

**Neutral Citation Number: [2022] EWHC 2916 (Ch)**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**CHANCERY DIVISION**

Royal Courts of Justice  
Strand  
London WC2A 2LL

Friday, 7 October 2022

BEFORE:

**MR JUSTICE LEECH**

BETWEEN:

-----  
**(1) HOLLIE LOUISE TOTTON**  
**(2) DANIEL ROBERT WASHER**  
**(as beneficiaries of the Estate of Hazel Margaret Totton, Deceased)**  
Applicants

- and -

**MARK DAVID TOTTON**  
**(as beneficiary and executor of the Estate of Hazel Margaret Totton, Deceased)**  
Respondent  
-----

**MS T ADAMS** appeared on behalf of the Claimant

**MR S GOKHOOL** (Solicitor) (of SG Law Solicitors) appeared on behalf of the Respondent

-----  
**APPROVED JUDGMENT**  
-----

Digital Transcription by Epiq Europe Ltd,  
Unit 1 Blenheim Court, Beaufort Business Park, Bristol, BS32 4NE  
Web: [www.epiqglobal.com/en-gb/](http://www.epiqglobal.com/en-gb/) Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

*This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

## MR JUSTICE LEECH:

1. By application notice dated 5 July 2022 (the "**Committal Application**") the Applicants, Hollie Louise Totton and Daniel Robert Washer, applied for an order for committal for contempt of the Respondent, Mr Mark David Totton.
2. On 31 August 2022 I heard the Committal Application in the absence of the Respondent and delivered an *ex tempore* judgment. I held that it was appropriate to hear the application in his absence. I also found that the Respondent was in contempt of court in that he had breached, and remained in breach of, paragraph 7 of the order of Meade J dated 10 March 2022 (as amended on 29 April 2022) (the "**Order**") by failing to comply with its terms by 7 May 2022 and that he had breached, and remained in breach of, paragraph 9 of the Order by failing to comply with its terms by 21 May 2022. I made an order for the Committal Application to be relisted on 12 September 2022 and on 13 September 2022 I issued a bench warrant for the attendance of the Respondent.
3. On 15 September 2022 I heard the adjourned Committal Application and this time the Respondent was present. I made an order for him to be committed to prison for 3 months but that the sentence was not to begin until Monday, 10 October 2022. I made that Order to give him an opportunity to purge his contempt and comply with his obligations to the Applicants. I relisted the Committal Application for further hearing today.
4. On 6 October 2022 the Respondent made an affidavit in compliance (so far as possible) with the Order. He gave evidence that the principal asset of his mother's estate, her home, was sold on 19 March 2020 for £425,000 and he exhibited the contract and completion statement and probate schedule. These documents showed that, apart from the property itself, his mother's estate consisted of stocks, shares, bank and building society accounts and premium bonds totalling (by my calculation) £48,321 and liabilities of £18,016.
5. In paragraph 30 of his affidavit the Respondent stated that he had given an account of his dealings with the estate from March 2020 onwards to his solicitor, although he had been advised not to divulge any further details about those dealings because it would, or might, incriminate him.

6. In a case called *Alokaili v Chohan* [2022] EWHC 2043 (Ch) HHJ Keyser QC had made an order for committal but also ordered that it was not to commence until a specific date in the future. He also relisted the committal application for a further hearing. When it came before me, I treated it as an application by the Respondent to purge his contempt under CPR Part 81.10(1). Further, because the Applicants contended that the Respondent remained in breach of the relevant order whilst he claimed to have complied with it, I accepted counsel's submission that it was for the Applicants to prove to the requisite standard that the Respondent remained in contempt of the original order. I adopt the same approach in the present case.
7. Mr Gokhool, who appeared for the Respondent at this hearing of the Committal Application, submitted that the Respondent had now complied with the order. In particular, he drew my attention to paragraph 7 and paragraph 9 to which I have already referred and for which I found the Respondent in contempt. He then drew my attention to paragraph 8 of the Order, which stated as follows:

"If the provision of any of this information is likely to incriminate the respondent, he may be entitled to refuse to provide it, but he is recommended to take legal advice before refusing to provide the information. A wrongful refusal to provide the information is a contempt of court and may then render the respondent liable to be imprisoned, fined or have his assets seized."
8. Mr Gokhool submitted that the Respondent had only very recently taken legal advice, that he has now taken the privilege against self-incrimination and that he is entitled to rely on paragraph 8 (above) in choosing not to provide relevant information. Ms Adams, who appears again for the Applicants today, accepts that the Respondent has made efforts to comply with paragraphs 7 and 9. She also accepts that if he is entitled to take the privilege against self-incrimination under paragraph 8 then he has substantially complied with the Order (or tried to comply with it).
9. In the light of those submissions, I accept that the Respondent has complied with the Order at this very late stage in time, namely, on 6 October 2022 and I will deal with the consequences of that compliance shortly. But Mr Gokhool also submitted that, given that the Respondent was always entitled to rely on the privilege against self-incrimination, he has never been in breach of the Order and, although he did not

take the point until 6 October 2022, he was always entitled to take the position that he has taken in his affidavit now served on that day.

10. I reject that submission (but not without some hesitation). It seems to me that if the Respondent was going to rely on the privilege against self-incrimination in paragraph 8, it was his obligation to take the point within the time periods set out in paragraphs 7 and 9 of the Order and to inform the Applicants why he was not providing the relevant information (or all of it). I found in both my first judgment dated 31 August 2022 and also in my second judgment dated 15 September 2022, that there had been a complete lack of engagement by the Respondent. He also admitted that he had buried his head in the sand at the hearing on 15 September 2022. I am not satisfied, therefore, that the Respondent complied with paragraphs 7 and 9 of the Order until his affidavit sworn on 6 October 2022.
11. I add that, although the Respondent made an admission of liability for contempt on 15 September when he appeared before me, I attribute little weight to that because at that stage he had not received legal advice. But, with some hesitation, I reject Mr Gokhool's well-made submission that the Respondent has never been in contempt of the Order.
12. I find, therefore, that the Respondent remained in contempt of the Order until 6 October 2022 when he made his affidavit and I reject Mr Gokhool's application that I should discharge the committal order in its entirety. The substantive question for me is whether I should vary it so that the Respondent either serves a small part of the sentence or that I should suspend it for some period to ensure compliance.
13. In my judgment dated 15 September I set out all the various considerations which I have taken into account in arriving at the sentence which I arrive at and I ordered that the Respondent should serve a three month sentence, that six weeks of that sentence should reflect his past breaches and six weeks should reflect future compliance. In light of the Respondent's late engagement with the process, his taking of legal advice and his instruction of solicitor and counsel for the production of his affidavit on 6 October 2021, it is right, in my judgment, to vary the order which I made on 15 September so that the Respondent is not required to serve the six week prospective element of the sentence.

14. The ultimate question in my mind is whether I should order him to serve the first part of the sentence of six weeks in light of his lack of engagement with the process and his late compliance before me today. I take into account that, even if he had complied with the Order promptly, he would have probably made an affidavit in very similar terms to the one that he has put before me today. I also take into account all of the circumstances which are set out in his affidavit, but it remains my view that a custodial sentence is the only appropriate sentence for the breaches of the order which he has committed to date. It also seems to me that, given all those various factors which I took into account and the content of his affidavit, that the original sentence of six weeks for the past breaches is still appropriate.
15. The final question which I have to consider is whether I should suspend that sentence for a period of up to 12 months. Mr Gokhool pointed out that if the respondent has committed criminal offences, and he is found guilty over that period, then the suspension will be triggered. It was pointed out that he has never been in trouble with the police before and he also drew my attention to the support which he has given to his mother.
16. I take into account the Respondent's evidence that it is extremely likely that he will lose his job if he has to serve any period of imprisonment. But in my judgment, it would not be appropriate to suspend the sentence for any period of time. I say this because, although the Respondent has complied with the order (to the extent that he does not rely on the privilege against self-incrimination), he remains in breach of his obligations to administer this estate and, in particular, distribute their share of the proceeds to the Applicants. The purpose of the original Order was ultimately to ensure compliance with that obligation to release it.
17. Although he may have complied with the letter of the Order, albeit very late, the Respondent has not complied with his obligations as the administrator of the estate. If I had thought that there would be some prospect of him distributing their entitlements to the Applicants and that the suspension of the sentence would encourage the Respondent to comply with his obligations to do so, then I might have been prepared to suspend the sentence. But Mr Gokhool did not suggest that it could be suspended on that basis nor, indeed, that the Respondent intended to comply with his obligations.

18. For those reasons, therefore, I will vary the original order so that the Respondent will serve an immediate custodial sentence of six weeks and I will discharge him from serving the future element of the sentence, the balance of the sentence which I originally ordered of three months. I informed the Respondent that he would go to prison for six weeks, that he would serve the first three weeks of the sentence and that he would then be entitled to an unconditional release after serving half of the sentence. I also informed him that he could apply to the court at any time to purge his contempt but that I would expect him to make further disclosure and to comply with his obligations to the Applicants. I also directed that the sentence would begin on Monday 10 October 2022 and ordered the Respondent to present himself to the Tipstaff's office in the Royal Courts of Justice at 10.30 am.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: [civil@epiqglobal.co.uk](mailto:civil@epiqglobal.co.uk)

**This transcript has been approved by the Judge**