are said not to have been satisfactorily answered in the Defendant's emails dated 22 June 2021 and 23 June 2021and to have raised as many questions as they answered in respect of the Defendant's account of events.

90. It is submitted that the above considerations and evidence give rise, the very least, to a case to answer.

91. It is therefore submitted by the Claimant that this is a proper case for the Court to draw adverse inferences from the failure of the Defendant to:

a. File evidence in advance of the hearing of the Amended Application as provided for by the orders dated 23 June 2021 and 13 October 2021;

b. Attend at the hearings on 13 October 2021 and 4 November 2021 to give evidence; or

c. Submit himself for cross-examination.

92. It is submitted that, particularly once the appropriate adverse inferences have been drawn, I can be certain and sure that the Defendant acted in contempt of court in breaching paragraph 1 of the May Order in that:

    a. He was aware of the terms thereof;

    b. He failed to deliver up client files and other documents notwithstanding being able to do so because there were ongoing matters being dealt with; and

    c. The Defendant knew that he was not delivering up files and other documents, not least because he made his witness statement dated 4 June 2021 providing false reasons as to his inability to deliver up the files and other documents.

93. Insofar as the Defendant might not himself have been working on the files, and they were in the hands of others, then, it is submitted, the Defendant breached paragraph 1.4 of the May Order, in not notifying Mr Joyce, as *"Agent"*, as to the identity of the person or persons having possession or control of the files.

94. Further, the Defendant acted in contempt of court and breach of paragraph 2 of the June Order in that he failed to provide a full and proper account (supported by documentary evidence) of the matters referred to in sub-paragraphs 2.1 to 2.5 thereof, providing an incomplete and false account of events.

F. The Defendant's Case

95. As I have said, Mr Thomas adopted the Skeleton Argument provided by Mr Umezuruike for the hearing on 13 October 2021, and submitted that I could not properly conclude on the evidence before the Court, and applying the criminal standard of proof, that the Defendant was in contempt of court as alleged.

96. The gist of the Defendant's case was as advanced in paragraphs 21 and 22 of Mr Umezuruike's Skeleton Argument, which said:

> *"21. C has woefully failed to establish beyond reasonable doubt that:*
>
> *(1) D has in his possession, custody or control, any Required Material;*
>
> *(2) Apart from the 13 files D transferred to A. Vincent Solicitors, D has possession, control or custody of any other Practice Files or documents;*
>
> *(3) The other Practice Files, Documents and Required Materials were not stolen from the van of Nurin Removals on 19.3.21;*
>
> *(4) D has not provided (so far as he is able) the circumstances in which the Practice Files, Documents and Required Materials were or were to be placed into storage, and the reasons why;*
>
> *(5) D has not provided (so far as he is able) the details of the theft of the Practice Files, Documents and/or Required Materials,*

the enquiries he made thereafter and the outcome of those enquiries; and

(6) D has not provided (so far as he is able) the addresses at which he traded in the United Kingdom (and during which dates) and the addresses of the hotels that he stayed whilst in the UK. D says that some of those hotels and the dates he stayed in them are in the bank statements that C has possession of.

22. D's case is that he has provided C with all the information that it requested through his first witness statement, second witness statement and this email of 21.6.21. His case is that C is requiring him to provide the impossible and has asked the same questions several times. His case is that C's conduct has become very oppressive and that the Contempt Application is an abuse of process that should be dismissed without a hearing."

97. Thus Mr Thomas submitted that the Defendant had addressed and answered the issues raised by the Amended Application in his witness statement dated 18 June 2021, particularly when read together with his earlier witness statement dated 4 June 2021, and his emails dated 22 June 2021 and 23 June 2021, written in response to Mr Gregory's email dated 21 June 2021.

98. In short, it is the Defendant's case that:

a. Any files and other materials, and any computers, laptops etc. to do with the practice had been stolen from Jay Ahmed's van on 19 March 2021 as explained by the Defendant, and so the Defendant was not in a position to deliver anything up as required by paragraph 1 of the May Order; and

b. A sufficient explanation been provided in relation thereto as required by paragraph 2 of the June Order, which the Defendant says superseded paragraphs 1 and 3 of the May Order, and in particular the latter.

99. Mr Thomas complained, on behalf of the Defendant, that the without notice application on 28 May 2021 leading to the May Order, and the very intervention itself, was based upon, in the sense of being effectively caused by the information from the informant, Mr Tang, which has since been discredited because Mr Tang has retracted his allegations, and that this was a highly material consideration, and explained the Defendant's reluctance to cooperate.

100. The bank statements were, so it was submitted, explicable on the basis that the Defendant was meeting past debts, which he was perfectly entitled to do.

101. So far as the information provided by Mr Spencer is concerned, this is said to have related to the actions of a former employee acting on a frolic of his own without reference to the Defendant. The Defendant, it was submitted, could not be responsible for that, and this provided no evidence of any breach by the Defendant.

102. So far as the Letter from the Home Office dated 6 September 2021 was concerned, although formally addressed to JP Legal, it was, so Mr Thomas submitted, clear from

its contents that it was responding directly to Mrs Qin Hu. Further, the Claimant had not carried out the enquiries that one might have expected it to have done should it have wished to seriously challenge what was being said by the Defendant. Thus, as confirmed by Mr Gregory under cross examination, the Claimant had made no enquiries of the Home Office in respect of where the various enquiries that they were responding to had come from, and when, and nor had the Claimant approached Jay Ahmed for his version of events in respect of the theft.

103. I note that in paragraph 17 of his Skeleton Argument, Mr Umezuruike, presumably on the basis of instructions, said that the Defendant's case was that JP Legal had made various applications to the Home Office on behalf of its clients before it had closed down, and that the enquiry referred to in the Home Office's letter dated 6 September 2021 related to an enquiry by Mrs Qin Hu herself, rather than JP Legal. Further, paragraph 17 of the Skeleton Argument referred to the Defendant denying that he had spoken Kerri Knight at Capsticks, paragraph 17, and further referred to the fact that: *"[the Defendant] says that it must have been a colleague of his that spoke with her."* However, the Defendant did not, as he could have done, file any evidence, as permitted to do so by the Order dated 13 October 2021, dealing with these matters.

104. Mr Thomas did not specifically address me on the question of drawing adverse inferences, and the approach to adopt on the present evidence, but by the adoption of Mr Umerzuirke's Skeleton, and from the points that he did take, I understood the Defendant's case to be that it would be wrong to draw adverse inferences in the light of:

    a. The explanations that the Defendant has given in his witness statements dated 4 June 2021 and 18 June 2021 and in email, and deficiencies said to exist in the way that the Claimant has presented its case, e.g. by relying on an unreliable informant and not making the enquiries of third parties that it should have made;

    b. The fact that although the Defendant had not attended any hearing in person or remotely, he clearly took the Amended Application seriously because he had instructed Counsel at every hearing at considerable expense, apart from the 2 November 2021 when he has asked for an adjournment so that he could instruct Counsel.

105. Thus Mr Thomas submits that, looking at the evidence as a whole, there is simply insufficient evidence to enable the Court properly and safely to be sure that the Defendant did act in contempt of court as alleged.

106. Whilst, Mr Thomas did not himself deal with the argument that the June Order superseded the whole of the May Order, I understand him to have adopted Mr Umezuruike's arguments in respect thereof.

107. The Defendant therefore submits that the Amended Application should be dismissed.

G. The Effect of the June Order

108. The point is taken in paragraph 15 of Mr Umezuruike's Skeleton Argument that paragraph 1 of the May Order was *"effectively replaced"* by the contents of paragraph 2 of the June Order. At the hearing on 13 October 2021, I expressed the provisional

view that whilst paragraph 2 of the June Order may have superseded paragraph 3 of the May Order, it did not supersede paragraph 1 thereof. Mr Thomas did not return to the point at the hearing on 4 November 2021, and so there were no further submissions upon it. Nevertheless, I address it.

109. So far as paragraph 1 of the May Order is concerned, I stand by the provisional view that I expressed. The position is that the Defendant came to the hearing on 7 June 2021 saying that he was unable to comply with paragraph 1 of the May Order because the files etc. had been stolen, and relying upon his witness statement dated 4 June 2021 as complying with paragraph 3 of the May Order. I did not understand the Claimant, on 7 June 2021, to be accepting that the Defendant was unable to comply with paragraph 1 of the May Order. The Claimant's point was that the witness statement dated 4 June 2021 did not provide a proper explanation as to why the Defendant could not comply, and their position was that if the Defendant did wish to maintain that he could not comply with paragraph 1, then he should make a witness statement that did properly comply with paragraph 3 of the May Order, and provide a proper explanation as to why he could not comply that fully and accurately addressed the various issues identified in sub-paragraphs 2.1 to 2.5 of the May Order.

110. In the event, the Defendant made his witness statement dated 18 June 2021, and it is the Claimant's case that that witness statement still fails to provide a proper explanation sufficient to satisfy the Court that the Defendant was genuinely unable to comply with paragraph 1 of the May Order.

111. In the circumstances, I consider that it must still be open to the Claimant to contend that the Defendant failed to comply with paragraph 1 of the May Order by failing to deliver up files etc. as provided for thereby, and to contend that in purported compliance with paragraph 3 of the June Order, the Defendant has produced a witness statement, namely his witness statement dated 18 June 2021, that is both unsatisfactory and untrue as to the explanations provided.

H. Should adverse inferences be drawn against the Defendant?

112. On the basis of the matters and evidence relied upon by the Claimant and referred to in paragraph 88 above, I am amply satisfied that the Claimant has demonstrated that there is at least a case for the Defendant to answer to the effect that:

    a. He did not cease trading, and close his files with effect from 1 January 2021, but rather that he continued to deal with clients thereafter, albeit having transferred conveyancing files to A. Vincent, such that he must have had paper and electronic files to deliver up in accordance with paragraph 1 of the May Order; and

    b. His evidence in his witness statements dated 4 June 2021 and 18 June 2021 about a theft on 19 March 2021 of all the paper files, computers and laptops is false.

113. There are, in my judgment, a significant number of matters raised by the Claimant's evidence that do call for an explanation by the Defendant, which the Defendant has singularly failed to provided, and that which would have provided fertile ground for cross examination of the Defendant had he sought to deal therewith, so as to enable his credibility to be tested. Examples include the following:

a. As we have seen, the Defendant, in his email dated 23 June 2021, suggested that Mr Spencer had had dealings with a Samuel Ali, a former employee who it was suggested must have been using the firm's email address and details to be corresponding with third parties after the Defendant is supposed to have closed the practice and the files relating thereto in January 2021. However, it is not explained how Samuel Ali would have gained access thereto, and been able to hold himself out as representing JP Law, particularly in the light of Defendant's specific confirmation in the witness statements that he made in June 2021 that nobody else had possession or control of client files relating to the practice, other than A. Vincent in respect of the conveyancing files that were transferred to the latter.

b. There is no evidence from the Defendant to challenge the Claimant's evidence that the Defendant spoke to a trainee at Capsticks, if not also to Kerri Knight herself, with regard to a case being conducted on behalf of a client of JP Legal as late as late March/April 2021 as referred to in Kerri Knight's email dated 21 April 2021. Presumably on instructions, Mr Umezuruike, in paragraph 17 of his Skeleton Argument, refers to the Defendant having said that the trainee must have spoken to a colleague of the Defendant. But that makes no sense if, as the Defendant seeks to portray, the practice had ceased to trade in January 2021, and all files were then closed. Kerri Knight's email of 21 April 2021 specifically refers to having received the Defendant's letter of claim dated 21 September 2020, to her approaching the Defendant's firm on 31 March 2021, after the intervention, and to being told to send the letter of response to the info@jplegallaw.com email address. On the basis of what Kerri Knight said, this must have been an ongoing case that the firm had continued to deal with, and Kerri Knight's email is very clear in identifying the name of the individual that the trainee spoke to, albeit that the Defendant's name is misspelt. If the firm had ceased to trade, then it is impossible to see how this dialogue with the representatives of Capsticks could have occurred, and how it can assist the Defendant to suggest that dealings must have been with a colleague.

c. Again, there is no evidence from the Defendant dealing with the Home Office correspondence. Various matters are asserted, again presumably based on instructions, in paragraph 17 of Mr Umezurike's Skeleton Argument. But it is not explained why if, all files were closed as at January 2021, the Home Office should have continued to correspond in respect of a significant number of clearly ongoing cases. Further, although the Home Office's letter dated 6 September 2021 may, in its body, have read as if it was addressed to the client, Mrs Qin Hu, it was in fact addressed to JP Legal at its office premises, and was sent by post to that address.

d. No evidence has been adduced from the Defendant, or explanation proffered as to how it could have come about that, as late as mid-April 2021, staff from JP Legal were speaking to Wai Lam Leung, who describes himself as a potential client, obtaining documentation from him, and seeking payment of fees. It is been suggested that employees, or former employees, have acted on the frolic of their own, holding themselves out as acting on behalf of JP Legal, but if that were so, then that is something that one would have expected the Defendant to have

detailed in evidence, and provided some explanation as to how the relevant circumstances came about, but he has failed to do so.

e. So far as the payment of sums of money to employees in February 2021 was concerned, the description in the bank statement is, unambiguously, to *"WAGES"*, with reference to *"Feb"* and *"Jan"* against the same. The Defendant might suggest that these payments relate to some other liability than wages for work done in January and February 2021 by when JP Legal is supposed to have ceased trading, but he has failed to identify what possible liability the sums in question might relate to.

f. I agree with the Claimant's contention that the explanation provided by the Defendant in respect of the alleged theft from the van on 19 March 2021 raises as many questions as it answers. This is significant, because if the Defendant were able to provide cogent and truthful answers to these questions, then one would have expected them to have been dealt with in evidence adduced by the Defendant in response to the Amended Application, in which case the Claimant would have been able to test the Defendant's evidence in cross examination.

g. As to outstanding questions in relation to the alleged theft that do, as I see it, call for an answer or much more of an explanation, the following standout:

   i. The absence of any documentation recording the transaction between the Defendant and Jay Ahmed. One would have expected at least an invoice that could be tied to a particular payment by the Defendant for the provision of removal services in question;

   ii. The claimant has identified a number of other payments by the Defendant to Jay Ahmed that have not been explained, and do, despite the Defendant's protestations, suggest a more involved relationship between the Defendant and Jay Ahmed that has not been explained despite a specific request in Mr Gregory's email dated 21 June 2021 for an explanation;

   iii. Despite the explanation tendered by the email dated 6 June 2021 that has been produced, said to be from Jay Ahmed, it remains at best opaque as to why the report made to the Police referred to the theft of tools from the van, but not to the files or the computers, laptops and other equipment of the practice, which presumably had not insignificant value. This provides a paradigm example of the sort of point that could, had the Defendant condescended to give evidence, have been explored in cross examination by reference to matters such as the insurance cover that Jay Ahmed might have had, and the terms upon which he had agreed to transport the files etc..

   iv. Further, the circumstances of the actual removal itself are, again, opaque. Despite what has been said, it is wholly unclear why the files etc. were being removed to a residential address, particularly when the Defendant retained a connection with 85 Wellington Road South, and why they were stored outside Jay Ahmed's house despite the fact that this was only a matter of minutes away from the destination to which they were being taken. Again these would have been fertile matters for cross examination.

114. In addition, apart from the failure of the Defendant to give any evidence on the above matters, save the evidence contained in the witness statements that the made in June 2021 which the Claimant has not been able to cross-examine him upon, one might reasonably have expected the Defendant to have adduced evidence from Jay Ahmed regarding the removal, and from former employees with regard to the circumstances behind of the closure of the JP Legal practice. I accept that it might not have been too difficult for the Claimant to make further enquiries of employees and to adduce evidence from them, but so far as Jay Ahmed is concerned, on the Defendant's case, he had, by his email dated 6 June 2021, offered assistance to recover the missing items, and there is no reason to believe, at least from this email, that he would not have been in a position to assist the Defendant by giving evidence as to his version of events, had the Defendant's version of events been true.

115. Having regard to the criteria identified by Lord Leggatt in *Efobi* (supra) at [41], there are, as I see it on the basis of the above, important matters in respect of which the Defendant could been expected to have provided answers and explanations. The answers and explanations that he could have been expected to provide relate to what I consider to be the key issue in the Amended Application, namely whether there were client files etc. to deliver up as at 28 May 2021, there being other relevant evidence bearing on that issue, namely that relied upon by the Claimant, which might have been capable of being undermined by further evidence from the Defendant and other witnesses on his behalf.

116. The Defendant is properly to be regarded as having been available to give evidence. He may be in Poland, but there was nothing to prevent him making a further witness statement or witness statements, and/or attending to give oral evidence at the hearing of the Amended Application. There was nothing to prevent the Defendant from travelling from Poland to Manchester, but even if he had had some difficulty in doing so, and if such had been requested, it would have been open to the Court to consider whether the Defendant might have given evidence by video link. However, there was no application for him to do so.

117. In all the circumstances, it is, in my judgment, reasonable to expect that had there been truth in the Defendant's contention that the firm ceased to practice with effect firm 1 January 2021, by when all the files had been closed, and had these closed files and the firm's computers and Laptops been stolen on 19 March 2021, then the Defendant would have either served evidence in answer to the Amended Application, as permitted by the Orders dated 23 June 2021 and 13 October 2021, or he would have attended at the hearing of the Amended Application to give oral evidence and provide a full and cogent explanation as to the matters that I have identified above, and been prepared to be cross-examined thereupon.

118. On this basis, I consider that I am entitled draw adverse inferences against the Defendant, and to conclude that the Defendant took a conscious decision not only not to attend any hearing in person, but also not to give evidence because he was aware that his evidence would not stand up to scrutiny, and that by attending at Court, rather than remaining in Poland, he would be exposing himself to arrest in the event that he was found to have acted in contempt of court.

I. Conclusion as to the merits of the Amended Application to commit

119. On the basis of the evidence before me, and drawing such inferences as I consider that I am entitled to draw, I do not consider that the Defendant's version of events, as set out in his witness statements made in June 2021, with regard to having ceased to trade on 1 January 2021, having closed all files at that time (save for those transferred to A. Vincent), and having the suffered a theft of the closed files, and the computers, laptops and other equipment of the practice, so that he had nothing to deliver up pursuant to paragraph 1 of the May Order, is a *reasonable* possibility.

120. In these circumstances, I am satisfied such that I can be and am sure that, as at 28 May 2021, when ordered to do so by paragraph 1 of the May Order, the Defendant had client files, in hardcopy and electronic form, that could and should have been delivered up to the Claimant's *"Agent"* as provided for thereby, and that the Defendant acted in contempt of court in failing to deliver the same up and in failing otherwise to comply with sub-paragraphs 1.1 to 1.3 of the May Order.

121. I so find on the basis that the Claimant has, in my judgment, established so that I can be sure that the Defendant:

    a. Knew of the terms of the May Order;

    b. Failed to act as required by paragraph 1 of the May Order, and therefore acted in breach thereof; and

    c. Knew of the facts which made his conduct a breach.

122. In reaching this conclusion I have taken into account, amongst other things:

    a. The fact that the Claimant's intervention, and the without notice application for relief made on 28 May 2021, was based to a not insignificant extent on evidence derived from the informant, Mr Tang, who subsequently retracted the evidence and information provided to the Claimant and which the Claimant had relied upon. However, I am satisfied that the intervention and the application for relief made on 28 May 2021 was properly supported by other evidence available to the Claimant, and I regard it as significant that the Defendant has made no application to set aside the order made on 20 May 2021, whether on the grounds of material non-disclosure or otherwise. Mr Gregory was cross examined in relation to the information provided by Mr Tang, and it was put to him that this information was the effective cause of the intervention and the application for injunctive relief. However, Mr Gregory emphatically rejected this suggestion, and his response is, in my judgment, supported by other evidence available to the Court, including that relied upon by the claimant as referred to in paragraph 88 above.

    b. That it would have been open to the Claimant to make further enquiries which might have been expected to strengthen its case, e.g. of the Home Office in relation to where the enquiries had derived from. However, I do not consider that any failure to do so materially undermines the Claimant's case.

123. It follows from the above that I have found to the requisite criminal standard of proof that the Defendant acted in contempt of court in breaching paragraph 1 of the May

Order by failing to deliver up paper and electronic files of the practice of JP Law as provided for thereby. The actions that I have identified above must, I find, have given rise to a breach of sub-paragraphs 1.1, 1.2 and 1.3 of the May Order.

124. If, contrary to my primary finding, the Defendant was not in possession or control himself of *"Documents"*, and they were in the control of another or others, then I am satisfied such that I can be sure that the Defendant would have been aware of the identity of the individual or individuals in question such that he would have been able to identify the same to the Claimant pursuant to sub-paragraph 1.4 of the May Order, yet he failed to do so. I consider that he would have been so aware given that when confronted by evidence as to dealings by JP Legal with Capsticks and Mr Spencer, he has been able, on his own case, to identify those involved in the dealings, i.e the colleague and Samuel Ali. However, in view of my primary finding, I do not consider it necessary or appropriate to make any formal finding of contempt in respect of sub-paragraph 1.4.

125. Further, I do not consider it appropriate to make any formal finding of contempt in respect of the allegation of breach of paragraph 3 of the May Order. I consider that this was, to all intents and purposes, replaced by paragraph 2 of the June Order, at least to the extent that it was recognised by the June Order that any deficiency in compliance with paragraph 3 of the May Order could be remedied by proper performance of paragraph 2 of the June Order. However, more fundamentally, paragraph 2 of the June Order required *"proper"* compliance with paragraph 3 of the May Order. Paragraph 3 of the May Order required the Defendant to comply therewith if *"unable to comply with any of the steps set out in paragraph 1 above"*. But, the Claimant's principal case, and my finding is that the Defendant was able to comply with the majority of the steps set out in paragraph 1 of the May Order, but failed to do so. In those circumstances, I consider it difficult to say there has been a breach of paragraph 3 of the May Order by the Defendant not properly doing something that he was not, technically, obliged to do in any event based on my findings as to his ability to comply with paragraph 1. This is notwithstanding that the explanations given in the Defendant's witness statement dated 18 June 2021 cannot have been proper explanations because they were false, at least in so far as based on the alleged theft on 19 March 2021.

J. Hand down and sentencing

126. At the close of submissions on 4 November 2021 I indicated that, if as I have done, I found that the Defendant had acted in contempt of court, I would deal with penalty or sentence when I handed down judgment. However, on reflection I consider that I should hand down judgment without requiring the parties to attend as soon as possible, and adjourn sentencing and the determination of any other issues such as costs to another date within the next few weeks, ideally in the week commencing 29 November 2021.

127. My reasoning is as follows.

128. In *JSC BTA Bank v Solodchenko* [2011] EWHC 1613 (Ch) at [16], Briggs J identified that it may be appropriate to adjourn sentencing after a finding of contempt where the committal proceedings had taken place in the absence of the respondent, so as to, amongst other things enable the respondent to consider presenting mitigation, seeking

to purge his contempt and/or belatedly seek to comply with the order that had been breached.

129. Although the Defendant was represented before me by Counsel instructed through direct access, he was not present himself. It is not clear to me how closely he has followed the proceedings.

130. I regard the breach of paragraph 1 of the May Order that I have found established to be a serious breach, and one which I consider was calculated to frustrate the attempts made by the Claimant to intervene in the Defendant's practice in the performance of its statutory functions designed to protect the public. Subject to such mitigation as may be advanced, I keep open all sentencing options, including the imposition of an immediate custodial sentence of significant length.

131. In these circumstances I consider it appropriate that the Defendant has an opportunity to carefully consider the terms of this judgment and the implications of it before I determine sentence, particularly having regard to the considerations identified in paragraph 128 above.

132. The Defendant has a right to appeal without permission. Any appeal should be made to the Court of Appeal (Civil Division). The time within the Defendant should file an appellant's notice with the Court of Appeal is 21 days from today when this judgment was handed down, but I will extend the time to appeal to 21 days after I have determined sentence.