Neutral Citation Number: [2010] EWHC 3279 (Fam)

Case No: FD 06P02361

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/12/2010

Before:

THE HONOURABLE MR JUSTICE PETER JACKSON

- -

Between :

PM	**Claimant**
- and -	
KH	**1st Defendant**
- and -	
HM (by the Official Solicitor as her litigation friend)	**2nd Defendant**
- and -	
States of Guernsey (Health and Social Services Department)	**Interested Party**

- -

Miss Lisa Giovanetti (instructed by **Bindmans LLP** as agents for the Official Solicitor) for the 2nd Defendant

The Claimant PM in person

Hearing dates: 9-10 and 21 December 2010
Judgment dates: 16 and 21 December 2010

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JUDGMENT

- -

This judgment consists of 20 pages. Pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken and copies of this version as handed down may be treated as authentic. It is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them may be identified by name or location.

Peter Jackson J:

This composite judgment, which is available to the public, consists of a judgment handed down on 16 December 2010 (paragraphs 1-69) and a further judgment given on 21 December 2010 (the balance).

Introduction

1. The Official Solicitor acts as litigation friend to a young woman called HM who will be 22 later this month. She lacks litigation capacity as a result of a severe learning disability and other difficulties. Her family consists of herself, her mother KH, her father PM and her older sister, JM.

2. The parents separated in 1996, when HM was aged seven. Since then she has been the object of ceaseless litigation. Heavy proceedings have taken place on Guernsey (the original family home), in England (where HM came to receive specialist care in 2003) and, earlier this year, in Israel. The conflict has been so extensive that at the end of 2009 this court approved a case summary and litigation chronology running to 26 pages.

3. By his present application, issued on 28 May 2010, the Official Solicitor seeks the father's committal to prison. The application arises out of his removal of HM to Israel on 29 October 2009 at a time when HM's future was yet again before the court. Between then and early 2010 the father and HM were in Israel at an address unknown to others. On 15 February 2010 the Israeli authorities placed HM in the care of her mother and sister but, because of rearguard legal action by the father, it was not until 8 April 2010 that they were able to bring her back to this country. Since then the father has remained in Israel, beyond the immediate reach of English law.

The father's absence

4. The proceedings before me have therefore taken place in the absence of PM, despite an order that he should attend, made by Eleanor King J on 9 August 2010. Instead PM filed written submissions on the issues and asked to participate from Tel Aviv by video-link. At the same time he made clear that he was not willing to contribute to any resulting costs.

5. It has been held by the House of Lords that our law knows no principle of fugitive disentitlement: per Lord Nicholls in *Polanski v Conde Nast Publications Ltd* [2005] UKHL 10; [2005] 1 W.L.R. 637. The instinctive feeling that a person should not be allowed to participate in proceedings at one and the same time as he puts himself beyond the jurisdiction of the court must sometimes be shaken off in order to comply with the fair hearing requirements of Art. 6 ECHR. This approach was taken in the context of committal proceedings by Teare J in *Marketmaker Technology Ltd v CMC Group PLC* [2008] EWHC 1556 (QB).

6. Accordingly, I might have acceded to PM's wish to give evidence by video-link had he offered to make the necessary arrangements and to pay

for them. I was not willing to hear him by video-link at public expense. Nor was I willing to conduct the hearing by Skype, as he suggested. Its essentially informal nature is not appropriate for a public hearing of this kind, court facilities are in any case not available, nor would an audible transcript be created.

7. My decision was to offer PM a live telephone link at public expense. He accepted this 'reluctantly' but in the event the procedure proved satisfactory to the court and to PM. I had the benefit of a very clear presentation of the issues from Ms Giovanetti and also from PM himself in the course of his sworn evidence and his submissions, which were well prepared and lost nothing in transmission. The hearing ran from 9:30 am to 5 pm, the court sitting for about 6 hours.

8. The outcome is that, despite PM's physical absence, it was not ultimately suggested by anyone that the right of all parties to a fair hearing has not been fully respected, indeed I am satisfied that it has.

Relevant chronology

9. The facts are as follows. There are no significant disputes for the court to determine.

10. After her parents' separation and divorce in 1996, HM lived with her mother on Guernsey. In 2003, when she was aged 14, she moved to live in a specialist placement in England. At that point PM moved from Guernsey to live near the school. Considerable difficulties ensued, with proceedings on Guernsey and in England.

11. On 21 November 2008, following a five-day hearing, Roderic Wood J made an order confirming HM's placement in the residential placement, rejecting PM's application that she should live with him and making detailed orders regulating and restricting his contact. The order, which runs to 16 pages, is found at [1/B1]. It includes an agreed schedule setting out the parents' contact for the period from November 2008 to September 2009 in meticulous detail: [1/B11].

12. After further difficulties, which included PM retaining HM at the end of contact, the residential facility gave notice that it was terminating HM's placement as from 18 July 2009. The matter came back before Roderic Wood J on 24 June 2009. It was agreed that a new residential and educational establishment should be found for HM, and that she should go there in autumn 2009, or as soon thereafter as a placement could be identified and arranged. Directions were given for a hearing before Munby J in August 2009 at which the identity of the new placement and the surrounding arrangements, including contact, would be settled. The order appears at [1/B61].

13. Two further parts of the order are relevant:

(i) The detailed contact arrangements for summer 2009 which had been set out in the 2008 order [1/B13] were varied: see [1/B65 & 74]. The eight week period between 16 July 2009 and 12 September 2009 was divided between the parents, with some three weeks being spent with the mother and five with the father, including the period 30 August to 12 September. It did not make provision for later dates, the hope no doubt being that HM would by then have started in her new placement.

(ii) Both parents gave undertakings concerning the return of HM to England and Wales at the end of any period of contact. In PM's case he undertook:

That if I take HM out of the jurisdiction of England and Wales during any period of contact I have with her, I will return HM to the jurisdiction of England and Wales on or before the end of that period of contact.

The general form of undertaking, signed by PM and sealed by the court, appears at [1/B70]. The undertaking was given in the context of a discussion of the consequences of PM abducting HM to Israel, an idea that he disowned. The relevant extract from the transcript is at [1/B77tt-vv].

14. The hearing before Munby J (as he then was) took place between 25 and 28 August 2009. By the end of the hearing all parties and professionals, with the exception of PM, supported a particular identified placement ('the new placement').

15. It is, I am afraid, necessary to trace in some detail the sequence of events over the two-month period between the end of the hearing on 28 August and 29 October, when HM was taken to Israel.

- On 28 August PM had by the end of the day not finished his submissions and it was agreed that he would supplement them in writing.

- On 30 August Miss Giovanetti circulated a revised draft order, on which the other parties made comments.

- On 1 and 2 September PM lodged his final submissions in opposition to the new placement.

- On 6 September Munby J communicated his decision [6/87], which was that HM should move to the new placement. The surrounding arrangements were set out in a very extensive draft order, which accompanied the decision [1/B126-152]. It included a number of schedules, of which the fifth at [1/B135] related to contact arrangements. That set out a detailed mechanism for determining contact (essentially based on a three weekly cycle), with a care

coordinator, who was to be appointed, holding the casting vote in relation to specific arrangements if agreement between the parents could not be achieved. Contact in the immediate future was mentioned – "(*Annexe – Initial Contact Arrangements [to be inserted]*)" – but no dates were fixed in the draft order, the court commending the mother's proposals for agreement: [1/B137]. The judge fixed a one-day review hearing for late November or early December 2009. The parties' comments on the order, restricted to points of detail only, were invited.

- On 13 September PM responded, criticising the decision and seeking leave to appeal.

- On 18 September the judge inquired whether contact dates had been agreed, and it was apparent from the parties' responses that they had not.

- On 9 October, in the light of PM's expressed dissatisfaction, Bindmans wrote requesting that the court provide a final order, the draft order having been in existence since 6 September.

- On 12 October the Official Solicitor's solicitor, Ms Gieve, wrote to the court explaining that HM had been with her mother in Guernsey, and had moved to her father's home on 8 October. She said that the proposed date for HM to start at the new placement was 19 October.

- On 12 October PM replied to the effect that he did not agree anything.

- On 23 October Ms Gieve wrote to the court inviting it to list the case for hearing because PM had not taken HM to the placement on 19 October. She explained that a meeting with possible care coordinators had been arranged for 3 November.

- On 27 October PM wrote to the parties saying that he would not be taking HM to the new placement and proposing that they consult to reach "a best interests decision in the absence of an order".

- Later on 27 October Munby LJ (as he had by then become) approved the orders in the form that appears at [1/B139] and sent them to the parties and to the Associate for sealing. The orders bore the date 6 September 2009. In response to Ms Gieve's request, the judge fixed a hearing on Friday 6 November, so after the meeting on 3 November.

- On 28 October the judge sent out his draft judgment [6/105]. He invited editorial amendments by 2 November. The judgment included the fact that leave for PM to appeal was refused and that his time for appealing to the Court of Appeal was extended to 5 November. The judge pointed out that lodging an appeal did not act as a stay.

- Later on 28 October Mr Paul Allen, a senior manager at Guernsey social services, who has been described as the acting care co-ordinator, sent an email to PM, copied to the parties [6/180]:

  As of 19 October Guernsey is now paying for [HM]'s placement at [the new placement] and the Court orders are now sealed.

  Having considered the recent e-mails and your offer to bring [HM] to Guernsey on Friday to facilitate contact with [KH], it would be in [HM]'s best interests for you to take her, and her belongings, to [the new placement] on Friday (sc. 30 October) *as part of the transition plan.*

  As suggested in her e-mail of 27 October, [KH] could then meet you at [name] airport and bring [HM] back to Guernsey for her contact weekend. Following this, [KH] could take [HM] to [the new placement] on Monday 2 November to commence her placement.

  These arrangements would also ensure [HM]'s well-being whilst the meeting on Tuesday and court hearing on Friday take place.

  In fact, unbeknown to all, the order was not sealed until 18 November.

- Having read the judgment, PM realised that the court intended to take the necessary steps to ensure that HM started at the new placement. He says that he realised that that once the order was sealed it would be too late because once HM had entered the placement it would be very difficult to persuade the Court of Appeal to overturn the decision. At midnight on 28 October he booked tickets to fly to Israel on the afternoon of 29 October. He asked HM whether she would rather live with him or go to the new placement. He did not tell anybody because, as he put it, some people might have felt it their duty to try to stop him and he did not have time to make them understand. He says that he took HM because he believed that he had no choice but to protect her from the judge. He went so far as to accuse the judge of acting deliberately to deprive him of any right of appeal.

16. On 29 October PM took HM to Israel, where they stayed in a youth hostel for four days, before moving into a flat at an undisclosed address, remaining there until 31 December. On 31 October he wrote to his other daughter JM saying that they had 'gone away to try and find peace and safety' [6/181]. JM immediately told KH, who suspected that PM had gone to Israel. PM e-mailed and telephoned KH the next day and told her that she could visit HM in Israel if she wished.

17. Returning to the litigation history:

- On 30 October Ms Gieve had written to Guernsey stating that *'It would be very helpful indeed if Mr Allen could set out in a statement to*

the court his proposed transitional plan for HM's move to [the new placement], given that the original plan has not been followed.'

- On 2 November the matter came again before Munby LJ when a number of orders were made, the details of which need not be repeated. It was declared that HM's removal was wrongful and contrary to her best interests.

- On 6 November, the matter was again before the court, when a number of further orders were made. The case was listed for further review on 12 November.

- On 12 November no less than 14 orders were made, all being sealed on 18 November. Two of the orders (Numbers 13 and 14) were directed to PM and were served on him in unsealed [6/209] and sealed versions [4/F43] on 18 November, the court having given permission for service outside the jurisdiction and by e-mail. The relevant parts of the orders are:

  - 13th order: A Mareva injuction, which by Paragraph 5 [6/201] required PM to inform Bindmans LLP of (i) the address where he and HM were currently residing and (ii) of all his assets in England and Wales. [The page on which this requirement appeared was omitted from the sealed version sent on 18 November.]

  - 14th order, which by Paragraph 1 [6/208] ordered that PM should forthwith upon service of the order make arrangements to return HM to the jurisdiction of England and Wales as soon as possible.

- On 18 November the order of 6 September [6/90] was finally sealed. PM states that he received it on 23 November.

18. On 19 November, PM sent an e-mail acknowledging receipt of the orders [6/212]. In the course of the message he wrote:

> *(BY THE WAY - HELLO TO OUR FRIENDS - WE ARE WELL AND HAPPY and I am sorry that each of you has been caused this unexpected and bizarre treatment by an English High Court Judge and Law lord. Love and best wishes from [HM] and [PM])*
> ...
> *I also note that I have not had sight of (nor am I aware of the existence of any sealed 'Order'. As such, I believe that they are therefore merely, as they stand, pieces of paper with some ink upon them. You, as judges will be well aware that I cannot appeal an 'Order' that has not been sealed. No further comment is necessary from me in this regard.*
>
> *I will conclude by repeating what I have been saying for far too long now.... Consultation and discussion with my full participation is the only way forward.*

SHALOM and have a nice day.

19. On 23 November, having received the sealed order of 6 September, PM sent a long e-mail to the judge [6/214]. At the end he wrote:

> *So what I am saying (again)… is that your actions in 'freezing' assets that you thought belonged to me is wrong; and the only persons who will suffer are the girls.*
>
> *[HM] and I are fine; we are well; we are managing despite the attempt at 'inconveniencing' us and to put it bluntly, will not be blackmailed - the effect of which would be like selling out on [HM's] future for money or assets. I have more respect for her than that. Do you?*
>
> *So now it's time to be A Mensch* – [and PM here includes a definition]
>
> *The opposite of a Mensch is an Unmensch (meaning: an utterly cruel or evil person)*
>
> *The Choice is yours*
>
> *And by the way, as you all seem determined NOT to consult or discuss anything with me, I can tell you that if you want any chance of [HM] and me coming back to the UK, you will need an Order that includes the following:-*
>
> 1. *[HM] to reside with me;*
> 2. *[HM] to be funded in her welfare, medical and educational needs by Guernsey;*
> 3. *[HM] to attend a day college placement at a suitable college, such as [2 colleges named];*
> 4. *No action or sanctions will be taken against me and all 'inconveniences' removed;*
>
> *[PM] and [HM]*
> *P O Box No...*
> *Tel Aviv*

20. On 1 December 2010, in an effort to cement HM's presence in Israel, PM applied for Israeli citizenship for her. This has subsequently been granted to him, but not to HM.

21. Turning back to the litigation history:

- On 9 December, further orders were made, the details of which are not now relevant [2/348-356].

- On 17 December a further hearing took place. Discussion of the remedies available to the court took place. At one point the question of contempt was discussed [2/B356f]. Ms Giovanetti referred to 'one slight difficulty' in relation to the breach of the undertaking given to Roderic Wood J. This related to there being 'no order in force'. She suggested that there should be a declaration as to the end of the period of contact that PM had been having.

- On 21 December a further order was made [6/216]. PM was required to attend with HM at any hearing of which he had been given 5 days notice. The order contained supplementary preambles and declarations, including:

  - A preamble recording that the court had reason to believe that on 28 October 2009 Mr Allen, the acting care coordinator, informed PM that the period of contact that was then taking place should end on 30 October.

  - A declaration that the PM's most recent period of contact came to an end on 30 October 2009.

- On 23 December PM received this sealed order.

22. On 31 December PM moved with HM to his present address in Tel Aviv *[note: address removed from composite judgment]*. On 9 January 2010 he sent a photograph of HM to her mother. In the background could be seen a hotel sign. He sent it as a clue to HM's whereabouts.

23. On 28 January 2010 PM was given notice of a hearing on 5 February, but he did not attend or bring HM with him.

24. On 15 February, HM was removed from PM's care by the Israeli police and placed in the care of KH.

25. A sequence of hearings took place in Israel. On 25 March a decision was given against PM, who sought unsuccessfully to appeal to the Court of Appeal and the Supreme Court.

26. On 8 April HM returned to this country with her mother and sister, having been in Israel for over five months.

27. On 30 April an order was made [2/B712] confirming HM's move to the new placement and making wide-ranging orders restricting PM's role. Further directions were given, which included directions in relation to this committal application [2/724].

The committal application

28. On 28 May the Official Solicitor issued committal proceedings, supported by an affidavit of Ms Gieve [6/O1]. I am satisfied that the application has been properly issued and served.

29. PM did not file formal evidence but sent two written submissions to the court, inviting it to strike out the proceedings [1/A27 & 53]. In them he stated that he could not attend the hearing for fear of arrest under existing orders.

30. The application came before Eleanor King J for hearing on 8 August. She adjourned the proceedings with reluctance, and directed that PM should file a detailed response to the application and that he should attend the adjourned hearing. Her order is at [3/B845] and her judgment at [3/B849].

31. In the course of the judgment, she disabused PM of any idea that he would be automatically arrested on his return to this country and accordingly said that there was no need to consider a video-link. She also noted that if PM in fact satisfied the means criteria, public funding would be available for his representation.

32. The matter having been allocated to me for hearing on 9/10 December, PM sent e-mails to my clerk, renewing his request for a video-link and expressing the expectation that he would be treated unfairly. I have referred to these issues at the head of this judgment.

The allegations against PM

33. Arising out of this sequence of events, the Official Solicitor alleges that PM was in contempt of court in a number of respects, which I shall number:

    (1) By removing HM to Israel on 29 October 2009, PM acted in breach of the undertaking given by him to Roderic Wood J on 24 June 2009.

    (2) By removing HM to Israel on 29 October 2009, PM acted in breach of the order made by Munby J and dated 6 September 2009.

    (3) By failing to make arrangements to return HM to the jurisdiction as soon as possible, PM acted in breach of the 14th order made by Munby LJ on 12 November 2009.

    (4) By failing forthwith to inform Bindmans LLP in writing of the address where he and HM were currently residing, PM acted in breach of the 13th order made by Munby LJ on 12 November 2009.

(5) By failing forthwith to inform Bindmans LLP in writing of the details of his assets in England and Wales, PM acted in breach of the 13th order made by Munby LJ on 12 November 2009.

(6) By failing to attend the hearing on 5 February 2010 in person, PM acted in breach of the order made by Munby LJ on 21 December 2009.

(7) By failing to bring HM to a hearing on 5 February 2010, PM acted in breach of the order made by Munby LJ on 21 December 2009.

34. It will be seen that the real complaint arises from the first three allegations: Nos. 1 and 2 relating to removal and No. 3 to retention.

35. I would add that during the course of the hearing the Official Solicitor withdrew an allegation that PM failed to inform the care coordinator of his holiday itinerary and contact details, as adding nothing, and that I granted leave to amend an incorrect date in paragraph 14 of the application, on which nothing turns.

Committal proceedings

36. Committal proceedings are serious matters which involve the liberty of the subject. They are quasi-criminal proceedings. The first consequence is that allegations of fact must be proved to the criminal standard. Secondly, it is in the nature of committal proceedings that order of which a breach is alleged should be clear. Just as the law of the land should make its requirements clear to the citizen, so must orders of the court if they are to be enforced by committal. As is said in Arlidge, Eady & Smith on Contempt (3rd Ed.) at 12-48:

> An order or undertaking will not be enforced by committal if its terms are ambiguous, the rule being analogous to that which governs the interpretation of penal statutes. It is to the terms of the order itself that one must look in order to define the obligations imposed.

37. There have been many assertions of the importance of clarity, for example that by Dame Elizabeth Butler-Sloss P in *Att-Gen v Greater Manchester Newspapers Ltd* [2001] EWHC QB 451 at [20] and by Munby J himself in *Harris v Harris (also known as Attorney General v Harris)* [2001] 2 F.L.R. 895 at [288].

38. A further consequence of the nature of the proceedings is a requirement for strict procedural correctness in relation to the order or undertaking in question, with any doubts being resolved in favour of the defendant. As is said in Arlidge (above) at 12-55:

> The burden should thus lie upon those who seek to obtain an order, or to negotiate an undertaking, to obtain clear restrictions to the full extent required at the time when the defendant's obligation arises. An order should be clear in its terms and should

> not require the person to whom it is addressed to cross-refer to other material in order to ascertain his precise obligation. Contempt proceedings based on such a defective order may well founder. There is clearly no scope for reading implied terms into an injunction.

As to the last sentence, reference is made to the decision of the Court of Appeal in *Deodat v Deodat* 9 June 1978 (unreported, cited by Munby J in *Harris* (above) at [288]).

Decision

39. I will now give my decision in relation to each allegation.

Allegation 1: By removing HM to Israel on 29 October 2009, PM acted in breach of the undertaking given by him to Roderic Wood J on 24 June 2008:

That if I take HM out of the jurisdiction of England and Wales during any period of contact I have with her, I will return HM to the jurisdiction of England and Wales on or before the end of that period of contact.

40. There is no doubt that the undertaking was given, or that PM took HM out of England and Wales, or that he did not return her. What is in issue is (1) whether the removal was during a period of contact and (2) whether, when HM was removed, the end of the period of contact had been set. PM raises arguments on both points.

41. Firstly, he says that HM was not having 'contact' with him, but that she had instead been living with him since she left her original placement on 16 July, and having contact with her mother. I reject this submission. Prior to 29 October 2009, HM had not lived with PM and all legal decisions about her had been to the effect that it was not in her best interests to do so. She had shared her free time between her parents when at her original placement or while awaiting her new placement. The contact ordered by the order of 24 June 2009 took matters up to 12 September 2009. HM had been with her father from 30 August and in effect he was 'holding over' after that, except for a short 4 or 5 day visit by HM to her mother. I conclude that on 29 October HM was with PM for a period of contact, albeit an extended one.

42. Next, PM says that no end period for contact had validly been set. He acknowledges that on 27 October he was asked by Mr Allen of Guernsey social services to take HM to the new placement, but says that this had no legal effect because there was no court-determined mechanism for Mr Allen (or indeed anyone else) to set a date, and nor did the approved unsealed order require PM to take HM to the new placement on a particular date. Nor indeed did the draft judgment do so at paragraph 95.

43. PM says that not only did he have no intention of obeying a draft order, which he wished to appeal, but also that he made his position on this clear

to everybody. He was driven in evidence to assert that he (uniquely) was entitled at that stage to take HM anywhere in the world for as long as he wanted.

44. Of course, PM did not seek to appeal, but instead took the law into his own hands. He knew perfectly well what he was doing in taking HM beyond the reach of the court, and it is tempting to find that by doing so he was in breach of his undertaking. However, that is not my conclusion. There are too many loose ends. In particular, I do not find that in the overall context that then existed, the e-mail from Mr Allen can bear the legal effect that the Official Solicitor suggests. Apart from anything else I can find no basis for the concept of an "acting care coordinator" or for the assertion that Mr Allen held the power to set dates, however sensible that arrangement might have been in the vacuum that then existed.

45. It is not without significance that this point clearly exercised the Official Solicitor, to the extent that he later invited the court to make a declaration in relation to the date on which contact had ended: see the note of the hearing on 17 December 2009 [2/B356f] and the preamble and declaration in the order of 21 December 2009 [6/216]. This in my view (i) emphasises the lack of clarity that existed as at 29 October, and (ii) falls foul of the principle that a defendant should not have to cross-refer to other material to know the effect of an order, unless a clear procedure of that kind has been put in place in the order.

46. I further find that insofar as there might be any ambiguity, it should be resolved in PM's favour: see *Redwing Ltd v Redwing Forest Products Ltd* (1947) 177 LT 387, 390 (Jenkins J):

> "a Defendant cannot be committed for contempt on the ground that upon one of two possible constructions of an undertaking being given he has broken that undertaking. For the purpose of relief of this character I think the undertaking must be clear and the breach must be clear beyond all question."

47. As a matter of law I therefore decline to find that PM breached his undertaking. He took advantage of a situation that was almost entirely of his own making, but in considering whether an order or undertaking has been breached, the court is not concerned with the substantial merits.

Allegation 2: By removing HM to Israel on 29 October 2009, PM acted in breach of the order made by Munby J on 6 September 2009.

48. The Official Solicitor submits that by virtue of the decision given by Munby J in his e-mail of 6 September, together with the approved but unsealed order of 27 October and the draft judgment of 28 October, an order was in force, and that PM breached it on 29 October when he took HM to Israel.

49. For his part, PM asserts, as seen above, that at that date no valid order existed. He points out that it is open to a judge to change his/her mind at

any time before the sealing of an order. He contends that no bailiff would enforce an order that was not sealed. He also states that in his experience of appealing, which is considerable, the Court of Appeal office would not have accepted his notice of appeal without a sealed order. (I note that, on the authority of *Sayers v Clarke Walker* [2002] 1 WLR 3095, this last point would not seem to be a correct account of the law, whatever the actual practice under CPR PD 52.6 may be.)

50. I have been referred to CPR 40 concerning judgments and orders. Rule 40.2 sets out the standard requirements, making it clear that an order is the written record of the decision, not the decision itself. By rule 40.2(2)(b)

> Every judgment or order must –
> (a) bear the date on which it is given or made; and
> (b) be sealed by the court.

51. CPR 40.7(1) defines when judgment or order takes effect

> A judgment or order takes effect from the day when it is given or made, or such later date as the court may specify.

52. Time for appealing runs from the date of the decision: CPR 52.2(2)(b). However, the decision must be formally given: see *Owusu v Jackson* [2002] EWCA Civ 877.

53. I have not heard detailed argument about the legal effect of an approved but unsealed order sent by e-mail. In the light of my wider finding in relation to this allegation, I do not find it necessary to reach a decided conclusion on the issue.

54. This is because, assuming for the present that the order of 6 September was effective on 29 October, I do not consider that PM's actions in taking HM to Israel placed him in breach of it. The Official Solicitor rightly alleges that PM acted in defiance of the decision as to HM's best interests, but he cannot point to a mandatory or prohibitive order that was made and broken. The order does not contain any set date for PM to take HM to the new placement, nor any mechanism for setting the date, nor any prohibition on him removing her from the country. No doubt the latter was regarded as unnecessary because of the undertaking and because it was thought self-evident that PM should not do it. However, as stated above, one cannot read implied terms into an injunction.

55. I contrast the order of 6 September with the crisp and unmistakeable terms of the order of 30 April 2010 [2/B712].

56. Accordingly, I do not find this allegation proved. PM's behaviour in abducting HM was a gross defiance of the spirit of the court's order, but that is not the issue in proceedings of this nature.

Allegation 3: By failing to make arrangements to return HM to the jurisdiction as soon as possible, PM acted in breach of the 14th order made by Munby LJ on 12 November 2009.

57. This order was regularly made, regularly served, crystal clear in its meaning and knowingly disobeyed. I find the allegation proved.

58. The only argument raised by PM is that because the original decision following the hearing in August 2009 was in his view objectionable, all subsequent orders were void as resting on what he described as rotten foundations. He describes them as 'contingent orders'. That argument has no merit at all and I have no hesitation in rejecting it. The validity of the order of 18 November was in no way contingent on the provisions of any other order.

59. In argument, PM was in effect driven to say that because he disagreed with the original order, the court no longer had any power over him. Since he makes the assertion in apparent seriousness, I must make it absolutely plain to him that all existing orders relating to HM (including the important second order dated 30 April 2010 [2/B712]) are in full effect and must be obeyed.

60. I must also dispel another myth which PM has aired, namely that HM cannot be abducted because she is an adult. There is in place a valid and binding order, referred to in the preceding paragraph, preventing PM, or anyone acting on his behalf, from (amongst other things) removing HM from her new placement, or from her mother, or from England and Wales, or, indeed from having direct contact with her. This order is, I stress, in full effect.

Allegation 4: By failing forthwith to inform Bindmans LLP in writing of the address where he and HM were currently residing, PM acted in breach of the 13th order made by Munby LJ on 12 November 2009.

Allegation 5: By failing forthwith to inform Bindmans LLP in writing of the details of his assets in England and Wales, PM acted in breach of the 13th order made by Munby LJ on 12 November 2009.

61. My finding about these allegations is identical to my conclusions on Allegation 3.

Allegation 6: By failing to attend the hearing on 5 February 2010 in person, PM acted in breach of the order made by Munby LJ on 21 December 2009.

Allegation 7: By failing to bring HM to the hearing on 5 February 2010, PM acted in breach of the order made by Munby LJ on 21 December 2009.

62. My finding about these allegations is identical to my conclusions on Allegation 3.

63. PM raises an additional argument in defence of these matters, namely that by December 2009 he and HM were habitually resident in Israel, and thereby beyond the reach of this jurisdiction. On reflection, he asserted that this applied to all orders affecting him. I reject that submission. It has no basis in law. HM lacks capacity to determine her own habitual residence and PM was certainly not entitled to change it unilaterally, nor, by fleeing, to escape the responsibilities resulting from proceedings which, as it happens, he himself originally began.

64. I also note that on 22 March 2010 the Israeli court gave short shrift to PM's assertion that this court had lost its jurisdiction: see [5/N14].

Outcome

65. I dismiss the first two allegations, which relate to HM's removal to Israel. I find that the third allegation, relating to her retention there, has been proved. I find the remaining four subsidiary allegations proved.

66. This judgment is being handed down in open court, with my findings as to each allegation being stated orally. A hard copy will be sent to PM and the other parties immediately after the hearing. The date for delivery of the judgment was notified to the parties on 15 December and PM was offered the opportunity to attend by telephone link. He has not taken this opportunity, saying that he is 'not available' for an unspecified reason, and that he will not be available until 20 December because he is going away for the weekend. He complains about short notice in fixing the hearing to deliver judgment. I do not accept his complaint. I intend that these proceedings should be concluded without delay, and in particular that the sentencing hearing should take place before the end of this legal term, which is on 21 December.

67. I therefore adjourn this hearing until 10:30 am (London time) on Tuesday 21 December 2010. If PM informs my clerk that he wishes to attend the hearing by telephone, attempts will be made to accommodate this. In the meantime I will consider any written submissions that have been sent by e-mail to my clerk by 4 pm (London time) on Monday 20 December. The Official Solicitor may wish to draw my attention to any evidence already filed that relates to the effect of PM's actions on HM, KH and JM.

68. As PM is a litigant in person, albeit an experienced one, I should explain that by adjourning the proceedings to 21 December, I am not making any order today or reaching any conclusions beyond those set out in this judgment. On 21 December I may hear short supplemental oral submissions by the parties (but only if a telephone link can be set up) and I will deal with the question of penalty for the breaches that have been proved.

69. I end by recording that I asked PM during the course of his evidence whether he would voluntarily return to England for a sentencing hearing if any allegations against him were proved. He said that he would not. In fixing the further hearing, I am acting on the assumption that this remains his position.

Further judgment (21 December 2010):

70. PM, who has once again appeared by telephone link, has raised three preliminary objections, to which I now turn.

71. Firstly, he objects to this hearing proceeding on this date. He says that it has been fixed arbitrarily and that he has had to "put himself out" to be available. He says that he has not had time to consider the matter and objects to "the rush".

72. I reject this complaint. These proceedings have already been on foot for over six months. This hearing is taking place 11 days after the hearing and 5 days after the delivery of my first judgment. PM has had ample time to prepare himself, and the listing of hearing of this kind is not a matter for the convenience of the parties.

73. Secondly, PM argues that he has been found to be in contempt of an order which does not exist. He refers to paragraphs 33(3) and 56 of my judgment in which I referred to in order of 18 November 2009. The order was in fact dated 12 November 2009, served on 18 November 2009, and I have amended my earlier judgment accordingly.

74. Thirdly, PM argues that his Article 6 rights are being breached as a result of his not having legal representation. He objects in the strongest possible terms to the hearing continuing. He says that he cannot find a lawyer to represent him. He has approached five barristers and seven solicitors, none of whom has been prepared to stand up against a senior judge like Munby LJ. He refers to the authorities referred to by the Official Solicitor – (*Hammerton v Hammerton* [2007] EWCA Civ 248, *Hale v Tanner* [2000] 1 WLR 2377, and *Re K (Contact: Committal Order)* [2002] EWCA Civ 1559) – which emphasise the importance of a contemnor being given the opportunity to obtain legal representation.

75. I do not accept that PM's Art. 6 rights are breached by this hearing proceeding even though he is unrepresented. As Eleanor King J observed in June, he has had access to funds and the right to obtain publicly funded representation if in truth he lacks them. I reject the suggestion that lawyers in this country would be unwilling for improper reasons to represent a person in the PM's position: examples to the contrary are commonplace. I find that PM's attitude and his absence from this country are in all likelihood the reason for his being unrepresented.

76. The obligation to afford a defendant representation is not absolute or unlimited, and intransigence in unreasonably failing to obtain legal assistance is a relevant factor: see *Hammerton* (above) at paragraph 9(ii). I would add that PM is in my view as well able to defend himself as any unrepresented litigant. I have found him to be thoroughly in command of the material and perfectly able to make submissions on the issues that have arisen. It is of a piece with his overall presentation that he has declined to make submissions today on anything other than the preliminary matters raised above. He told me "I am not going to engage in any further discussion. You will have to do what you have to do and I will take it up afterwards."

77. Having dealt with these preliminary matters, I will now proceed to the question of the appropriate penalty.

78. PM, you have been found to be in contempt of court in 5 specific respects.

79. Having taken HM, who is unable to make decisions for herself, to Israel, you kept her there for as long as you could. You were ordered to bring her back as soon as possible. You disobeyed. Your conduct was contemptuous in the true sense of the word, seeking to hold others to ransom by demanding that they surrender to an outcome that that had been found by this court after a fair trial to be completely against HM's interests. You succeed in preventing her return to this country for another 4½ months.

80. At the same time you were ordered to reveal where you were keeping HM. You never obeyed. Instead, seven weeks later, you cynically sent a photograph from which the address might be deduced, as if it were all a game.

81. Likewise, you have been ordered to describe your assets in this country. You have never done so.

82. I take account of the fact that you have, so far as I know, not previously been found to be in contempt of court. I also accept that by your conduct you have brought financial consequences upon yourself and that you have been deprived of regular contact with HM. I accept that your actions spring from your misguided belief that, where she is concerned, you are always right and everyone else is wrong. I also take account of the fact that your efforts to prevent HM's return have failed, and that some time has now passed.

83. I do not accept your claim, made uniquely in an e-mail on 19 December but not repeated today, that you are 'heart-broken and remorseful'. I wish it were so. Having read a large number of your communications and listened to you for several hours, I have detected no hint of regret. On the contrary, every note has been in the key of defiance. If you were truly remorseful, you would have obeyed the court's order to attend these proceedings; indeed you would have done so voluntarily.

84. These are family proceedings where passions can run often high, but that is not an explanation here. Even if HM's removal could be thought impulsive (and in my view it was not) your detaining her in Israel was a knowing and calculating course of conduct, carried out without the slightest consideration for any feelings other than your own. Your actions have caused distress and disturbance to HM: see [3/C668-674]. You put HM's mother and sister through months of extreme anxiety, and you severely disrupted their personal lives: see [3/C674-6].

85. You are an arrogant man who abuses his obvious intelligence. You never tire of trumpeting your own rights, but you are deaf to anyone else's.

86. For this flagrant and damaging contempt of court, there is no alternative to a custodial sentence. I pass the shortest term that I reasonably can, reminding myself that I am not sentencing you for removing HM from this country but for not returning her.

87. For failing to make arrangements to return HM to the jurisdiction as soon as possible after service of the order of 18 November 2009, I sentence you to 4 months imprisonment.

88. For failing to inform Bindmans of the address where you and HM were living, I sentence you to 1 month imprisonment concurrent.

89. For failing to inform Bindmans of your assets, I sentence you to 1 month imprisonment concurrent.

90. I impose no penalty for the remaining two contempts involved in failing to bring HM to the hearing in February 2010.

91. The total sentence is one of 4 months imprisonment.

92. A warrant will be issued for your arrest. I direct service of the committal warrant upon you by the court by e-mail.

93. As you are unrepresented, I inform you that upon returning to serve your sentence you will be eligible for 50% remission and that after a period you are entitled to seek to purge your contempt.

94. When you serve this sentence, the Official Solicitor will make appropriate arrangements for some other body to review your detention.

95. *[Following a pause]:* I order you to pay the Official Solicitor's costs of the committal application, those costs to be subject to detailed assessment. I have considered whether the fact that some allegations were not made out as a matter of law should reduce your liability. In my view it does not. The facts are clear and you accepted nothing. The overall costs would have been incurred anyway.

96. As this is a committal order, permission to appeal is not required: CPR 52.3(1)(a)(i).

97. Finally, in the interests of HM I will maintain the restriction on the identification of the name and location of those involved. Any application for this direction to be relaxed must be made on notice to the parties.
