

NEUTRAL CITATION NUMBER: [2014] EWHC 2187 (Fam)
IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Case No: DF13C00133, DF13C00134, IL13C00903
Queen's Building
The Royal Courts of Justice
Strand
London WC2A 2LL

Date: Monday, 16th June 2014

Before:
THE HONOURABLE MR JUSTICE KEEHAN

B E T W E E N:

LONDON BOROUGH OF
BEXLEY
and
V, W and D

Transcript from a recording by Ubiquis
61 Southwark Street, London SE1 0HL
Tel: 020 7269 0370

MR DAVID appeared on behalf of the London Borough of Bexley
MS A DIXON appeared on behalf of the First Respondent
MS T MCLEVY appeared on behalf of the Second Respondent
MS J DEZONIE appeared on behalf of the Third Respondent

JUDGMENT

MR JUSTICE KEEHAN:

1. This matter is listed for a directions hearing at my direction in light of the contumelious failure of the London Borough of Bexley to comply with directions set out in an order of 12 May 2014. By paragraph 19 of that order the local authority were to file their final evidence by 4.00pm on 2 June. That deadline was itself an extension of time by the order of 17 February. The local authority had originally been ordered to file its final evidence by 22 May. On the front of the order of 12 May, as appears on all of the orders in this matter, there is set out in bold a requirement that each party shall comply timeously with court orders and any party who finds themselves unable to comply with any direction is required to apply to me via my clerk for an extension prior to the expiration of the time for compliance. Nothing was received from the London Borough of Bexley to further extend time for their compliance with filing their final evidence. Eight days after they were due to file their final evidence emails were received from solicitors for the other parties notifying the court of the failure of the local authority to file its evidence.

2. On 10 June an email was sent by my clerk to the London Borough of Bexley asking why they had not complied with the court order. On 11 June a reply was received from the solicitor having conduct of this matter setting out various factors that led to the local authority being unable to comply with paragraph 19 of the order of 12 May. Accompanying that email was a number of care plans for some of the children. When a further email was sent asking when the local authority would comply with filing all of its final evidence, a reply was received on 11 June indicating that the solicitor would be in possession of full instructions the following day and would contact the court. No email was subsequently received. The final evidence of the local authority was filed and served at 9.21 on Saturday,

14 June.

3. Counsel for the local authority today helpfully filed a position statement which repeats the reasons given by the local authority for failure to comply. It was said on behalf of the London Borough of Bexley that no application was made for an extension of time because it was not known when the local authority could comply. That is simply not good enough and it will not do. The consequence of the local authority failing to file its evidence in time has delayed the other parties being able to comply with their duties under the order and accordingly they will now be late in filing their evidence. I have today granted extensions of time to each of the other parties to do so.
4. I am told this morning that the London Borough of Bexley has not filed or served an amended schedule of facts. By paragraph 15 of the order of 12 May they were to do so the following day, 13 May, by 4.00p.m. They have not done so. I am given no explanation as to why they have not done so. I am told that an amended schedule of facts will be filed and served by 9.00am tomorrow morning.
5. In the case of *Re W (A Child)* [2013] EWCA 1177 the President, Sir James Munby, observed at paragraphs 50 to 54:

‘It is, unhappily, symptomatic of a deeply rooted culture in the family courts which, however long established, will no longer be tolerated. It is something of which I complained almost thirteen years ago: see *Re S (Ex Parte Orders)* [2001] 1 FLR 308. Perhaps what I say as President will carry more weight than what I said when the junior puisne.

I refer to the slapdash, lackadaisical and on occasions almost contemptuous attitude which still far too frequently characterises the response to orders made by family courts. There is simply no excuse for this. Orders, including interlocutory orders, must be obeyed and complied with to the letter and on time. Too often they are not. They are not preferences, requests or mere indications; they are orders: see *Re W (A Child)* [2013] EWCA Civ 1227, paragraph 74.

The law is clear. As Romer LJ said in *Hadkinson v Hadkinson* [1952]

P 285, 288, in a passage endorsed by the Privy Council in *Isaacs v Robertson* [1985] AC 97, 101:

‘It is the plain and unqualified obligation of every person against, or in respect of whom, an order is made by a court of competent jurisdiction, to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void.’

‘For present purposes that principle applies as much to orders by way of interlocutory case management directions as to any other species of order. The court is entitled to expect – and from now on family courts will demand – strict compliance with all such orders. Non-compliance with orders should be expected to have and will usually have a consequence.

A person who finds himself unable to comply timeously with his obligations under an order should apply for an extension of time before the time for compliance has expired. It is simply not acceptable to put forward as an explanation for non-compliance with an order the burden of other work.

Non-compliance with an order, any order, by anyone is bad enough. It is a particularly serious matter if the defaulter is a public body such as a local authority.’

I respectfully agree with all that was said by the President.

6. As I observed in the case of *A Local Authority v DG* [2014] EWHC 63 (Fam) at paragraph 43:

‘The conduct of the parties in this matter and the wholesale failure to comply with case management directions is lamentable. Family practitioners must wake up to the fact that, whatever the difficulties presented by public funding issues and/or the pressure of work, the court will no longer tolerate the failure of parties to comply timeously with court orders. Those failures simply lead to unacceptable delays in the proceedings which are wholly inimical to the welfare of the children involved.’

7. Notwithstanding the failure of the local authority to comply with the order and to serve documents at least seven and up to 12 working days late, it is still possible for the other parties to file their documents and for the fixture listed for 26 June to be maintained. I make it plain it is my clear intention that this matter will be heard and hopefully concluded

in that fixture of 26 June.

8. I understand that social work professionals and lawyers, whether engaged by public authorities or in private practice, are under enormous great strain in the current circumstances and economic climate, particularly given changes to public funding, but that does not relieve them of the obligation to comply with orders made by the court. The failures by the London Borough of Bexley in this matter are stark. This hearing would not have been required if they had complied with their orders and, in my judgment, it was right that this matter was listed at the earliest opportunity to address those failings and to enable the other parties to make submissions as to when they could comply with their obligations to file documents. Accordingly, I am in no doubt that it is right that the local authority should be ordered to pay the costs of this hearing.
9. I shall direct that there is a transcript of this judgment. It will be anonymised and published. I give leave for it to be reported. All parties will be anonymised save for the London Borough of Bexley. The London Borough of Bexley will pay for the cost of that transcript.
