Case No: H00PO451

IN THE CROWN COURT AT SALISBURY

Salisbury Law Courts
Wilton Road
Salisbury
SP2 7EP

BEFORE:

HIS HONOUR JUDGE PARKES QC

BETWEEN:

PREMIER MARINAS LIMITED **CLAIMANT**

- and -

ROBERT LOOKER **DEFENDANT**

Legal Representation
Mr Joseph England of Counsel on behalf of the Claimant
Defendant not in attendance nor represented

Hearing date: 25 March 2022
Transcribed from 14:29:22 until 15:15:53

Reporting Restrictions Applied: No

Friday 25 March 2022

His Honour Judge Parkes QC:

[1] This afternoon I have to sentence the Defendant, Mr Robert Looker, for contempt of court for his continued disobedience of an order of the Court. Mr Joseph England of counsel represents the Claimant. The Defendant is neither represented nor present in court and, for reasons which I shall give, I have decided to proceed with this hearing in his absence.

[2] On 5 January 2022, in the Defendant's absence, I found him guilty of contempt of court. My judgment on that occasion was transcribed and is generally available and I will not repeat what I said on that occasion except to the extent necessary to give context to my sentence. The Claimant is the owner of a marina at Port Solent where the Defendant has, for some years, berthed and stored his 12 metre ketch, Silverwind.

[3] There is a long history of problems between the Claimant and the Defendant involving repeated non payment of storage and berthing fees, resulting in proceedings in the County Court at Chelmsford in November 2018. A judgment for the unpaid fees was obtained and the matter was duly transferred to the High Court so that a writ of control could be issued. I speculate that the Chelmsford proceedings and the transfer to the High Court may underlie the Defendant's claimed belief that the County Court at Portsmouth, from which this matter proceeds, has no jurisdiction in the matter.

[4] There were further problems with payment of storage fees and, as a result, the Claimant gave notice to the Defendant on 1 August 2021 that his permission to store the vessel would be withdrawn in 30 days. In other words, he had to remove his vessel from the marina by 1 September 2021. He did not remove it.

[5] The Claimant issued proceedings in the County Court in Portsmouth on 13 September 2021seeking unpaid storage fees of £2,715.20 and an injunction compelling the Defendant to remove the vessel from the marina. The cause of action is in trespass, I believe, because theDefendant no longer had any right to keep the vessel at the marina, his licence to do so having been revoked.

[6] The Claimant applied on notice for an injunction to compel the removal of the vessel. The Defendant responded neither to the proceedings nor to the application, as a result of which the Claimant applied for default judgment. That application, together with

the application for an injunction, was heard by District Judge Robin Wilson on 20 October 2021.

[7] The Defendant neither attended that remote hearing nor made any representations but there is no possible doubt that he had notice of it.

[8] The application for an injunction was granted. The order, which is headed with a penal notice, states that:

> "On 20 October 2021 the Court considered an application for an injunction. The Court ordered that Mr Robert Looker must remove the vessel Silverwind from Port Solent Marina, South Lockside, Port Solent, Portsmouth, Hampshire, PO6 4TJ on or before 4pm on 10 November 2021."

[9] The Defendant did not remove the vessel by the deadline of 4pm on 10 November and it remains, even now, on the Claimant's land. There is no possible issue about the service of that order.

[10] On 18 November 2021 the Claimant issued this application for the committal of the Defendant for breach of the Court's order. It was made in the normal form of a contempt application, namely court form N600, and set out all the Defendant's rights. It identified the nature of the contempt as being breach of the court order of 20 October 2021 in the following terms, namely, that he must remove the vessel Silverwind from Port Solent Marina on or before 4pm on 10 November 2021. The application was personally served on the Defendant by a process server on 7 December 2021.

[11] On 1 December 2021 I made an order for directions providing that the application to commitwould be heard at Winchester Combined Court, The Law Courts, High Street, Winchester on a date in January 2022 and at a time which would be notified to the parties, that the parties and their representatives should attend court in person and, in particular, that the Defendantmust attend court for the hearing of the application. It warned that, if he were to fail to attend, the Court might proceed in his absence and might, whether or not it proceeded in his absence,issue a warrant for his arrest and production to the Court.

[12] The order informed the Defendant that he had the right to remain silent, although the Court might, if appropriate, draw an adverse inference from his silence, and that he might, if he wished, put in written evidence but that he was not obliged to give evidence, whether in writing by witness statement or orally at the hearing. However, if he wished to make a witness statement he had to file it at the County Court in Winchester and serve it on the Claimant's solicitors by 4pm on 17 December 2021. In addition, there was a notice to the Defendant giving him the usual notice of his rights in very much the same terms as form N600.

[13] The Defendant did not file any evidence then, and has not done so at any point since. Nor has he engaged withthese proceedings at all, other than by a long series of argumentative emails which have a recurrent theme, combining offensiveness to the Claimant's solicitors with the repeated assertion that his vessel Silverwind is subject to what he calls 'the lawful C-E-N-S jurisdiction of Chelmsford Family Court' and, in particular, of the designated family judge there, Judge Fiona Shanks. I do not know what CENS means. Mr England has suggested today that it may mean Cambridge, Essex, Norfolk and Suffolk. That may be.

[14] The Defendant's claimed belief that Chelmsford County Court has jurisdiction may stem from the fact that the Claimant earlier proceeded in the Chelmsford County Court and that there was a transfer to the High Court for enforcement purposes; or it may possibly be caused by his apparent involvement (referred to in emails) in pending divorce proceedings in that court. Such proceedings might, I speculate, be concerned with the split of matrimonial assets such as a yacht.

[15] At all events, he is or has been, or claims to be, under the misapprehension that the CountyCourt at Portsmouth and now at Winchester, lacks jurisdiction to deal with these entirely separate and distinct proceedings. He has been told many times in the email correspondence, both by the court office and by the Claimant's solicitors, that he is wrong, but apparently to no avail.

[16] The hearing of the application to commit took place at Winchester on 5 January 2022. The Defendant, again, was neither present nor represented. I decided to proceed in his absence for the reasons which were given in my judgment of that date.

[17] I considered the checklist of the relevant matters which the authorities suggest that the Court ought to consider when proceeding in the absence of the Defendant in such cases. Having done so, I hesitated only over the question of whether there was any reason for Mr Looker's non-appearance. That was because I recalled an email from Mr Looker to the Court which referred to a heart condition. However, there was no suggestion in the doctor's note supplied with that email, which would have been sent in early December and referred only to a "febrile illness", that his condition, whatever it was, would prevent him from attending court.

[18] On 30 December 2021, the Defendant had written to the Court saying that he was clinically unwell, and was self-isolating pending a clinical assessment at Addenbrooke's Hospital on 22 January 2022. He was told by the Court on 4 January that he must attend court the following day unless he provided convincing medical evidence which informed the Court that he was medically unfit to attend.

[19] In response, the Court received an unsigned attachment to an email from the Defendant, which purported to come from his GP. It informed the Court that the Defendant had been diagnosed with ischemic heart disease, cerebral vascular accident and hypertensionso that it was, and I quote the GP's words:

> "… medically reasonable for him to consider reducing any unnecessary socialcontact and travel in light of the increasing number of Covid diagnoses being made nationally."

[20] There was nothing in the doctor's note that suggested that the Defendant was prevented from attending court for medical reasons. At most, it suggested that, given his condition, it would be undesirable. The Defendant had not, at any stage, applied for an adjournment, nor for a remote hearing. In the circumstances it seemed to me that there was no good reason not to proceed.

[21] I then considered the question of whether the Defendant was in contempt of court by failingto remove the vessel and to take matters shortly I have no doubt that the Defendant had at all times been well aware of the order of District Judge Wilson and what he was required todo to comply with it, and that he had taken a conscious decision to disobey that order and not to remove the vessel. As I said in my judgment, there was nothing remotely ambiguous about the order, which was extremely straightforward and perfectly clear. I was therefore satisfied beyond reasonable doubt that he was guilty of contempt of court in his disobedienceto that order by failing to remove the vessel.

[22] In the normal course of matters, I would have proceeded then and there to sentence. I did not do so, for three reasons. I wanted to know more of his medical condition and to give him an opportunity to serve on the Claimant and the court any medical evidence following his Addenbrooke's appointment, which might have assisted the |Court in the disposal of the matter; I wanted to give him the opportunity to remove the vessel before the Sentencing Hearing; and I wanted to give him a final opportunity to obtain legal representation given that, as I made clear, he was in danger of a substantial custodial sentence. The Defendant was, of course, told of his right to appeal and he said that he intended to exercise that right but in the event he did not do so.

[23] I therefore adjourned the sentencing of the Defendant to Friday 18 February 2022 at 11 o'clock in the morning at The Law Courts, High Street, Winchester, ordering him to attend and warning that I would, if necessary, issue a bench warrant to have him brought to court. My judgment was transcribed and served on the Defendant so that he understood fully where he stood.

[24] After several fruitless attempts by the court office to find out whether the Defendant wouldattend court in accordance with my order, I issued a bench warrant to ensure his attendance at court on 18 February 2022. Two Hampshire bailiffs went up to Stansted in Essex to arrest Mr Looker and bring him to Winchester but, as they later reported to me in open court, he claimed that he had stage 3 heart failure and was not feeling well. The bailiffs called an ambulance. They had observed a slight shortness of breath but no other outward signs of incapacity. The paramedic staff assessed him as being hypertensive. He walked unaided to the ambulance and was taken to hospital.

[25] According to an email sent by the Defendant to the Court and the Claimant's solicitors later that day, he spent six hours in Accident & Emergency while his heart was stabilised. It may be worth reading that email, dated 18 February, timed 21:32, which is addressed to Mr Bishop, the Claimant's solicitor, Mr Duff, the Senior Partner of Shoosmiths, and to the Court. He said this:

> "Thank you for HHJ Parkes QC order of today that I am bound to say ignores the actuality with this Respondent both clinically and at law when both are a matter of court record.
>
> Clinically it is also a matter of court record that the Respondent is a stage 3 heart failure patient, thus any undue stress quickly induces an angina attack which was the case this morning and, obviously, the clinical reason why I was taken to A&E by ambulance where I spent today. It took A&E six hours to stabilise my heart condition.
>
> At law it is also a matter of court record that this Respondent has, on a fundamental legal point of order, confirmed that SY Silverwind is/was and, indeed, still remains lawfully in CENS jurisdiction, Chelmsford CC, HHJ Shanks.
>
> I know of no act or CPS procedure that permits SY Silverwind to be active in two courts and two jurisdictions at the same time? Remarkably neither your office nor HHJ Parkes QC have attempted to address this fundamental point of order, preferring instead to admonish the Respondent for not attending the staged Sentencing Hearing today.
>
> I am satisfied that both your Head of Practice and, indeed, the Lord Chancellor's Office are now engaged on this malfeasance, for that is what it is in practice.
>
> An important distinction is made both in fact and law that no judge of whatever judicial rand (sic) stands above the law, the particulars of which, strangely, remain unanswered, both by yourself and most unforgivably HHJ Parkes QC, in either of the two orders. It is, I am bound to say, in the interests of justice being seen to be served, that HHJ Parkes QC addresses 'at law' this fundamental point of order?"

[26] It is, of course, not a matter of court record that the Respondent is what he calls a stage 3 heart failure patient. There is no evidence to that effect at all, merely claims from the Defendant in the course of his interminable and repetitive emails.

[27] In consequence of the abortive attempt to bring the Claimant to court on 18 February I made an order adjourning the Sentencing Hearing to today, 25 March 2022, at Salisbury Law Courts at 2 o'clock in the afternoon. My order provided that if the Defendant feared that forgood medical reasons he would be unable to attend court he should, by 4 March 2022, inform the Court of that fact, whereupon the Court would attempt to make arrangements for him toappear by remote link from an Essex Court or a local police station. He did not respond to that invitation.

[28] My order also provided that if the Defendant wished to place before the Court evidence of his medical condition, he should do so by 11 March 2022; and that if he failed to do so, the Court would proceed on the assumption that his medical condition was not so serious as to have a bearing on the sentencing process. He did not serve any evidence or provide any information about his medical condition, beyond intermittent assertions in emails, by 11 March or at all, and the Court can only infer in those circumstances that his medical conditionis, indeed, not so serious as to bear on the process of sentencing.

[29] I caused the court office to write to the Defendant on 17 March reminding him of the hearing today, and asking him to inform the Court whether he intended to attend. He was warned that if he did not attend he would either be arrested by bailiffs or sentenced in his absence. He was urged to cooperate with the Court and mitigate the effects of his non cooperation, and to obtain legal advice. That letter produced two replies, one of 17 March and one of 21 March.

[30] The email of 17 March refers to his earlier email of 24 February, from which I am not going to quote, and says that he stands by it and he repeats that for the avoidance of any doubt whatever Silverwind remains lawfully in the "CENS jurisdiction" and that Judge Shanks has the case file and directions. I do not think I need say any more about that except that he mentions that in his view I am "Unlawfully traipsing around in this toxic minefield of a case wearing thelegal equivalent of snow shoes. He suggests, not for the first

time, that I should consult with Judge Fiona Shanks, and asserts that the Sentencing Hearing is or was, by definition "An affront, injustice, in this known and knowable unlawful and unsafe circumstances". He quotes the tag: "Quis custodiet ipsos custodies?"

[31] On 21 March, he sent another email to the Court, very much to the same effect. I have also been shown by Mr England an email which the Defendant sent to Mr Elliott of Shoosmiths, Mr Duff, managing partner of Shoosmiths, and Mr Collins of the Claimant company, which says:

> "Be in no doubt of it, you will be eating your entire unlawful £40,000 in costs Mr Bishop. You're indeed in contempt of court yourself Mr Bishop and by dint of your own unlawful acts and omissions with four courts in three jurisdictions. This Respondent is satisfied that HHJ Parkes QC is properly and lawfully aware that SY Silverwind is/was and, indeed, remains in the lawful CENS jurisdiction, an inconvenient truth that you, Mr Bishop, deliberately sought to pervert justice inviolate of section 42 County Courts Act as you are/were aware. Nothing less than your SRA licence now hangs in the balance, be in no doubt of it Mr Bishop."

[32] A final attempt was made by the court office on 23 March to persuade the Claimant to cooperate and, in his own interests, to obtain legal advice. It was not, in the event, possible for Hampshire or Essex bailiffs to attend today to bring the Defendant to court in Salisbury, nor to arrange for him to be taken to a local court so that he could be sentenced by videolink. That would have involved adjourning the case yet again, with no guarantee that further attendance by bailiffs would not be met with further claims that the Defendant was not feeling well.

[33] It is not surprising to record that the Defendant has not come to court today. He did, however, email the court office, and Mr Duff and Mr Collins, at 8.55am. He said:

> "Good morning Mr Duff. I spoke to the court's administration yesterday (Winchester) for the first time to orally reconfirm that the Respondent would not be attending your Mr Bishop's trumped up contempt of court Sentencing Hearing today before HHJ Parkes QC sitting at Salisbury Crown Court and on the known and knowable grounds for your Mr Bishop's 'acts and omissions' with Chelmsford CC who retain the lawful jurisdiction of SY Silverwind, fact. Thus your Mr Bishop is himself in contempt of court, fact."

I omit most of the email, but note that he concludes:

> "In the meantime, Winchester County Court and His Honour Judge Parkes QC have been made properly aware that DFJ HHJ Shanks currently holds the lawful jurisdiction of SY Silverwind, fact."

[34] I do not doubt that I have the power to sentence the Defendant today in his absence, althoughI accept that this can only be done in exceptional circumstances. The circumstances which Ihave outlined are, in my judgment, exceptional. The Defendant has at no point engaged withthese proceedings despite repeated attempts by the court office to explain his obligations to him. All that he has done has been to send innumerable unfocused emails to the Court and to the Claimant. He has never advanced any defence to the claim nor any explanation for hisfailure to comply with the original order of the Court that he should remove his yacht from the Claimant's marina. His defiance of the Court is, in my view, plain and complete.

[35] Such has been the repetitive and unfocused nature of the Defendant's correspondence that I have felt some concern as to his mental capacity: but there is no way of determining whetheror not he has capacity to understand the litigation, and in the absence of any evidence as to his cognitive abilities, it seems to me that I can only rely on the presumption of capacity. The bailiffs who attended his house on 18 February did not suggest that he did not appear to be compos mentis. Mr England suggests that the Defendant can be inferred to be perfectly capable of understanding the litigation from the way in which he tends to keep his more offensive observations for emails which he sends to the solicitor while being marginally more courteous to the Court. That may be.

[36] As far as his physical health is concerned, he has often referred to his heart condition, but he has never produced a medical report which suggests that he is not fit to attend court. He did email the Court on 24 March, to say that he was attaching his medical records, but they were not, in fact, attached to the email. A court officer spoke to him on the telephone and explained, I believe, that the records were not attached (it may be that explanation was given by email) but no further attempt seems to have been made by the Defendant to send the records to the court.

[37] It appears to me that I have no realistic alternative but to deal with the Defendant in his absence, and I shall do so. The procedural rules in relation to contempt of court have changed, but they do not appear to have altered the approach which the Court should adopt to penalty. CPR 81.9 now reads as follows:

> (1) If the court finds the defendant in contempt of court, the court may impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law.
>
> (2) Execution of an order of committal requires issue of a warrant of committal. An order of committal and a warrant of committal have immediate effect unless and to the extent that the court decides to suspend execution of the order or warrant.
>
> (3) An order or warrant of committal must be personally served on the defendant unless the court directs otherwise.
>
> (4) To the extent that the substantive law permits, a court may attach a power of arrest to a committal order.
>
> (5) An order or warrant of committal may not be enforced more than two years after the date it was made unless the court [orders] otherwise.

[38] I found the decision of Nicklin J in *Oliver v Shaikh* [2020] EWHC 2658 (QB) of great assistance on the objects of sentencing. Nicklin J derived a number of principles from earlier authority which at paragraph 17 of his judgment he stated as follows:

> i) The object of sanction imposed by the court is two-fold: (1) to punish the historic breach of the court's order by the contemnor; and, (2) to secure future compliance with the order. In my judgment, if those objects in any way conflict in terms of sanction, then the primary objective is to secure compliance.
>
> ii) The sanctions available to the Court range from making no order, imposing an unlimited fine or the imposition of a sentence ofimprisonment of up to two years. The Court has the power to suspend anywarrant for committal.

iii) As with any sentence of imprisonment, that sanction should only be imposed where the Court is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate. It is a measure of last resort. A suspended prison sentence, equally, is still a prison sentence. It is not to be regarded as a lesser form of punishment. A sentence of imprisonment mustnot be imposed because the circumstances of the contemnor mean that hewill be unable to pay a fine. A sentence of imprisonment may well be appropriate where there has been a serious and deliberate flouting of the Court's order.

iv) The Court's task when determining the appropriate sanction is to assess culpability and harm. The Court will consider all the circumstances, but typical considerations when assessing the seriousness of the contemnor's breach are:

a) the harm caused to the person … whose interests the injunction order was designed to protect, by the breach;
b) whether the contemnor has acted under pressure from another;
c) whether the breach of the order was deliberate or unintentional; and
d) the degree of culpability of the contemnor.

v) Mitigation may come from: (a) an admission of breach - for example, admitting the breach immediatelyand not requiring the other party to go to the expense and trouble of proving a breach; (b) an admission or appreciation of the seriousness of the breach; (c) any cooperation by the contemnor to mitigate the consequences of thebreach; and (d) genuine expression of remorse or a sincere apology to the court for hisbehaviour.

[39] The judge observed at paragraph 18:

> If a contemnor, even belatedly, demonstrates a genuine insight into the seriousness of his prior conduct and its unlawfulness, then the Court may well be able to conclude that the contemnor has 'learned his lesson' and the risk of [a] future breach is thereby diminished.

[40] It is right to refer, also, to the decision of the Court of Appeal in *The Financial Conduct Authority v McKendrick* [2019] 4 WLR 65 at [41], where the court observed that:

> It may sometimes be necessary for the sentence for this form of contempt of court to include an element intended to encourage belated compliance with the court's order. Where that is the case, that element of the sentence is in principle one which may be remitted if the contemnor subsequently purges his contempt by complying with the order.

[41] In that context I note that CPR Part 81.10 provides as follows:

> (1) A defendant against whom a committal order has been made may apply to discharge it.
>
> (2) Any such application shall be made by an application notice under Part 23 in the contempt proceedings.
>
> (3) The court hearing such an application shall consider all the circumstances and make such order under the law as it thinks fit.

[42] The effect of this, as Nicklin J stated at paragraph 21 of his judgment, is that where the Court's punishment contains both an element for punishment of breach, and an element for encouragement of belated compliance, as the sentence of this Court does, "The Court may reduce a previously imposed penalty on an application made under CPR 81.10."

[43] The Defendant's culpability for this breach is high. He has been given every opportunity to mitigate his position by a belated compliance with the Court's order but he has refused to doso. His breach has continued over many months despite many warnings from the Claimant'ssolicitors and from the court office. It is plain that his defiance of the Court is intentional, for all that it is inexplicable, and it continues to this day. There is not the slightest suggestion of remorse or insight.

[44] In terms of harm, the damage to the rule of law and the authority of the Court is very significant. Court orders must be obeyed and if they are not the rule of law is undermined. Those who flout the orders of the Court do serious harm to the rule of law. There is also harm to the Claimant, which has been left with a large vessel taking up space on its land which is needed for other boats.

[45] It appears to me that the Defendant does not believe that he has to comply with the Court's order. He thinks he knows better. It is my duty to make it absolutely clear that he is wrong and that orders of the Court must be obeyed by everyone. I am satisfied that this case is so serious that only a period of immediate imprisonment is sufficient to reflect the culpability of the Defendant and the harm caused by his defiance of the Court's order.

[46] As he has not attended today, a warrant for his arrest will be issued. When he is arrested, and subject to any application under CPR 81.10, he will be committed to prison for a period of 9 (nine) months.

[47] I shall direct that a transcript of this judgment be prepared and served upon the Defendant.

His Honour Judge Parkes QC: The warrant of committal, of course, will have to be served upon the Defendant personally. He should be informed, I think, of the result of today's hearing by email and I would be grateful if your instructing solicitors would please do that, Mr England. I do not know whether you can assist me on the process of serving upon him the warrant of committal? It may be that it has to be served by the police.

Mr England: Yes, Your Honour. I believe in a previous case it's been the Tipstaff's office but that's sometimes when the Defendant is in court. So, I believe that's right, Your Honour.

His Honour Judge Parkes QC: It's not served by a party, it's served by the police, or by the Bailiffs, conceivably.

Mr England: Yes, and I'm not sure whether the Claimant is entitled to see that warrant.

His Honour Judge Parkes QC: No, I see. That may be right, although it's very much in a standard form. It will be taken by the enforcing authority, which will be the police, to the Defendant's house, and it will be their authority for taking him to prison. There should also be an order drawn up to reflect what has happened today.

Mr England: I am not sure, your Honour, that that requires personal service.

His Honour Judge Parkes QC: No. But in any case there is a power to direct an alternative means of service. It seems to me that your clients have already incurred enough costs in this process, and that I should not compel them to incur any more. It's quite clear that Mr Looker always responds to emails.

Mr England: Yes, he's not shy of using email.

His Honour Judge Parkes QC: So, it seems to me that the order that I've made should be communicated to him by your instructing solicitors by email.

Mr England: Yes, so you wish to have an email informing him of the result -

His Honour Judge Parkes QC: Yes, please.

Mr England: And, and that a transcript will follow and then the, once the order is drawn up, we will serve that on him by email.

His Honour Judge Parkes QC: That would be kind. Exactly.

Mr England: Your Honour, would it assist if I drew up the order for Your Honour when I -

His Honour Judge Parkes QC: Well, that would be a great help.

Mr England: I will do so.

His Honour Judge Parkes QC: That would be extremely kind of you, thank you. Yes, if you would.

Mr England: It may be Monday morning that that arrives with Your Honour.

His Honour Judge Parkes QC: Don't worry about that. Is there anything else?

Mr England: There is the matter of costs of last time and this time. We would ask, for the reasons given in your judgment, the sentencing, that they be awarded, like the first time, on the indemnity basis.

His Honour Judge Parkes QC: Well, that seems proper, I agree.

Mr England: Now, Your Honour, there's a schedule from last time.

His Honour Judge Parkes QC: Thanks. Right. Now, this is in relation to the 18 February hearing. The hearing actually took place but the Defendant, of course, wasn't there.

Mr England: Precisely. Yes, so those, those, those are the costs for, I would submit that the overall amount satisfies the test of reasonableness, because of course proportionality is excluded on indemnity costs but not reasonableness, as I recall.

His Honour Judge Parkes QC: Does proportionality become irrelevant on indemnity costs assessments?

Mr England: I believe that it does. Reasonableness stays the same and, and the other key difference, I hope I haven't misdirected the Court, is that any doubt resolves in, in favour of the party receiving the sums rather than the ordinary --

His Honour Judge Parkes QC: Now, that is certainly true. Let me just have a look at CPR Part 44.4. You're right, proportionality is not relevant on the indemnity basis. What the court has to decide whether the costs were unreasonably incurred or unreasonable in amount.

Mr England: Yes, so it's the sort of negative, framed in the negative, yes.

His Honour Judge Parkes QC: Yes.

Mr England: And we would submit that the overall costs are proportionate.

His Honour Judge Parkes QC: Yes.

Mr England: In fact, as you know, one does have to read the emails from Mr Looker. Obviously one doesn't have to respond to all of them but, there's actually a very modest amount for my solicitors. And then my fee was incurred for, for attendance.

His Honour Judge Parkes QC: Right. 44.3 says:

> "Where the amount of costs is to be assessed on the indemnity basis, the court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party."

Mr England: Yes.

His Honour Judge Parkes QC: Right, so it was the hearing on 18 February when he did not attend. This has all, of course, been dealt with by Mr Bishop as a Grade A fee earner.

Mr England: Yes, and his time is, for the number of emails and so on, relatively modest.

His Honour Judge Parkes QC: Yes. That, it seems to me, is pretty reasonable, bearing in mind the amount of material which he has had to deal with.

Mr England: Yes, and overall, applying the indemnity basis and summary nature of the assessment, we'd submit the overall figure is reasonable for attending the hearing.

His Honour Judge Parkes QC: Yes.

Mr England: And this has been served, I should say, on Mr Looker, who, you may recall from one of the emails you referred to in your judgment, has referred to the costs. He suggested they were £40,000 but they're clearly not. That shows that he had an opportunity to comment on any specific matters and has not done so.

His Honour Judge Parkes QC: Yes, I see. And then let me see the schedule for today's hearing. A little bit more work on documents, no attendance at the hearing, which I think is sensible. I think, Mr England, although your assistance has been valuable, I don't think I can really say that the full amount of your brief fee on each occasion ought to be visited on Mr Looker. I will allow one brief fee and not two. So I will allow the full amount claimed in respect of the 18 February hearing, which is £6,283.20. And today, I shall allow the sum claimed less your brief fee, which is a rough and ready way of saying that, although I, I am sure that your attendance is extremely valuable to your clients, it's not an amount which I should order Mr Looker to pay twice over.

Mr England: Yes.

His Honour Judge Parkes QC: Notwithstanding that it's his fault that we're here twice. But --

Mr England: Well, I would make that point in reply but Your Honour has the point already.

His Honour Judge Parkes QC: In respect of the second hearing, I shall allow £1,286.20.

Mr England: I'm grateful. And 14 days is the, is the --

His Honour Judge Parkes QC: Yes, 14 days.

Mr England: Yes, thank you, Your Honour. I should just, just say, for completeness, that there are attempts to execute against the vessel. We'd hoped that an application as serious as the one that had been made by my solicitors would have caused him to move the vessel.

His Honour Judge Parkes QC: It may be that that may still happen. I have referred to CPR Part 81.10. It may be that Mr Looker will decide that he ought, at this stage, to comply with the order, so he may realise that it's not too late.

Mr England: Your Honour, the only thing I pause to raise with you is that while it's right that he understands what's happened today as soon as possible, if he was informed by email of an arrest warrant that doesn't occur at the same time as the order, it may be that Mr Looker will then take steps to flee. That would be my only concern.

His Honour Judge Parkes QC: I think he must be informed and I've got no reason to suppose that he will absent himself. There's simply no evidence to suggest that he's likely to do that, that there's any flight risk involved, especially given what he says about his health. It's only right that he must be informed.

Mr England: Your Honour, yes, thank you very much indeed.

His Honour Judge Parkes QC: Thank you.

Mr England: Thank you for you and your court staff's time over this matter.

His Honour Judge Parkes QC: Not at all. I'm very grateful for your help.
