England and Wales High Court (Queen's Bench Division) Decisions

Neutral Citation Number: [2022] EWHC 362 (QB)
Case No. QB-2019-04074

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
26 January 2022

B e f o r e :

MR JUSTICE KERR

FARRER & CO LLP	**Claimant**
- and -	
JULIE MARIE MEYER	**Defendant**

MR JAMES McWILLIAMS (instructed by Farrer & Co LLP) appeared for the Claimant.
MS FRANCESCA PERSELLI (instructed by Preiskel & Co LLP) appeared for the Defendant.

HTML VERSION OF JUDGMENT

MR JUSTICE KERR:

Introduction

1. Arising from a simple debt claim for unpaid solicitors' fees, there are three items on the court's agenda. They were debated at a hearing before me last week, on 21 January 2022. I list them in the order in which I intend to deal with them:

(1) The defendant's application to set aside a default judgment in favour of the claimant in respect of the claim;

(2) the defendant's application for relief from sanctions and an extension of time for compliance with an order of the court for disclosure of certain documents;

(3) whether the defendant should be subject to a suspended sanction for contempt of court for non-compliance with that order.

Parties, representations and appearances

2. The defendant is a businesswoman and a USA citizen resident in Switzerland. She or her companies also use, or have used, three addresses in London; one in WC2, one in SW1 and one in SW5.
3. The defendant has been variously represented by herself, by direct access counsel and by several firms of solicitors. She is represented at present by solicitors and counsel.
4. The claimant is a firm of solicitors in London. It is represented by counsel instructed by the claimant itself.
5. The defendant was not physically present in court but attended remotely from Zurich, Switzerland. She said she was medically unfit to attend in person due to conjunctivitis.
6. The medical evidence, such as it is, supporting that is not adequate. It does not support the proposition that she is unfit to attend in person yet fit to attend remotely.
7. I record that there will be ample time to arrange travel to this country if there is a further hearing; and that I have warned the parties that remote attendance is not permitted for a person's convenience and is unlikely to be allowed at any further hearing, absent a compelling reason.
8. I also record that the defendant says she is unvaccinated against Covid-19. She does not say why. She has said in a recent witness statement that this would cause her difficulty in travelling to the UK for the hearing.
9. I permitted her to attend remotely, with some hesitation, on her undertaking that she was alone, that no one else was, to her knowledge, sharing her screen or attending remotely and that she understands it would be a serious contempt of court to copy or transmit the video footage of the hearing.

Facts in outline

10. The defendant instructed the claimant to act in connection with her business interests in early 2018. The terms were set out in retainer letters of 22 March 2018 and 27 April 2018. Invoices were rendered and not paid. Some payments were made but of nowhere near the full amount billed. In about November 2018, the claimant ceased to act for the defendant.
11. On 9 October 2019, a letter before claim was sent to the claimant. She did not respond.
12. On 15 November 2019, a claim was brought for about £187,000 and interest thereon for unpaid solicitors' fees for work done.
13. On 19 November 2019, service was effected at two London addresses used by the defendant for companies of which she was then or is a director.
14. On 6 December 2019, the defendant emailed Mr Julian Pike, a partner of the claimant, saying she had heard from a media source that a claim had been made. I do not know on what date Mr Pike read that email.
15. The defendant did not acknowledge service. Default judgment was then obtained on 10 December 2019.
16. On 13 December 2019, Mr Pike emailed back, saying that a default judgment had been obtained, and he attached a copy of it. He did not say whether he had known of the defendant's email of 6 December 2019 before the default judgment was obtained.
17. On 18 December 2019, an enquiry agent for the claimant was told by a man at one of the London addresses, in SW5, that the defendant was still resident at, though not then present at, that address.
18. On 16 January 2020, the court considered the default judgment. On 20 January 2020, the court issued a standard order under CPR Part 71, endorsed with two penal notices in bold, underlined capitals, stating that the amount owing was now just over £199,000 and ordering the defendant to attend at the Royal Courts of Justice on 5 March 2020 to provide information about her means for the purposes of enforcement.
19. The order explained that the defendant would be required to produce documents to the court and answer questions on oath. The second penal notice stated that if she did not obey the order: "you may be sent to prison for contempt of court."
20. A list of documents to be produced was included: payslips, bank statements, share certificates, rent book and so forth; and in respect of businesses, documents such as management and other accounts and invoices.
21. On or about 20 January 2020, the defendant, unrepresented, applied to set aside the default judgment. In the narrative, she complained that the claimant had provided a poor standard of services, saying that the claimant had done only about five months' work at the most which would leave about £50,000 at the most due to them rather than the £197,000 claimed.
22. She denied receipt of the claim documents, saying she had learned of the default judgment from a journalist. She said she wanted her "day in court" and that she would be submitting a defence and counterclaim "shortly". Her supporting witness statement was to the same effect.
23. From 27 January 2020 to 4 February 2020, there were emails between the claimant and the defendant and her Swiss lawyer. I am satisfied from that evidence that the defendant knew of the enforcement proceedings and did not wish to be validly served with them. On 4 February 2020, the same man at the SW5 address told the claimant's agent that the defendant was no longer resident there.
24. On 12 February 2020, on a without notice application, Master Gidden gave permission for the court's order of 20 January 2020 to be served on the defendant at the WC2 address used, or formerly used, by a company associated with her, in London and as such notified to Companies House.
25. On 27 February 2020, the defendant applied for a stay of execution and an adjournment of the oral examination due to be held on 5 March 2020. That was supported by a long witness statement disputing the validity of the service upon her of the proceedings, alleging a poor standard of service by the claimant and asking for disclosure of her client files, over which the claimant was asserting a lien.
26. On 3 March 2020, a trainee solicitor working for the claimant, called Ms Xinlan Rose, served the court's order dated 20 January 2020 at the WC2 address, in accordance with the permission given by Master Gidden. The receptionist at that address accepted from Ms Rose the envelope containing the order and a covering letter from the claimant. Ms Rose swore an affidavit of service the same day.
27. On 4 March 2020, the defendant's application for a stay of execution and an adjournment of the oral examination due to be held the next day came before Saini J. The set aside application was not before him, though he was aware of it and it was relied on in submissions by then counsel for the defendant, Mr Tom Bell.
28. On 4 March 2020 itself, the defendant produced two witness statements; the first saying she was suffering from a heavy cold and could not travel; the second referring to medical evidence and to her sparse assets, impecuniosity and various pending claims against her, including for non-payment of solicitors' fees.
29. I have seen a note of part of the hearing before Saini J and of his brief, but very clear, *extempore* judgment. The defendant has not disputed the accuracy of the note. Mr Tom Bell, regular and that the defendant dropped the argument about validity of service, effected under section 1140 of the Companies Act 2006 (**the 2006 Act**), and that the defendant does not have a complete defence.
30. Mr Bell could not put a figure on how much the defendant accepted was owing to the claimant but he accepted that some money was owing. However, he pressed Saini J with the submission that the defendant had a good arguable defence to the balance of the claim and good prospects of setting aside the judgment.
31. Saini J dismissed (at paragraph 1 of his order) the application to adjourn the oral examination the next day. In his *extempore* judgment, he commented that he was not in a position to judge the merits of the set aside application but the *Denton* requirement of promptness posed real difficulties for the defendant.
32. Saini J also ordered, at paragraph 2 of his order: "[t]he remainder of the Defendant's application is adjourned generally with permission to restore." He awarded costs against the defendant, which he assessed. That is one of several unsatisfied costs orders made against the defendant in these proceedings.
33. On 5 March 2020, the Part 71 hearing took place before a court officer, Mr Nazeem Mahmood. The defendant was represented by counsel; the claimant, by Mr Oliver Blundell, a solicitor working for the claimant. The defendant was not present. She did not seek to attend remotely; that was not yet common practice, for the first coronavirus related lockdown had not then yet started.
34. Mr Blundell, the solicitor for the claimant, asked Mr Mahmood to refer the matter to a High Court judge for a suspended committal order to be made. Indeed, he suggested it be referred back to Saini J in court 37 that very day. However, Mr Mahmood referred it to a Queen's Bench Master.
35. There was then a long administrative delay for reasons explained by Mr Blundell in a much later witness statement. Saini J's order was not sealed. The file was not referred up to a High Court judge. Indeed, nothing of substance was done by the court.
36. Eventually the claimant submitted a witness statement from Mr Blundell, dated 14 June 2021, asking for an order under CPR rule 71.8(2) and (3) that the defendant be held in contempt and subject to such punishment as the court should think fit, suspended provided she should attend court on a date to be specified in order to comply with the court's order under Part 71, made on 20 January 2020.
37. On 18 June 2021, by an order sealed three days later, Lane J ordered the matter into court, warning the defendant that she would be in contempt if she did not attend the hearing by remote means. That warning was reinforced by another penal notice.
38. Mr Blundell made a further witness statement, on 28 July 2021, in response to a skeleton argument from counsel for the defendant. In it he sought to explain the delays and denied failing to engage properly with the defendant.
39. On the same date, 28 July 2021, the matter came before HHJ Simpkiss (though that order was not sealed until 3 September 2021). His order was that upon the defendant's failure to attend personally (although counsel was there for her), she was in contempt. He ordered the Part 71 hearing to be listed. The defendant must attend. He ordered that if she did not the matter should be referred to a High Court judge to decide whether to make a suspended committal order. He ordered costs against the defendant. The order included another penal notice warning of contempt should the defendant not obey it.
40. The adjourned Part 71 oral examination came before Heather Williams J on 25 October 2021, though her order is dated 29 October, four days later. The defendant did attend, obedient to HHJ Simpkiss' order. She appeared remotely, in person. She unsuccessfully asked for the hearing to be held in private.
41. She took an affirmation over the video link and was questioned by Mr McWilliams of counsel for the claimant about her means and assets. She gave evidence to the effect that she was impecunious.
42. Heather Williams J's order recorded that the defendant gave evidence of her means and agreed to supply certain documents. The order started with yet another fearsome penal notice, in bold underlined capitals. The defendant was probably used to these by now.
43. The judge's order gave her until 15 November 2021 at 4pm to provide those documents she had agreed to provide and certain other documents over and above those she had agreed to provide. That order was sealed on 1 November 2021.
44. The existence of the documents ordered to be provided had been confirmed by the defendant during her cross-examination, as a recital to the judge's order recorded. The documents ordered to be produced were:

> (i) bank statements for any account held in the defendant's name at Banque Migros from the date that account was opened to the date of this order;
>
> (ii) documents relating to the loan obtained by the defendant from Banque Migros, including but not limited to (a) the loan agreement; (b) bank statements and other documents showing the account or accounts into which the loan proceeds were paid; and (c) bank statements and other documents showing payment in respect of the loan and the accounts from which those payments had been made;
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> (iii) documents relating to or evidencing the status of her alleged director's account with Viva Investment Partners AG from the date of her first involvement with Viva Investment Partners AG (howsoever called) and the date of this order;
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> (iv) credit card statements in respect of any corporate card or credit card used by the defendant to fund her living and/or personal expenses from 2016 to the date of this order;
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> (v) any correspondence or documents relating to her notification to Companies House as a Person with Significant Control in respect of Lattun Limited;
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> (vi) her tax returns to the United States' Internal Revenue Service for each and every year from 2016 onwards;
>
> (vii) the two sale and purchase agreements to which the defendant referred during the course of her adjourned examination and under which her entitlement to earnout consideration arises; and
>
> (viii) any documents relating to the exercise of and sums held in her pension.

45. On 29 October 2021, Oakland & Co, solicitors acting for the defendant in London, wrote a letter before claim threatening a claim against the claimant and personally against its partner, Mr Pike, arising from the representation the defendant had received from the claimant; making serious allegations of professional shortcomings against Mr Pike and against the claimant. No claim was ever brought on the back of that letter, however.
46. On 12 November 2021, the defendant was tested at Zurich Airport and found to be positive for Covid 19. The defendant says she then went into isolation. There were then three days left until the deadline set by Heather Williams J's order.
47. On 15 November itself, the date the deadline expired, the defendant made an application for an extension of time for compliance with the order. It was supported by a short witness statement, the defendant's fifth. In it, she sought a short extension of seven days, saying she had been diagnosed with Covid 19 and was feeling unwell.
48. Three days later, on 18 November 2021, after expiry of the deadline, through new solicitors, Birketts, the defendant applied for relief from sanctions, an extension of time and an order that the court should require an undertaking from the claimant not to misuse documents disclosed, i.e. not use them other than for the litigation. She asked for an extension until 14 January 2022.
49. That application was before me at last week's hearing. It was supported by another witness statement, the defendant's sixth, and an exhibit to it. She exhibited, among other things, the positive test result arising from the test done at Zurich Airport on 12 November 2021.
50. In anticipation of a further application, on 24 November 2021 the defendant made a further witness statement, with long exhibits (her seventh), in support of her application to be made the following day.
51. The next day was 25 November 2021. The defendant, representing herself, applied to "restore" the application to set aside the default judgment and added a human rights argument about service, seeking a declaration of incompatibility. The application she wished to "restore" was that originally made on or about 20 January 2020 to set aside the default judgment.
52. Next, on 14 December 2021 the defendant signed (electronically) a statement of truth on a draft defence prepared by her present counsel, Ms Francesca Perselli, blaming the default judgment on a "technicality" preventing her from defending. In the draft defence she maintained that:

(1) a poor standard of service had been provided by the claimant. It was said also that she had raised that issue in 2018.

(2) that the retainer letters 'indicated' that there would be ceilings on monthly billings, which were exceeded.

(3) that she intended to counterclaim for misrepresentation in separate proceedings, and

(4) that the bills were inadequately particularised.

53. The draft defence also included a draft counterclaim for an assessment of the bills pursuant to s.70 of the Solicitors Act 1974 (**the 1974 Act**) and sought an extension of time for that on account of "special circumstances". It did not include a draft counterclaim founded on alleged deficient professional services arising under the common law, nor a counterclaim for misrepresentation.
54. The case then came before Robin Knowles J on the papers. He made an order on 15 December 2021 (sealed the next day), without a hearing. He ordered that, it appearing the defendant had not complied with paragraph 3 of Heather Williams J's order of 29 October 2021, the defendant's application was to be:

> "… listed for hearing, before a High Court Judge, on the first available date next term on or after 17 January 2022, for two hours. and at that hearing consideration is also to be given to the consequences of and steps to be taken in respect of the apparent and continuing non-compliance with the Williams J Order.
>
> AND IT IS FURTHER DIRECTED that nothing in this Order should prevent the Defendant from providing documents described in paragraph 3 of the Williams J Order in tranches."

55. On or about 4 January 2022, the matter was listed for the hearing that took place last week, on 21 January 2022. The requested extended deadline of 14 January 2022 for compliance with Heather Williams J's order then came and went, without any further disclosure from the defendant.
56. On 18 January 2022, the defendant made her eighth witness statement in relation to the hearing before me. The statement was said to be in support of the application to set aside the default judgment and for relief from sanctions.
57. There were exhibits to it. The exhibits included a generic pro forma medical certificate, merely using the German word "Krankheit" (illness) of the same type as produced just before last week's hearing, but covering retrospectively the period 4 to 6 March 2020.
58. The main point made was that the defendant had recently discovered that Swiss law prohibited the disclosure ordered by Heather Williams J. The defendant included in the exhibits some legal letters from Swiss lawyers said to support that proposition.
59. Also, on 18 January 2022, Mr Blundell made a further witness statement (his fourth) setting out the history of the matter and exhibiting various documents.
60. Three further witness statements (the ninth, tenth and eleventh) arrived from the defendant in the 24 hours leading up to the hearing. The matter then came before me on 21 January 2022. At the hearing I was handed one further letter from a Swiss lawyer, dated 19 January, which had somehow escaped the bundle.

First issue: whether the default judgment should be set aside

61. The defendant submits, through Ms Perselli, as follows.
62. First, she submitted that the default judgment was irregular and should be set aside as of right. The court should not hold the defendant to Mr Bell's concession that the judgment was regular, made at the hearing before Saini J in March 2020.
63. On that occasion, Ms Perselli submitted, the set aside application was not before the judge. Further, the basis on which the validity of the service under section 1140 of the 2006 Act had been disputed, before Mr Bell made his concession that the judgment was regular, had then been rather different.
64. Ms Perselli submitted that where service is effected under section 1140 of the 2006 Act default judgment may not be obtained. The authorities upholding service on an individual under section 1140 were not default judgment cases.
65. Ms Perselli, in her skeleton argument, went through the rules on service in the CPR and the authorities at length and in detail. She submitted that the authorities relied on by the claimant were not in point. Those were mainly the authorities considered by the Chancellor, Flaux LJ, in *PJSE Bank "Finance and Credit" v Zhevago* [2021] EWHC 2522 (Ch) (see at [46]-[56]), supporting service under section 1140 on a company director resident outside the jurisdiction but in his capacity as an individual not a company.
66. There was, she pointed out, no case in the books such as this, where (i) the claimant knows the defendant resides outside this jurisdiction; (ii) the business address at which the defendant was served had not previously been used for dealings between the parties, and (iii) the claimant made no attempt to bring the proceedings to the defendant's attention.
67. Here, Ms Perselli objected, the claimant had sent pre-action correspondence to a different email and postal address and then purported to use section 1140 to support service under that provision (at an address provided to Companies House of a company of which the defendant is a director) before obtaining default judgment.
68. The defendant said that was unfair and outside the service rules in CPR rule 6. The cross-reference in rule 6.3(2)(b) to service under the 2006 Act should not be interpreted so as to apply to service on an individual under section 1140 in her capacity as an individual. The claimant, Ms Perselli argued, should either have sought the court's permission to effect substituted service or should have served at the usual or last known residential address, under rule 6.9, having taken steps to ascertain what that address was.
69. The defendant's submission, in the skeleton argument of Ms Perselli, was as follows:

> "It is implicit within section 1140 CA 2006 that the claimant cannot serve at that address in circumstances where it would be required, because of its knowledge of the defendant's circumstances, to take reasonable steps to confirm the service address under r6.9. Therefore there has not been good service.
>
> Further and alternatively, that CPR Part 12 is not available where service has not been effected pursuant to Part 6. The wording of Part 12 does not permit it and there are strong policy reasons why it should not be available."

70. The reasons relied on are, essentially, reasons of fairness. A person against whom default judgment is obtained may not know of the proceedings and may be denied the opportunity to defend against them before judgment is entered. Ms Perselli referred to the discussion of the issue in the context of article 6 of the European Convention on Human Rights in *Akram v Adam* [2005] 1 WLR 1762 CA, in the judgment of Brooke LJ at [41]-[43].
71. Alternatively, the defendant submitted that the court should exercise its discretion to set aside the judgment. Mr Pike had not mentioned the default judgment request, in response to the defendant's email of 6 December 2019, until after the default judgment had already been obtained. That was unconscionable, the defendant argued.
72. Further, Ms Perselli submitted she had acted promptly in applying to set aside the judgment in January 2020. Her prospects of successfully defending the claim were good; the bills rendered by the claimant were sparse; the narrative was inadequate. She referred me in that regard to *Ralph Hume Garry (a Firm) v Gwillim* [2003] 1 WLR 510, in the judgment of Ward LJ at [63]-[70].
73. The delays that had occurred since January 2020 were the fault of the claimant as much as of the defendant, Ms Perselli submitted. The claimant had sat on the case and not progressed enforcement of the judgment during the rest of 2020 and into 2021.
74. As for the bills rendered to the defendant, she submitted that these were either too vague to qualify as valid solicitor's bills under section 69 of the 1974 Act or, alternatively, if they did qualify as such, an extension of the one year time limit under section 70 of that Act for seeking an assessment of the bills should be granted.
75. Furthermore, said Ms Perselli, the reasonableness of the charges could be contested at common law. The defendant's right to do so was not excluded or curtailed by the 1974 Act. The burden at trial would be on the claimant to show the reasonableness of the charges sought to be recovered.
76. The claimant, through Mr McWilliams, submitted in brief as follows.
77. First, the judgment is a regular judgment. That concession was rightly made by Mr Bell and is not one from which the defendant should now be permitted to resile.
78. Service effected at an address provided to Companies House by a director of a company is good service for the purposes of the CPR, Mr McWilliams submitted, even if the individual is not physically present in the jurisdiction (see the wording of section 1140 and the reasoning of the Chancellor at [46]-[56] in the *PJSE Bank "Finance and Credit"* case).
79. The defendant here was served with the claim form attaching the particulars of claim on 15 November 2019 and, as such, deemed served pursuant to CPR rule 6.14 on 19 November 2019. Under rule 10.3, the defendant therefore had until 3 December 2019 to file an acknowledgement of service. She did not do so and, as such, the claimant satisfied the conditions under rule 12.3 for default judgment to be entered, so Mr McWilliams submitted.
80. The new argument that default judgment is not available where service has been effected under section 1140 was hopeless, he contended, as shown by the decision in the *PJSE Bank "Finance and Credit"* case.
81. Furthermore, Mr McWilliams contended there is no restriction under CPR Part 12 or 13 as to the manner in which service must have been effected in order for default judgment to be obtained, nor can any such restriction be found in the case law.
82. The effect of section 1140, he submitted, is that the moment a director gives the Registrar of Companies notice of intention to change their registered address, the existing registered address can be used for service for a further 14 days. The director, therefore, only has to give notice of a change of address sufficiently in advance and monitor the old address until the 14 day period has elapsed.
83. There is nothing unfair or onerous, he said, about the provision in principle. It serves to avoid disputes about service in the case of documents served after a notice of change has been sent to Companies House but before the same can be registered. It resolves those disputes by leaving both parties in no doubt as to what address can be used for service and for how long.
84. In any event, said Mr McWilliams, the defendant rightly does not suggest she was served within the 14 day period after having given notice to Companies House of a different address. In fact, she was still using one of the addresses at which she was served as recently as July 2021.
85. By the same reasoning, Mr McWilliams argued there is nothing in the human rights argument raised by the defendant as there is no unfairness.
86. There are no good reasons why the court should exercise its discretion under CPR rule 13.3 to set aside the default judgment.
87. The defendant does not, he suggested, have a realistic prospect of successfully defending the claim. For the reasons explained in Mr Blundell's fourth witness statement, there is no sensible basis on which the defendant can dispute liability. At most, she could dispute quantum.
88. She is well out of time to seek assessment under section 70 of the 1974 Act and, as for any common law challenge, nothing said by the defendant shows that the time claimed was not, in fact, worked or that the time was not reasonably incurred.
89. Moreover, Mr McWilliams submitted, the defendant had delayed long both before and after making the set aside application. She had not sought to put it before the court until the hearing last week, some two years after the default judgment.
90. He pointed out that she had acknowledged in her evidence before Saini J that she "*should have been more proactive in dealing with the application to set aside this judgment*", yet did not offer anything like a proper explanation for that delay beyond a generic reference to workload and alleged difficulties in finding "*a lawyer that I could trust, afford and work with*."
91. Mr McWilliams pointed out that the defendant has already been found in contempt of court on one occasion and submitted that she is in contumacious breach of another order now. The court, he said, should decline to exercise its jurisdiction to assist a contemnor who shows flagrant disregard for the court's orders, particularly where the indulgence she seeks is so great.
92. Mr McWilliams disputed the suggestion that the claimant had acted unconscionably in obtaining the default judgment. The request, he pointed out, was submitted on 4 December 2019, which was two days before the defendant emailed Mr Pike.
93. Finally, he said that the defendant had not satisfied several costs orders made against her. Even if the judgment were set aside, it should be on terms that they first be paid, including the costs of the instant hearing.
94. Turning to my reasoning and conclusions on the application to set aside the judgment, I start by considering whether the defendant is entitled, as of right, to have it set aside on the basis that the judgment is irregular. In my judgment, it is not irregular. Mr Bell, on behalf of the defendant, conceded as much as long ago as March 2020.
95. I reject the suggestion that because the context in which he did so was not the actual hearing of the set aside application itself, the defendant should not be held to his concession. By making it, the defendant sought to impress Saini J and gain advantage for his client. Mr Bell, properly doing his job, wanted to be realistic and concentrate his submissions on the existence of a possible partial defence to the claim.
96. He relied on the substance of that possible partial defence and sought thereby to persuade Saini J to spare his client an oral examination the next day. I see no reason why it is unfair to hold the defendant to that concession. Furthermore, it was, with respect to Mr Bell and in fairness to him, correct. The decision and reasoning of the Chancellor in the *PJSE Bank* case, applies directly to this case. It legitimises service on a company director but in the capacity of an individual not corporate person under section 1140 of the 2006 Act at the company address until 14 days after that address is cancelled at Companies House.
97. Contrary to Ms Perselli's attractively put submissions, there is no limit to the purpose for which that service can be effected, whether it be of a claim in tort, contract, debt or other proceedings. Nor is there any basis for excluding that mode of service where default judgment is sought. The rules do not so provide expressly and I decline to read into them any implied exclusion for default judgment.
98. There is nothing unfair about using section 1140 to serve a claim which is then subject to a default judgment. A company director making use of the privilege of incorporation in this country must also accept the burdens and other consequences of that. That means monitoring receipt of documents at the given address while it is in use for the company and for 14 days thereafter.
99. It was up to the defendant to do that. It is not the claimant's concern if she failed to do so, any more than it would be if she had been served at her home and had not bothered to open the envelope containing the claim documents before a default judgment was obtained. In both cases, the served party is unaware of the claim until after judgment. In neither case is that unfair.
100. I have a discretion to set aside the default judgment, but I have rarely seen a weaker case for exercising that discretion. I accept the claimant's submissions as to why I should not. There was some delay before applying to set aside the judgment. There was a much longer delay after the application was made.
101. The delay after it was made is inexplicable, inordinate and inexcusable. It is no excuse that the other party also delayed to some extent. That party, the claimant, had the benefit of a judgment. The onus is on the party seeking to set aside to do so promptly. That was not done.
102. Second, the merits of any defence look shaky, to say the least. First, it was reluctantly accepted by Ms Perselli, as it was less reluctantly by Mr Bell in March 2020, that any defence would be partial at best. There would still be a sum owing that could be measured in tens of thousands of pounds.
103. Third, there is nothing in the point that the bills are inadequately particularised. They can be supplemented by information already known to the defendant, as Ward LJ made clear in the *Ralph Hume* case. It is clear from the copious witness statements from the defendant that she is well acquainted with the exact nature of the work done by the claimant. Fourth, there is no prospect whatever of obtaining an assessment of the bills. The time limit under section 70 of the 1974 Act has long expired and a request for an extension of time is hopeless and one has not even been made.
104. That leaves the theoretical possibility of a common law defence based on the amount charged being too high. I might have been willing to consider allowing that to be tried if the set aside application had been pursued with vigour in late 2019 and early 2020.
105. I have no appetite for doing so nearly two years later, two years which has seen disobedience to court orders and unsatisfied costs orders. The application to set aside the default judgment is, for those reasons, rejected.

Second issue: whether time for compliance should be extended and/or the defendant should be granted relief from sanctions in respect of non-compliance with the order of Heather Williams J.

106. For the defendant, Ms Perselli submits as follows. Her submissions in relation to compliance with Heather Williams J's order are made under the heading of her application for relief from sanctions. Relief from sanctions is not usually equated with asking the court for mercy having breached an order endorsed with a penal notice. Nevertheless, that is how the submissions were framed in the skeleton argument.
107. Ms Perselli explained at the hearing that no further application for an extension of time is pursued. The application is now, in effect, to be absolved from any compliance at all with Heather Williams J's order. Ms Perselli accepts that no application to vary or discharge that order is before the court. She asked me, nonetheless, to treat the hearing as a request to discharge the order, her client being, for good reason, not willing to comply with it.
108. Ms Perselli explained that the reason why the defendant is unwilling to disclose any of the eight categories of documents is fear of the consequences under the Swiss criminal law of doing so. During the hearing, Ms Perselli received instructions from the defendant that the documents had been collated and put in a "drop box", but the defendant is unwilling to disclose what is, or allegedly is, in the drop box.
109. Under the rather incongruous rubric of relief from sanctions, she submitted as follows.
110. The defendant was initially not able to provide the eight categories of documents due to practical difficulties in obtaining them, as set out in her sixth witness statement.
111. However, she went about collating the documents.
112. In the course of doing so, she received Swiss law advice that she cannot disclose them as a result of Swiss company law requiring secrecy of information that can harm a company's financial interests.
113. The evidence, she submitted, confirmed that those principles applied to all eight categories of documents the defendant has been ordered to disclose (see, in particular, the letter of 19 January 2022 from Mr Remo Busslinger of Streichenberg und Partners, Swiss lawyers).
114. This information had been obtained by the defendant at short notice, in part due to her limited means which have meant that she does not retain a Swiss lawyer to advise her, and she had only recently become aware of the content of Swiss law.
115. That submission is made although the defendant's evidence is that she started to consider the effect of Swiss law in about mid-November 2021; and although there are three separate Swiss lawyers or law firms that have written letters in the last two weeks or so.
116. The *Denton* principles, Ms Perselli submitted, again apply as to whether the failure to provide the financial documents ought to attract any sanctions.
117. As for any question of committal for contempt, if the court is not satisfied with her explanation as to why she is unable to disclose the documents, the remedy should be an application under CPR Part 81 and none has been made.
118. It is conceded by Ms Perselli, realistically, that breach of a penal order is always serious. However, she submitted that the defendant had good reasons for doing so, namely the practical difficulties that initially required her to seek an extension of time to collate the documents and then, more recently, the Swiss law advice she has received that she may face criminal sanctions if she discloses them.
119. As for other relevant factors, the defendant also disputes the basis on which the underlying judgment was obtained, in respect of which the enforcement orders have been made. If, contrary to my decision above, but which has only become known to the defendant now, the judgment had been set aside, there would be no basis on which to order disclosure of financial documents at all.
120. For the claimant, Mr McWilliams made the following main points.
121. First, he said the concept of relief from sanctions has no application in this context. Neither the CPR nor Heather Williams J's order impose an automatic sanction in the event of non-compliance from which relief might be sought under CPR rule 3.9.
122. The remedy for a defendant in breach of an order such as this is either to seek variation or discharge of the obligation of which they are in breach and/or to purge any contempt by belated compliance with that obligation.
123. The defendant had failed to produce, said Mr McWilliams, a single document in response to Heather Williams J's order. Whilst she claims to have encountered difficulties producing certain categories of document, her failure was really unexplained.
124. Indeed, in the case of some categories – for example, her US tax returns – it had been her own evidence during the examination that they could be straightforwardly provided.
125. Her obligation under Heather Williams J's order, said Mr McWilliams, is to produce the documents as soon as reasonably practicable. The 15 November 2021 deadline was a long-stop date. The documents should have been produced immediately and, in any case, not later than 15 November.
126. Further, he said there is no medical evidence to support the assertion that the defendant's illness made it difficult for her to collate the Part 71 disclosure. It does not follow from the fact that she apparently tested positive for Covid 19 on 12 November 2021 that she was ill with the condition, still less that the illness was sufficiently severe to prevent her from complying before 14 January 2022, the date she had herself asked for.
127. The defendant, said Mr McWilliams, is clearly able to litigate when it suits her. She has instructed a new firm of solicitors recently and made two applications to this court. Her efforts could instead have been directed towards complying with her obligations under the court's order.
128. As for Swiss law, Mr McWilliams submitted that it formed no part of the application for an extension of time and was not mentioned until a solicitor's letter as recently as 13 January 2022, and the letters dealing with Swiss law are dated from 12 to 19 January. There is no application before the court to vary or discharge Heather Williams J's order.
129. Yet the defendant has had the benefit of legal advice in connection with her obligations under it since 18 November 2021.
130. There is no good evidence, said Mr McWilliams, that Swiss law in fact prohibits the defendant from making disclosure of the documents requested. They concern her assets rather than those of any Swiss entity.
131. The so-called "legal opinions" are cursory and generic. They do not explain why disclosure of the documents would fall foul of Swiss law. Indeed, he submitted it is not clear that the Swiss lawyers had examined the documents.
132. Furthermore, Mr McWilliams submitted, there are a number of documents among the eight categories which have nothing to do with any Swiss company.
133. Finally, he pointed out that even if Swiss law did prohibit disclosure the defendant is obliged to provide, that is not an end of the matter and in itself an answer. The court can order disclosure from a party even if that would expose the party to a criminal sanction under foreign law (see *Bank Mellat v HM Treasury* [2019] EWCA Civ 449, and *Tugushev v Orlov* [2021] EWHC 1514 (Comm) at [32]-[38] per Butcher J.)
134. I come to my reasoning and conclusions on this second issue. I am satisfied (a) that time for compliance with Heather Williams J's order should not be extended and (b) that relief from sanctions should not be granted in respect of the non-compliance.
135. The point is really a short one, despite the detail in the facts and submissions. There is no basis for relieving from sanctions for any breach of a procedural rule. The defendant has not here missed a procedural deadline, such as by failing to serve a witness statement on time. She is in continuing breach of a mandatory order endorsed with a penal notice.
136. There has been no attempt to comply, nor any application to vary or discharge the order. The medical evidence is inadequate and unconvincing. It does not prevent the defendant litigating when she wants to make an application herself.
137. As for the Swiss criminal law issues, the authorities relied on by the claimant, the *Bank Mellat* and *Tugushev* cases, show that the court should carry out a balancing exercise and that the court is concerned not just with the letter of the foreign criminal law but with the extent of jeopardy that proceedings under it will be brought against the disclosing party. In my judgment, the balance here is all one way. The Swiss law evidence does not begin to excuse the non-compliance.
138. First, it does not extend to all the documents required to be disclosed.
139. Second, it is generic, as the claimant rightly submitted.
140. Third, the writers of the documents do not say they have examined the documents.
141. Fourth, the legal materials contain no analysis of the documents against Swiss criminal law.
142. Fifth, thus they do not adequately differentiate between secret company documents and personal financial documents, such as tax returns. Much of the information is about obligations not forming part of the criminal law of Switzerland, but about the potential for civil liability.
143. Sixth, the Swiss lawyers' letters do not suggest the defendant would be at any real risk of prosecution in Switzerland if she were to make disclosure in accordance with an obligation owed to the English court on pain of imprisonment.
144. The remedy, if the problem were real, would be to apply to amend or discharge the order and to apologise, abjectly and sincerely from the heart, for not complying with it, but that is not done.
145. In the unusual and extreme circumstances and the late production of the evidence, I would not be prepared to absolve the breach even if that meant, in theory at least, exposing the defendant to criminal sanctions under Swiss law; a prospect which, however, on the evidence before me, I consider far fetched in the extreme.
146. I am conscious that the defendant has had a lot of time to comply with the order and has been warned by several penal notices of the consequences of not complying with orders of this court. My impression is that penal notices leave the defendant feeling pretty relaxed. Robin Knowles J's order of 15 December 2021 referred to the current state of non-compliance and that the consequences of that would be considered at this hearing.
147. Even in the face of that warning, the defendant has directed her considerable litigious energies to arguing for exemption from the requirement to comply, instead of to complying. She has thereby shown a disrespect to the court and cavalier disregard for its orders.
148. Finally, it is idle for the defendant to submit, as she does, that the underlying basis of the judgment is flawed and that it should be set aside, a proposition I have already roundly rejected. But even if the judgment had been set aside, the obligation to comply with the orders made in advance of setting aside would still exist.
149. That proposition has been crystal clear not just as a matter of principle but also since Saini J rightly treated the two issues separately on 4 March 2020, treating the question of attendance under Part 71 as a separate and prior matter to the question of whether the judgment should be set aside.
150. I conclude that the defendant is, and remains, in serious breach of the order of Heather Williams J, is not entitled to discharge of her obligations under it or any other relief from that breach and its consequences.

Third issue: whether the defendant should be subject to a sanction for breach of the order of Heather Williams J dated 29 October 2021

151. The defendant says not, for reasons already explained in recording her previous submissions above on relief from sanctions, and she does not accept that the court has the power under CPR rule 71 to make a suspended committal order as sought by the claimant.
152. For the claimant, Mr McWilliams submits to the contrary.
153. He says the defendant is, and will remain, in contumacious breach of the order and that the order of Robin Knowles J placed the consequences of that squarely before me.
154. Secondly, he submits the claimant has been indulged long enough. It is the second time she has been in contumacious breach of an order of this court and it is tolerably clear that, without exercise of the court's coercive powers, compliance will not be forthcoming.
155. He submits that the court does have jurisdiction to find her in contempt by reason of non-compliance with Heather Williams J's order and to impose a punishment for that breach, provided it is suspended in accordance with Part 71.
156. The jurisdiction arises, he submits, as follows.
157. First, he says that the order of Heather Williams J was made pursuant to rule 71.2. In oral submissions, in response to an intervention from me querying that, he submitted, in the alternative, that the original order to attend made on 20 January 2020 was the relevant order under rule 71.2.
158. Second, he said the defendant had failed to comply with that order, having failed to disclose documents that evidently are in her possession, power and control.
159. Third, he said that the failure to comply had been referred to a High Court judge to consider for the purposes of CPR rule 71.8(1), Robin Knowles J having directed that the matter be considered at the hearing before me.
160. Fourth, he submitted that the court accordingly has the power under rule 71.8(2) to hold the defendant in contempt and make an order punishing her by a fine, imprisonment, confiscation of assets or other punishment under the law, provided it is satisfied that the claimant has complied with CPR rule 71.4 and 71.5.
161. However, by rule 71.8(3), Mr McWilliams acknowledges any order this court makes must be suspended provided that the defendant (i) attends court at a time and place specified in the order and (ii) complies with all the terms of that order and the original order.
162. He invites the court to exercise its powers and to make an order finding the defendant in contempt, sentencing her to a term of imprisonment to reflect the egregious nature of the breach and that this is now the second occasion upon which she has acted in contempt, but suspending the sentence on terms that she must (a) provide the disclosure required under the order of Heather Williams J by 4pm on a date in the not too distant future and (b) that she should attend court in person, again on a date in the near future, to be fixed by the court, for the purposes of being examined about the contents of her disclosure.
163. I turn to my reasoning and conclusions on this third issue. First, the defendant's point that no contempt proceedings have been brought under CPR Part 81 is a bad one. It is nothing to the point. The jurisdiction to find a person in contempt for non-compliance with an order under Part 71 is separate from the power to make a finding of contempt on an application made under Part 81.
164. Next, to have jurisdiction to make an order under rule 71.8 there must be a failure to comply by a person against whom an order has been made under rule 71.2 (see rule 71.8(1)(c)). The court's order made on 20 January 2020 was an order made under rule 71.2. It fits the description of such an order in sub-rule (1). The defendant failed to comply with it by not attending before Mr Mahmood on 5 March 2020.
165. That led to the matter being referred to a High Court judge under rule 71.8(1). After that, a fresh or restored application was made which led to HHJ Simpkiss' finding of contempt and ultimately to Heather Williams J's order and that of Robin Knowles J, placing the matter before me due to apparent non-compliance with the order of Heather Williams J.
166. I am satisfied, tracking through the effect of the various orders, that I am a High Court judge within the meaning of the words "[t]hat judge" in rule 81.8(2), that is to say, the judge seised of the matter for the purposes of rule 71.8. Rule 71.7 provides for adjournments and it is clear that the High Court judge or circuit judge acting under rule 71.8 need not be the same one as the High Court judge or circuit judge to whom the matter is first referred.
167. I therefore have power under rule 71.8(2) to hold the defendant in contempt and punish her accordingly, provided the claimant has complied with rule 71.4 and 71.5. If I make such an order, it must be suspended on the terms set out in rule 71.8(3). I therefore consider next whether the claimant has complied with rule 71.4 and 71.5.
168. As for the former, that requires payment of travelling expenses of attending court if they are requested. There is no evidence that any such request has been made. I conclude that rule 71.4 has been complied with in that the obligation under it has not arisen.
169. As for rule 71.5, Ms Rose's affidavit of service, made on 3 March 2020, gave details of when and how "the order" was served. The reference to "the order" is, in my judgment, to the court's order within the meaning of rule 71.2, i.e., in this case the order of 20 January 2020. I have checked the affidavit of service and I am satisfied that it complied with the requirements of rule 71.5.
170. I therefore accept the claimant's submission that I have jurisdiction under rule 71.8(2) and (3) to hold the defendant in contempt of court and to make a suspended order for a fine, imprisonment, confiscation of assets or other punishment under the law.
171. I am satisfied that this is an appropriate case to exercise that jurisdiction. The defendant has shown herself in these proceedings to be a selfish and untrustworthy person, her word counts for nothing if it suits her to break it, she shows indifference to the respect properly due to the court and to the financial and resource burdens to which she continues to subject the clamant and the court.
172. It is necessary, in my judgment, to teach her that the court is not to be trifled with. I reject the idea of imposing a fine. The defendant would not, in my judgment, pay it if she could avoid doing so. To make her pay, if achievable at all, would impose yet further on public resources and it would make enforcement of the judgment more difficult for the claimant if she did pay.
173. Confiscation of assets would be a good idea but is unlikely to be effective. The defendant would be likely to hide any assets she could to put them beyond the reach of the court. It is not clear to me that she has any assets of substance in the jurisdiction.
174. In my judgment, a sentence of imprisonment is appropriate and necessary because the breach is deliberate, cynical and continuing and because, on the evidence before me, I am satisfied there is every prospect that the defendant will continue to flout orders of the court unless coerced into obeying them.
175. I will make an order holding the defendant in contempt and imposing on her a sentence of imprisonment for six months. I am required to suspend that sentence on terms reflecting the wording of rule 71.8(2) and (3).
176. The defendant is required to comply fully with the disclosure requirements of the order of Heather Williams J by 4pm on 7 February 2022 and to attend in person, not remotely, at a court in this building, the number of which will be confirmed, at 10.30am on 14 February 2022 or such other date as the court may advise. She has plenty of time to arrange travel to this country for that purpose.
177. I am grateful to both counsel for their clear and helpful submissions. That concludes this judgment.

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