

**IN THE COUNTY COURT**  
**SITTING AT GLOUCESTER & CHELTENHAM**

**Claim No. B00GL019**

Kimbrose Way  
Gloucester  
GL1 2DE

Date: Monday, 1<sup>st</sup> June 2015

Before:

**DISTRICT JUDGE DAVIS**

Between:

**GLOUCESTER CITY HOMES**

Claimant

-v-

**JANE BEARD & ORS**

Defendants

Counsel for the Claimant:

MR WIGHTWICK

Counsel for the Defendants:

MR KING

**DRAFT JUDGMENT NOT YET APPROVED BY THE COURT**

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Number of Folios: 63  
Number of Words: 4,560

DRAFT JUDGMENT

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DISTRICT JUDGE DAVIS:

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1. This is the case of Gloucester v Birch, Beard, Edwards, Birch and Birch. This is the sentencing portion of our time together today. As I said before the lunchtime adjournment, having listened to mitigation from each party's advocate and, in the case of Mr Birch, from himself in person, I have spent the lunchtime adjournment considering the best way forward so far as this case is concerned. I am going to deal with each defendant in turn. Mr Birch, are you able to stand up or are you still too uncomfortable to do so?

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MR BIRCH: My leg is playing up but I will stand up, your honour.

THE DISTRICT JUDGE: If your leg is playing up do not trouble yourself. Do stay sitting down.

D

MR BIRCH: Okay, yes, thank you, your honour.

E

THE DISTRICT JUDGE: On 16<sup>th</sup> January 2015 this court issued an injunction order. You were present at court on the day in question and I spoke with you about the consequences of breaching this order. I told you that if this injunction order was breached it was likely that there would be severe consequences. The order itself was very clear in the terms that were set out within it. It told you you should not undertake certain types of behaviour. The order has, at its head, a warning, "If you do not comply with this order you may be held in contempt of court and imprisoned, or fined, or your assets may be seized." The order itself prevented you from using or threatening violence against a number of persons set out in paragraph 1 of my order. It forbade you to shout or swear or to use abusive language, or make rude or insulting gestures. It forbade you from causing a nuisance or annoyance to the persons mentioned in the order and generally restricted your behaviour. That order was granted because I was satisfied there were grounds so to do.

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2. This matter came before me on 10<sup>th</sup> March when I further considered the case. There was an application to commit. I listened very carefully to what you had to say to me.

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3. This morning, very helpfully, you conceded that you had carried out a number of breaches of the injunctive order. You told me that, I think, you had breached the order on many occasions. I think we totalled 22 breaches. You explained to me that you were very sorry that you had caused the council such a lot of trouble and you would like a last chance to find somewhere else to live. You told me you went to prison 27 years ago and could not do it again, "It would kill me", you said. "I need my children to look after me and to care for me", you said. You did not want to be split up from your wife or children.

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4. Notably, you required a prompting from me to offer any apology in respect of the behaviour that your processes have inflicted upon your neighbours. I had to ask you if you were sorry about that. You needed prompting to say sorry about the neighbours and you told me that you were sorry for what you had done. Looking across the schedule of injunctive breaches, you have, over a consistent period of time, totally disregarded the injunction and the terms contained within it. You have been involved

- A in noise nuisance on numerous occasions. You have been aggressive towards members of Gloucestershire County Council staff, something which is inexcusable. These staff have a perfect right to expect a degree of respect from the people who they are employed to serve. You have not showed that degree of respect. There is a catalogue of breaches. Arguments within the family, arguments within the property, arguments outside of the property.
- B 5. I take into account the fact that you have conceded, albeit at the very last minute, the fact that you have committed these various breaches. By considering the sentencing guidelines which I have done, I have established in my mind that this is a case to which we can ascribe a lesser degree of harassment and alarm or distress. That is the mid-ranking level of concern insofar as the guidelines are concerned and I remind myself that the starting point for this sort of offence is six weeks' custody to a maximum of 26 weeks' custody.
- C 6. I have thought very carefully about the circumstances of this case. I have considered your health position and I have to say I am not in any way persuaded that you have any lasting requirement to use a wheelchair but I accept that you have a bad hip today. I can see absolutely no justification for departing from a custodial entry point insofar as this case is concerned. Considering whether it is appropriate to suspend the sentence, I can see no justification for suspending the sentence. There are no exceptional circumstances in play insofar as this case is concerned. I am entirely satisfied that your flagrant breach of the injunctive process was deliberate. You breached the injunction on many occasions despite having received a warning from me on at least one occasion of the consequences that would follow. You are therefore sentenced to 12 weeks' imprisonment with immediate effect.
- D 7. Jane Beard: I am not going to ask you to stand up, Miss Beard, because I understand you have difficulties in mobilising. Again, I made an injunction when you were here on 16<sup>th</sup> January 2015. At the risk of repeating myself, I told you at the time that if you breached the order there would be serious consequences. Now, here we are. You have to your credit admitted a number of breaches of the injunction today. You have saved the court time as indeed did Mr Birch. However, I still have to consider what to do in respect of the numerous breaches of injunctive order. Again, the order was very clear. It said, "If you do not comply with the order you may be held in contempt of court and imprisoned or fined, or your assets may be seized". For whatever reason, you chose to disregard that warning. It was common ground before me this morning that there were numerous incidents of breach. Your advocate, Mr King, argued capably and persuasively on your behalf. He did the best that he could with a very difficult set of circumstances because the reality of this case is that the breaches are over a significant period of time and are of quite a serious nature. Again, I have identified these breaches as being of a lesser degree which means the entry point of six weeks in custody and a maximum of 26 weeks' custody applies here.
- E 8. It was suggested to me that I should accept that these breaches were of a relatively low level. I am afraid I did not accept that. These breaches are important. They are important because of the distress they will have caused to the people living around you. You behaved abominably and there is no excuse for that. Now, I am entirely satisfied that this justifies a custodial sentence and you are to be sentenced to 12 weeks imprisonment.
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A 9. However, I am also aware of your difficult health circumstances and I accept that those health circumstances were common ground. You have got difficulties mobilising, you have difficulties preparing meals and you require some degree, a limited degree, of supervision during the course of your day. I am also satisfied that there is a degree to which you have been held hostage to fortune in respect of these breaches. You have been involved in something that has spiralled beyond your control. Having carefully considered all of these issues and particularly the representations made by your advocate, I am satisfied that there are just – just – exceptional circumstances in this case to enable me to suspend your sentence.

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MISS BEARD: Thank you, your honour.

C THE DISTRICT JUDGE: Make no mistake. If there is a further breach of this injunction, that suspended sentence will bite and there will be a further sentence on top of that. Do not leave this room thinking you have got away with it, you have not. I will deal with this case if it comes back before me. This case will be reserved to me and you can expect a fairly severe consequence for any further breach. Am I making myself clear?

D MRS BEARD: Yes, you are, your honour. I would like to say sorry for all the inconvenience I've caused.

THE DISTRICT JUDGE: Yes. Now, Jonathan Ward?

MR KING: Robert Edwards, sir.

E THE DISTRICT JUDGE: I am sorry, Robert Edwards, wrong piece of paper. Stand up please, Mr Edwards.

F 10. Mr Edwards, we met on 16<sup>th</sup> January and I told you that if there was a breach of the injunction I issued then there would be a consequence. I was very clear about that as to all of you and the fact that I remind myself once again of what the injunction said. It said, "If you do not comply with the order, you may be held in contempt of court and imprisoned and fined", or both. For whatever reason, you chose to disregard my order. I carefully read your witness statement which is at page 64 of the bundle and I note the apologies contained within it. You have accepted a number of breaches, significantly fewer breaches than the other people with whom I am concerned this afternoon and there have been no further breaches since the date of the initial concern.

G 11. Again, I treat these issues very seriously. I identified your breaches as being of a lesser level with entry point at six weeks in custody. I accept representations made that you suffer from social problems. You do not live at the property with which I am concerned and you did accept all the issues which I am concerned with today. That saved the court a great deal of time. You accept that your behaviour might have been intimidating and you are clearly apologetic. I have no doubt that you have learned your lesson. However, as I said to you when we first met, there will be consequences if you breach my order. You are sentenced to 28 days in prison. I am satisfied, just and I say, just, that there are exceptional circumstances in respect of this particular aspect of this case. I am prepared to suspend the sentence but if there is a further breach you will come back before me and there will be consequences. I hope we do

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A not misunderstand each other because there certainly will be. The order is suspended for 12 months. Sit down.

MR EDWARDS: Thank you.

THE DISTRICT JUDGE: Ellen Birch

B 12. Ms Birch, you helpfully assisted the court today by accepting virtually all the breaches put before me. I remind myself again, that this case came before me on 16<sup>th</sup> January 2015. You were given a clear warning. I told you that if there were further breaches of this order there would be consequences. I made that exceptionally clear. I listened very carefully to what your advocate had to say in respect of your case today. He was very careful and skilful in making representations to me. He told me that you have mild, non-specific learning difficulties. I accept that. He told me that perhaps the breaches you had accepted were of a lesser degree of harassment. I do not accept that. Looking at the paperwork, there are far too many breaches identified here to justify such a finding. The breaches continued after the hearing in front of me when you received a further warning. You clearly found it very difficult to understand what I was telling you. You thought that you could behave with impunity. You thought that there would be no consequences for your behaviour. You were wrong. It is wholly inappropriate for you to behave in the way that you have been behaving. You have caused significant distress and unhappiness to the people living around you who are blameless. They did not have any expectation that their lives would be affected in a negative way by your behaviour. They have a reasonable expectation that you will behave appropriately, particularly after you have been to court and been told to do so. For whatever reason, you chose not to do that as I have said.

E 13. Again, looking at the sentencing guidelines as I have throughout this case, I am satisfied that this is a lesser degree case with an entry point of six weeks' custody, with a maximum of 26 weeks. I am also satisfied that there was a calculated and deliberate disregard of this court's order over a significant period of time. That is clear from the admitted breaches. I am, therefore, sentencing you to eight weeks' imprisonment. There are no justifications for any suspended order here. None of the representations made by Mr King were accepted by me. I was not satisfied that there was any justification for suspending that sentence. Do sit down.

F 14. Trudy Birch, do stand up. Again, at the risk of repeating myself, I have read your statement, as I have read everybody's statement I should say. I note your contrition, I note that you did not seek a hearing in respect of the factual aspects of this case and that you admitted virtually all of the breaches. As I have said, I have read your statement. I note that you grew up in foster care and I note that you have mild, non-specific learning disabilities. I note that you are seeking a suspended order today and that you are very sorry for what you have done. I have considered, I think, the 26 breaches of this court's injunction. It was made very clear to you, as I said and as I have said to everybody throughout the course of these proceedings that if there was a breach of the injunction there would be consequences. For some reason and I know not why, you chose to disregard that warning. The injunction order itself contained that warning. It made it very clear that there would be a consequence, were there to be a breach. There have, I think it is common ground, been 26 breaches of my injunction over a significant period of time. There were noise breaches, there were behavioural breaches and you have caused unhappiness and dissatisfaction to those around you.

A Those around you have no right to expect to have to tolerate that sort of behaviour. They had no expectation that your behaviour would be that bad. They probably had a rational expectation that you would behave more appropriately, once you had been told to do so. You chose not to do that and a consequence follows.

B 15. As I said and as I have said throughout this afternoon, I was entirely satisfied that this was a middle-ranking entry point lesser degree case, starting point of six weeks. I give you credit as I have given to all of the people before me this afternoon, credit for the fact that they have effectively pleaded guilty to the issues and I have considered very carefully whether there is any justification for suspending your sentence. Your advocate was very careful to seek that suspended sentence. I am not satisfied there is any justification for doing so. I am therefore sentencing you to nine weeks' imprisonment. Do sit down.

C 16. I end by saying this. I have given everybody here credit for their belated cooperation in respect of this matter. It is a matter of considerable regret to me that it has come to this. You were all given warnings of what would happen if you chose to ignore the court's order. You chose to do that. These are the consequences. I hope very much that I do not deal with this case again in the future but if I do it will come before me and there is likely to be a similar outcome. Advocates, do you have anything you wish to say?

D MR KING: Not in relation to committal, sir.

THE DISTRICT JUDGE: Thank you. Mr Wightwick?

E MR WIGHTWICK: No, not in relation to sentence, no. They were concurrent on each—

THE DISTRICT JUDGE: Yes. Where the suspended orders are made they are for a year. Now, what other matters need to be dealt with?

F MR KING: Sir, the matter of possession and the date on which possession should be granted and I would ask, just for the avoidance of doubt, that the three months that was requested by the defendants still be the appropriate order, particularly as people are now going to be spending time in prison and affairs will need to be arranged. Of course, sir, it is still open to you if you would consider it, to amend the injunction to allow a longer period certainly for Miss Beard to make her arrangements.

G THE DISTRICT JUDGE: Yes. Mr Wightwick, what would you have to say about the issue of possession?

H MR WIGHTWICK: Well, since my client said that they would be content for a 28-day order, we learned that there were further incidents in May. We have now played the recordings of those incidents to Mr King who has confirmed that he does not need to hear any more. They are incidents of loud shouting between Jane Beard and Michael Birch on, we think, both occasions and we therefore have a very serious situation at the property because, as I said earlier, we have two neighbours who have moved out. One of them has moved out temporarily for a week to go away during the course of these proceedings, the other one has barely been there for some considerable number of months because she finds it impossible to remain overnight there. The only other resident, as we have heard, is somebody who works during the day so is not

A troubled by the fights and arguments that are happening during the daylight hours. Now, in terms of enforcement of the order, therefore, unfortunately we would ask that it be enforceable immediately or as soon as possible after today. The powers that be in the council, in the homelessness team will not take any action unless an order is actually enforceable imminently. They will say that the applicant is not actually homeless at the time in any event. So whether you are minded to make an order forthwith and not to be enforced by warrant before a date fairly soon and whether that be 14 days or not is a matter for you. However, unfortunately sympathy has somewhat evaporated since this morning.

B THE DISTRICT JUDGE: What we are certainly talk about here, of course, is time for Ms Beard to rehouse herself. She has now been shorn of a significant part of her support network.

C MR WIGHTWICK: Yes, indeed and I realise that certainly if these two daughters, I believe she has five daughters, will be in custody there will be others who will be able to help her. If other members of the family are able to help then it may be that Julie and Ellen would not be involved.

D THE DISTRICT JUDGE: And both advocates, you are content that it is a matter for my entire discretion, bearing in mind the merits of the particular case?

MR WIGHTWICK: That is it.

THE DISTRICT JUDGE: That is the basis on which I have got to make a decision.

E MR KING: It is a matter for your discretion, sir. Could I say... obviously there is a certain amount of distress going on. First of all, in relation to the evidence of recent telephone tape recordings, I have heard some of them. They really do not throw much light onto the situation and also if Mr Birch is going to be absent from the property one imagines that there will be no danger of the neighbours experiencing problems from him at least and presumably if Mr Birch and Miss Beard have been arguing, then of course they will not be hearing anything from Miss Beard as well if Mr Birch is absent. So, yes, it is simply a question of whether Miss Beard can house herself and how long that will take. I disagree with my learned friend when he says that the powers that be in the council will not necessarily look at the situation until the possession order is imminent. I take it by that he means that a bailiff's warrant has been applied for. In a case of somebody with severe disabilities with the situation that Miss Beard finds herself in, social services are more likely to act more quickly.

G THE DISTRICT JUDGE: How long does it take to obtain a warrant in this court at the moment?

H MR WIGHTWICK: Depending on what is on the face of the order, of course, sir, the bailiffs will not execute any warrant that is actually given to them within less than a week so it depends when you want to move *[on?]*

THE DISTRICT JUDGE: All right, thank you.

17. Having considered all the circumstances of this case and particularly the fact that there has been a significant change in the circumstances as a result of the decision-making

A process and punishment process I have just undertaken, I am satisfied that it would be inappropriate to order the immediate possession of the property insofar as Jane Beard is concerned. I am satisfied that she should give up possession within four weeks and no warrant should be executed before six weeks, having considered all the circumstances of this case. Anything else gentlemen?

B MR WIGHTWICK: Just costs, sir. Chambers have been served. I know it is somewhat academic but—

THE DISTRICT JUDGE: Costs follow the event?

MR KING: Costs follow the event, sir, subject to the usual legal aid orders because there are legal aid certificates—

C THE DISTRICT JUDGE: Yes, absolutely.

MR KING: —in respect of everybody apart from Michael Birch.

THE DISTRICT JUDGE: Save in respect of Mr Birch?

D MR KING: Save in respect of Mr Birch and, of course, I am bound to ask for legal aid detailed assessments or whatever it is currently called.

THE DISTRICT JUDGE: And you shall have it.

E MR WIGHTWICK: I have done four draft committal orders in respect of members of the family of which I hand two to you because I just wanted to confirm that you are happy with the format because it is not on the standard court form but it is a form that Gloucester has used before.

THE DISTRICT JUDGE: Why do I not check with my listing department what order they would like to receive from you?

F MR WIGHTWICK: Yes, well, I can, it would take me a long time but I can transpose all of that information into a standard committal order but that form is accepted. I have inserted a clause as to the summary assessment of costs on that as well. I also suggested amending the injunction to deal with exclusions, following their release. I do not know whether you have got any views on that, sir?

G THE DISTRICT JUDGE: I do not think it is necessary. I think if they have not learned their lesson this time, they will never learn it.

MR WIGHTWICK: No, well, that may well be right.

THE DISTRICT JUDGE: All right, I will look at this order. I do not think I need to keep the parties here, they can be taken away.

H MR WIGHTWICK: They will need copies of that order and the warrant of committal before they leave the court unfortunately.

THE DISTRICT JUDGE: I meant within this room.



A MR WIGHTWICK: Oh, of course, yes.  
THE DISTRICT JUDGE: They can go to somewhere secure outside.  
MR WIGHTWICK: All right, yes, although those who are being put in prison immediately have got to be released to the relevant staff.

B THE DISTRICT JUDGE: Yes, all right. If they would like to wait in a room elsewhere rather than in this particular room, we can talk about the form of the order.  
MR WIGHTWICK: We can probably do that, I am sure. So sorry, sir.  
MR BIRCH: Excuse me, your honour.

C THE DISTRICT JUDGE: Do sit down.  
MR BIRCH: Can I have a word with you, please? My wife won't manage on her own now because she got... she's got to have 24 hours minding. She won't manage on her own.

D MISS BEARD: And I will have my [*inaudible*], all right? You've done it now, all right? I'll tell you now, that's it now. Have my keys, please. I'm going to hand the keys in. I can't take all the [*gloom?*]. I can't. My other daughters, they've got children. My other children have got children of their own. They haven't got time to look after me. They can't look after me, they've got children. I haven't seen my eldest daughter. I've fallen out with her. No, no.

E THE DISTRICT JUDGE: Thank you, Mr Edwards.  
MR EDWARDS: Thank you, judge.  
MISS BEARD: I hope you're satisfied. [*Inaudible*]. Splitting the family up.

F THE DISTRICT JUDGE: Now, I will go and consider this order. Talk to listing and find out what I need to sign before this matter can be dealt with today. Thank you for your assistance, Mr Wightwick. Thank you, Mr King. Is there anything else I really ought to say at this stage?  
MR WIGHTWICK: No. There are some little omissions that I need to change on those orders and Mr King has not had an opportunity to look at them properly.

G THE DISTRICT JUDGE: Why do you not show Mr King?  
MR WIGHTWICK: I can do that.

H THE DISTRICT JUDGE: I will see if I can go and sign the appropriate warrants downstairs.  
MR WIGHTWICK: Certainly, sir and while you do that I will effectively need to get rid of the bits that are extraneous and we can be back here in, I would have thought it will take me another 15 minutes.

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THE DISTRICT JUDGE: All right. Also in court I have got Charlotte Newman, is that right?

MR WIGHTWICK: Yes, you have.

MISS NEWMAN: Yes, sir.

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THE DISTRICT JUDGE: Thank you very much for your assistance in this case. Thank you for your statement.

MISS NEWMAN: That is all right, sir, thank you.

THE DISTRICT JUDGE: Thank you all for coming. I will just see the counsel, I think, going forward if I need to do so. Everyone else can be released.

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MR KING: Thank you sir, yes.

THE DISTRICT JUDGE: All right? Thank you, please do not wait.

*[Short adjournment followed by discussion re order]*

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