

**IN THE FAMILY COURT AT NEWCASTLE**

Newcastle Civil & Family Courts and Tribunals Centre  
Barras Bridge  
Newcastle upon Tyne  
NE1 8QF

BEFORE:

**DISTRICT JUDGE DODSWORTH**

BETWEEN:

**PAULINE BARCLAY**

**APPLICANT**

**- and -**

**JOHN BARCLAY**

**RESPONDENT**

**Legal Representation**

Mr Timothy Spain (Counsel) on behalf of the Applicant  
Ms Sally Terris (Counsel) on behalf of the Respondent

**Judgment**

Judgment date: 20 December 2024  
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

*“This judgment was delivered in open court”*

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**District Judge Dodsworth:**

1. This matter comes before me this afternoon as an application for the committal of Mr John Barclay. The Applicant is Pauline Barclay. The committal arises out of financial remedy proceedings between Mr and Mrs Barclay (as they were at the time). For ease in this judgment I will refer to the parties as husband and wife. No disrespect is intended, it is just for clarity.

2. The application for committal was made by the wife on 2 August 2024. The notice of hearing was issued on 25 September 2024, listing the matter for hearing at 2pm on 7 November 2024. The application was made on the prescribed form. That form contains a number of important provisions. It sets out clearly to the respondent his rights: the right to be legally represented, the right for a reasonable opportunity to obtain legal representation, and so on. That was served on Mr Barclay together with a witness statement by the wife in support of the application.
3. The alleged breaches on which the contempt application is founded are breaches of (i) an order of Deputy District Judge Howard made as long ago as 14 December 2017, and (ii) of undertakings given by the husband as part of that order. That order compromised, by consent, the financial remedy proceedings between the parties. Various provisions were contained in the order and the undertakings. They related, for example, to payments for maintenance and paying mortgages and council tax liabilities for various properties.
4. At this stage I should make clear that it is not disputed that the husband is in breach of both the orders and the undertakings. That is not challenged. The order of 14 December 2017 has been amended on 31 August 2023. Matters also came before the Court on 18 December 2023 when Deputy District Judge Welch reinforced to the husband the terms of the orders and set out clearly what he was required to do in recital 7 to the order made on that date.
5. The defence of the husband to these committal applications is a procedural defence. Points taken on his behalf by Ms Terris, who appears today for him, are that the penal notice was not prominently displayed on the original order, and that the order was not personally served upon the husband. She also stresses the importance of the fact that he was unrepresented for large periods since the order of 14 December 2017 was made, and that he only obtained legal aid representation for these committal proceedings on or about 9 December 2024.
6. Part 37 of the Family Procedure Rules 2010 governs applications and proceedings in relation to contempt of court. Rule 37.4 is of particular importance. It provides, as far as material, the following:
  - “(1) Unless and to the extent that the Court directs otherwise, every contempt application must be supported by written evidence given by affidavit or affirmation.
  - (2) A contempt application must include statements of all the following, unless (in case of (b) to (g)) [they are] wholly inapplicable ...
  - (c) Confirmation that any order was personally served, and the date it was served, unless the Court or the parties dispensed with personal service.
  - (d) If the Court dispensed with personal service, the terms and date of the Court’s order dispensing with personal service.”
7. Here, it is plain that the order of 14 December 2017 contained a penal notice. It contained that in bold on the first page, and it was prominent. I do not find there is any merit in the submission that there was not a prominent penal notice on the order.
8. It is not in dispute that the order was not personally served on the husband. The point which Mr Spain, who appears for the wife, makes is that the requirements of Rule 37.4

are there to provide procedural safeguards for those who are defending contempt proceedings, and therefore those whose liberty is at risk. What is important is the substance of what has happened.

9. Here, he says the fact that the husband was not personally served is not fatal to the application. The husband was present at multiple hearings and he knew what was being ordered by the Court, and in particular he was represented on the occasion when the order of Deputy District Judge Howard was made and when he gave the undertakings, and he was represented by extremely experienced counsel, Ms Julia Nelson, on that occasion.
10. He says the terms of the order are clear, and the fact that he has not been personally served has caused no prejudice whatsoever to the husband who cannot have been unaware of what this was all about. The notes to Part 37 in the Red Book are of assistance. Whilst they make clear the importance of abiding by the correct procedure because of the quasi-criminal nature of committal proceedings and the liberty of the subject being at stake, they also make clear that minor breaches of the procedure will not render the proceedings irredeemably invalid, see *Re H* [2018] EWHC 3761 (Fam) and *Nichols v Nichols* [2008] EWCA Civ 121.
11. Here, the procedural irregularity is that the order was not personally served. The notes to the Red Book also make clear that if people are aware of the substance of the orders, they should not be permitted to rely on purely technical defences, see *Benson v Richards* [2002] EWCA Civ 1410 and *Serious Organised Crime Agency v Hyman* [2011] EWHC 3599. Those cases establish, where there is no doubt that the Defendant knew what the order said, and the consequences of disobedience, the fact that an order has not been personally served will not be fatal to any committal proceedings.
12. Here, I am satisfied to the requisite criminal standard that the husband was aware at the time of the 2017 order of its terms and of the terms of the undertakings he had given. He has suffered no prejudice whatsoever by the failure to personally serve the order on him. If he was in any doubt as to the effect of the orders, it is unarguable that Deputy District Judge Welch disabused him of that when she made the order of 18 December 2023.
13. The husband was further disabused of any misunderstandings by District Judge Sendall when she heard this matter on 7 November 2024 and adjourned it to 18 December 2024 to allow him to obtain legal representation, and also when she adjourned the matter on 18 December 2024, to today's date.
14. I also note that the application is supported by a witness statement rather than an affidavit. That appears to have been an oversight on the wife's solicitor's behalf, but no practical difference is caused by that. The witness statement would have been in exactly the same terms as an affidavit, therefore I permit that to be remedied under Rule 4.7 of the Family Procedure Rules, which permit minor technical breaches of rules to be dealt with appropriately.
15. Accordingly, and for those reasons, I find contempts set out in the application to have been proved, and I will now hear any submissions as to the appropriate disposal of this matter.

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This Transcript has been approved by the Judge.

The Transcription Agency hereby certifies that the above is an accurate and complete recording of the proceedings or part thereof.

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## Contempt of Court: Sentencing Remarks

Recording date: 20 December 2024  
(start and end times cannot be noted due to audio format)

Reporting Restrictions Applied: No

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**District Judge Dodsworth:**

16. I now deal with the disposal of this matter having found that the husband is in contempt of court. When considering what is the appropriate penalty to impose on Mr Barclay I must bear in mind the range of options available to me. I could impose a custodial sentence for a maximum period of 2 years, I could impose a fine, I could confiscate Mr Barclay's assets, or I could impose no penalty at all.
17. I bear in mind the objectives of sentencing. The first objective is to ensure future compliance with court orders, there is a need to uphold the authority of the Court and to deter others from simply ignoring court orders. The second objective is to punish the contemnor for the contempt as it has been found. The third objective is to secure the rehabilitation of the contemnor. That is perhaps of less importance in this case, where the contempt is the failure to pay sums due pursuant to court orders and/or undertakings.
18. Each case is, of course, fact specific. It is not the Court's job to try and find similar cases and transpose penalties from one to another. My job is to assess the seriousness of Mr Barclay's conduct and to find a punishment that meets that seriousness. I bear in mind in particular the desirability of keeping people out of prison wherever possible, particularly in the current climate where prison places are scarce resources.
19. Imprisonment will only usually be appropriate where there has been a serious, contumacious, flouting of orders of the Court, such that only a custodial sentences can be justified. I do bear in mind that Mr Barclay has not effectively protested that he is in breach of the orders and the undertakings.
20. I could suspend any custodial sentence that I thought appropriate as a first step to securing compliance with orders of the Court and to enable him to have an opportunity to purge his contempt. However, in this case there has been a failure to comply with orders over a protracted period. I am told that, excluding the costs orders that have been made against him, the husband owes over £70,000 to the wife. Given the sums involved, and the period for which the husband has been in default of the orders and undertakings, it seems to me that the custody threshold is plainly crossed and that only an immediate custodial sentence is appropriate. The husband has had a long, long time to sort this matter out, and has not done so. At no point has he sought to engage constructively to resolve this matter, unless, perhaps, at the very doors of the Court today. He has not applied to appeal or amend any of the orders, nor has he sought to challenge the sums due and payable to the wife.
21. In my judgment the minimum sentence that I can pass is one of 42 days' imprisonment. That will have the practical effect of him serving 21 days in custody and 21 days on licence. In coming to that figure I have borne carefully in mind all that has been said in mitigation on his behalf. I have considered the effect of the custodial sentence imposed will have on his 12 year old daughter, his elderly mother, for whom he is carer, and his new partner with whom he lives. However, his conduct is so serious that, as I say, in my judgment only an immediate custodial sentence of 42 days can be justified.

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