

IN THE STOKE-ON-TRENT COUNTY COURT

No. A00SQ686

The Combined Court Centre  
Bethesda Street  
Hanley  
Stoke-on-Trent

29<sup>th</sup> April 2015

Before:

**HIS HONOUR JUDGE MAIN, QC**

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Between:

**ASPIRE HOUSING LIMITED**

Claimant

and

**KEVIN BAILEY**

Defendant

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MRS. JACKSON (S) appeared on behalf of the Claimant.

MR. K. BAILEY appeared In Person.

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**SENTENCE**

## SENTENCE

1. JUDGE MAIN: Well, this is the case of Kevin Bailey. Mr. Bailey, you need not stand up. I am going to sentence you now, but I am going to read something out, as I now must. So you can sit down and just listen, okay?
2. This is the case of Aspire Housing Limited -v- Kevin Bailey, under Case Reference A00SQ686. Kevin Bailey resides at 33 Rothesay Avenue, Newcastle-under-Lyme in Staffordshire, postcode ST5 2LQ. Since the 15<sup>th</sup> June 2009, he has been an assured shorthold tenant of the Claimants.
3. The Defendant has been, if I can use the phrase, a noisy neighbour, and he has been noisy repeatedly. Noise-measuring equipment was installed to survey the extent of his noise nuisance and how it affected Mrs. Anne Day, who resides at 29 Rothesay Avenue, in the spring of 2014.
4. On the 7<sup>th</sup> May 2014, following that noise survey, the Newcastle Borough Council issued the Defendant with a Noise Abatement Notice, under the provisions of the Environmental Protection Act, Section 79(1)(g) of 1990. That notice, whilst having initially the desired effect, did not succeed in changing the Defendant's noisy behaviour.
5. As a consequence, on the 12<sup>th</sup> November 2014, District Judge Rank heard evidence filed by the social landlords, Aspire Housing, in support of their application of the 10<sup>th</sup> October 2014 for an injunction under the provisions of Section 153(a) of the Housing Act of 1996. Specifically, he considered a statement from Amy Jones of the 6<sup>th</sup> November 2014; she is the neighbourhood officer with particular responsibility for Rothesay Avenue.

6. On considering that, he also considered the statement as to the disturbances which Mr. Bailey was bringing about from his behaviour at 33 Rothesay Avenue. District Judge Rank ordered that Mr. Bailey should be forbidden, whether by himself instructing or permitting or encouraging any other person, from: (1) making any noise which could be heard outside the confines of his flat at 33 Rothesay Avenue, Thistleberry, Newcastle-upon-Lyme, Staffordshire, at any time, to include, but not an exhaustive list, playing of musical instruments, playing of loud music, shouting, banging, arguing and fighting, and he ordered that that order should remain in force until 12 noon on the 12<sup>th</sup> November 2015.
7. The Defendant was present at the time that District Judge Rank made that order, therefore it had immediate effect. The making of that injunction, on the Claimant's account, has not secured a continuing improvement. I have an affidavit from Anne Day of 29 Rothesay Avenue of the 23<sup>rd</sup> March 2015, asserting a number of separate incidents as between the early hours of in fact the New Year of 2015 to the 9<sup>th</sup> March of 2015. I note that the New Year incidents are not part of the schedule which I am asked to consider.
8. I understand that since the application to commit the Defendant on the 30<sup>th</sup> March 2015, there have been yet further incidents of noise and disturbance which are not part of this hearing, although they, too, would contravene, if established, District Judge Rank's order.
9. I also have a statement from Police Constable 962 Seddon, setting out the Police's involvement with the Defendant in relation to their attendance at that premises. That follows a disclosure request made by the Aspire Housing Limited following a sharing agreement.

10. Attached to the Application Notice is a schedule of alleged breaches, setting out four separate incidents as at the 19<sup>th</sup> February 2015. They are, as I have already established, on the 19<sup>th</sup> February 2015, when it is alleged the Defendant was playing loud music in his flat which could be heard outside, all night until 6.30 in the morning.
11. Secondly, on the 21<sup>st</sup> February 2015, at 10 a.m., when he was heard to be playing loud music from inside his flat that could be heard outside the confines of the flat. Thirdly, on the 28<sup>th</sup> February 2015 at 9.50 p.m., when he was playing, I think, music and continually shouting and banging from inside his flat which could be heard outside the confines of his flat.
12. Fourth, on the 9<sup>th</sup> March 2015, from 6.10 p.m. until 12.35 a.m., that is, into the early hours of the 10<sup>th</sup> March 2015, he was playing loud music, playing a fiddle, which I take to be a violin, from inside his flat, which could be heard outside the confines of his flat. In respect of each of those matters, he has admitted the facts and I have found them proved on the criminal standard of proof.
13. So far as the personal circumstances of Mr. Bailey are concerned, he is a 61-year-old gentleman, or at least he will be 61 on the 5<sup>th</sup> May this year. He has a history of alcohol and drug addiction. He is a former heroin addict, last having had heroin two years ago. He now is a methadone-dependent individual, getting scripts of methadone from his GP on the NHS.
14. In respect of his various dependencies, he sees a drug addiction counsellor and is also supported by Aspire Housing as a person known to them as a drug addict. He has been recently on a detox unit, at least about twelve months ago.

15. He was able to stay free of alcohol until about five months ago, therefore he has been free of it for some seven months, but for the last five months or so he has returned to abusing alcohol. He starts off at 6 o'clock in the morning drinking strong lager, and tops himself up as the day continues.
16. That is no doubt being perpetuated in part by the presence in his life of his current so-called partner, Jade Harper, aged 22 years, who also has an alcohol addiction problem. I am told that she is to go into a rehabilitation unit tomorrow for some three weeks. When she is discharged, I am told that Mr. Bailey will go into the same unit for a further three weeks, in the hope that one or other will be able to stay free of addiction and the abusing of alcohol. However, I have to say, the prospects do not look rosy, as they live together and they have separate addictions.
17. That being said, he is a man with a troubled past. He does not actually have mental health issues, but he does have drink(sic) and alcohol problems. It appears as though the fact that he has this ongoing alcohol problem probably explains his abhorrent lifestyle and his behaviour. The fact that he does not realise that he is putting on loud music on his television, probably when he has electricity, and he is causing a considerable disturbance to his neighbour.
18. Let me turn to his neighbour. Mrs. Day is a 61-year-old lady. She herself has certain health issues. She suffers from angina. She also suffers from headaches, migraines. She has to take medication to help herself to sleep, and when she wakes up, as she does, because she is disturbed in the night because of the noise from her neighbour, Mr. Bailey, she gets disorientated. She finds it very difficult to enjoy the quiet of her own home and listening to her own radio and the TV, and

reading, because she is disturbed, she cannot concentrate. As a consequence of which, she has trouble sleeping.

19. There are occasions, there has certainly been one recorded occasion when she got so fed up she just had to get out of her own flat because of the noise being created from next door. This is the effect that it is having on Mrs. Day, which I understand to be very troubling, and it has been continuing, if not continuous, even from the time shortly after the making of the order.
20. In these circumstances, I have to consider the extent of the breaches, which have been admitted and I have found proved, and I must give consideration to the guidance which has been given to the Courts in these circumstances. I first of all take into account the guidance given by Lord Justice Toulson in the case of *Amicus Horizon Limited -v- Thorley*, reported, Neutral Citation [2012] EWCA Civ. 817 from May of 2012.
21. At Paragraph 5 of his Judgment, Lord Justice Toulson said as follows: “In December 2008, the Sentencing Guidelines Council issued definitive guidance for breaches of Anti-Social Behaviour Orders. Although those Guidelines are not directed at criminal proceedings, they are equally relevant when an Anti-Social Behaviour Order has been made by a civil court”.
22. “The Sentencing Guidelines Council recommends different sentencing bands according to the gravity of the harassment, the alarm or distress caused by the offender’s conduct. For serious harassment, the recommended starting point is 26 weeks’ custody. For a lesser degree of harassment, alarm or distress, the recommended sentencing range is for a Community Order of 26 weeks’ custody with a recommended starting point of six weeks’ custody. For offences not

involving actual harassment, alarm and distress, the recommendation is of a Community Order”.

23. In the more recent Guidelines from the Court of Appeal in the case of *Willoughby -v- Solihull Metropolitan Borough Council*, and the Judgment of the Court of Appeal given by Lord Justice Pitchford, Neutral Citation [2013] EWCA Civ. 699, May of 2013, Lord Justice Pitchford said as follows, under Paragraph 18.
24. “Bearing in mind the fact that the maximum sentence for a breach of an injunction is two years in prison, pursuant to Section 40 of the Contempt of Court Act 1981, counsel recognises, however, that the severity of orders for committal will depend on the particular facts of the case, and little assistance can be gained by an attempt to closely analyse the differences between one set of facts and another”.
25. In Paragraph 20, he continued: “In my view, the particular relevance of the present case to the following principles are, one, there are three objectives to be considered. First, is punishment for breach of the order of the Court. Second, is to secure future compliance with the Court’s order if possible. Third, is rehabilitation, which is the natural companion to the second objective”.
26. “Secondly, the Committal Order should reflect the aggravating and mitigating features of the breaches. Aggravating features will include deliberate flouting of the Court’s order on repeated occasions and in breach of a suspended order for imprisonment. Mitigating features may comprise personal inadequacy, admissions of breach, a low level of anti-social behaviour and efforts to reform”.
27. Let me turn to you, Mr. Bailey, particularly. Here, I must take into account the circumstances of Mrs. Day, the effects of this repeated and prolonged behaviour,

the effect that it has had on her and her enjoyment of her premises, which I do. Secondly, I must take into account there has already been an Noise Abatement Notice, and there has been the effect of this injunction. However, notwithstanding both of those matters, there have been repeated and ongoing breaches of the terms of the order of the 12<sup>th</sup> November 2014.

28. It is plain, in those circumstances, that you have crossed the custody threshold. I must also make it plain that I do view these as serious breaches, therefore, this is one of those cases that falls within the second category of the Sentencing Guidelines Council where the starting point for the Court must be six weeks' custody.
29. I must also take into account your personal mitigation. I take into account the fact that you present before the Court today in a most pathetic way. You come unkempt, although you have been coherent. You have significant personal inadequacy. Almost certainly the provisions of the Equality Act would be engaged to reflect the fact that you have a protected characteristic. You have serious mental health problems in the sense of your ongoing and chronic drug addiction, which itself is a mental health issue.
30. I also take into account that you have a number of life issues as a consequence of the fact that you are a methadone addict, you are an alcoholic. You have been seeking assistance, you are under the personal provision of a drug counsellor and you are treated in respect of those inadequacies. In those circumstances, I must take that into account in considering whether to make this an immediate custodial sentence.



31. I also take into account what you have told me, that you seem to be genuinely remorseful. You recognise what you do affects others. I accept that it may be that you yourself are not always causing these problems, it may be those that come to your home that are also alcohol-addicted individuals, who cause disturbances when they are required to leave.
32. Let me be clear. This is serious, and therefore I am going to impose a six-week sentence of custody on you. I am going to suspend that for a period of twelve months. Therefore, I am not going to send you to custody today. However, I must make it plain that if you offend, if you breach the terms of this injunction - and this injunction will still continue until the 15<sup>th</sup> October 2014(sic) - and if you cause disturbances there afterwards, if this is continued, you will be in breach of this particular suspended sentence.
33. There is every likelihood, I am sorry to say, because of the way you behave, that before long, and when the time comes for this order to expire, Aspire Housing will be back to the Court to seek a continuation. In the meantime, in the next six or so months they may be back here seeking a breach of these orders, because you are an alcoholic, you are a drug addict. You will be back before these Courts, I suspect, and when you come back to these Courts, if I am sitting on the Midlands Circuit, you will be brought back before me.
34. If you breach the terms of these orders, I will send you to prison. I will start off by imposing the six weeks I have imposed on you as a starting point, and I will add to that sentence with additional prison. Do you understand?

KEVIN BAILEY: Yeah.

35. JUDGE MAIN: I am giving you an opportunity, because that is fair; you have not been brought before these Courts previously in respect of any committals. You have made efforts in the past to stop the noise. When the Noise Abatement Notice was issued, your behaviour improved.
36. When you have come from your detoxification unit, you have stopped the drinking. You have tried hard. You have tried to behave in a proper way. However, you get back into your old ways, and you are now living with a young woman who has an alcohol problem. That says it all.
37. You have got to take much greater steps to address your behaviour, because of the effect it has on your next-door neighbour. If you do not do so, you will be back in front of me.
38. You know what is going to happen to you. Do you understand what I have said to you?

KEVIN BAILEY: Yeah, I do, Judge, yeah.

39. JUDGE MAIN: Is there anything I need to say to you to further explain matters to you?

KEVIN BAILEY: I've got it. No, I've got it.

40. JUDGE MAIN: Very well. Now, I must record, since the 26<sup>th</sup> March 2015, the Lord Chief Justice has handed down a Practice Direction in respect of committals for contempts of Court in open Court, which is this application. This has been heard in open Court. You have been identified by name, you have been identified in terms of the nature of your contempt. I have set out the punishment. There

will be six weeks on each of the counts to run concurrently, all suspended for twelve months. I hope that is clear.

41. These details will be provided to the national media via the Copy Direct Service and to the judicial office at the judicial website's updated judiciary.gsi.gov.co.uk(?), with a view to publication on the nationwide network. In these circumstances, there will be proper reporting to the national media via the Copy Direct Service, and as required, this matter will be supplied to BAILII for proper publication, as this is a prison sentence in open Court.

42. I am sorry if I have had to read that out in open Court. The costs of preparing a transcript, which will now have to be compiled, will be met out of public funds.

43. Very well. Mr. Bailey, you are now free to go. But bear in mind, as I have ...

MRS. JACKSON: Forgive me, your Honour, could we ask him to leave until I have heard the order that can be served upon him?

JUDGE MAIN: No, he is free to go now.

44. This order already has effect on you, because I have explained it to you in my presence, in open Court. There is no need for you now to be served with that order before it is effective.

45. I advise you to stay in the reach of the Court building so that there can be preparation so it can be handed to you, otherwise inconveniently, Aspire Housing will have to send somebody round to serve it on you personally.

KEVIN BAILEY: No, I understand, Judge.

JUDGE MAIN: So, wait in the building, have a cup of tea, or just wait in the building until it is served on you. But I cannot direct you to stay here.

KEVIN BAILEY: I've got - no, I understand what you're saying.

JUDGE MAIN: Very well.

Very well. Thank you, Mrs. Jackson. I make no order as to costs in respect of this Committal Order.

KEVIN BAILEY: Thank you, Judge.

JUDGE MAIN: That will be formulated. You have a lifeline, Mr. Bailey, take it.

KEVIN BAILEY: Thank you very much, Judge.

JUDGE MAIN: I hope, genuinely, the rehabilitation goes well.

KEVIN BAILEY: Cheers.

JUDGE MAIN: I hope that you and partner can use that to stay off the booze and keep quiet.

KEVIN BAILEY: Yeah. Thank you.

JUDGE MAIN: Thank you.

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