Case No: E00WN114

IN THE COUNTY COURT AT WIGAN

Wigan & Leigh Courthouse
Darlington Street, Wigan WN1 1DW

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Before:

DISTRICT JUDGE HAISLEY

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Between:

WIGAN BOROUGH COUNCIL **Claimant**
- and -
ELIZABETH ELLIOT **Defendant**

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MR. BURNS (C) (instructed by **Wigan Borough Council**) for the Claimant
MR. KEELING-ROBERTS (C) for the Defendant
re the committal proceedings

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Approved Judgment

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DISTRICT JUDGE HAISLEY :

1. The following is my judgment in terms of sentencing the Defendant for the breach on 30th January 2019 of an anti-social behaviour injunction made on 19th October 2018.

2. In coming to my judgment, I have been assisted by the very helpful submissions of both counsel and I am grateful to them both.

3. I am afraid, I suspect this will not be music to Ms. Elliot's ears, I do need to begin by referring to the procedural history of this matter, which I did earlier, but for reasons that will be obvious the procedural history is of intense relevance to sentencing here.

4. So, as I have already referred to, the Claimant is the council for the local government area in which anti-social behaviour has occurred. The Respondent is 44 years old. She was, until very recently, the sole tenant of a one-bedroomed flat, 5 Albion Drive in Aspull.

5. The main complainant in the previous injunction committal proceedings was Ian Curran. He lives at 10 Albion Drive, another one-bedroomed flat.

6. On 22nd January 2018, an application was issued by the Council without notice to the Respondent for an anti-social behaviour injunction. That application was supported by witness statements from Tracy Jones, who is a council anti-social behaviour officer, Ian Curran and another neighbour, Lauren Gibbons. On 1st February 2018, a without notice interim injunction, which can be found at page F1 of the current bundle, was granted by the court to remain in force until 4 p.m. on 1st February 2019. That injunction bore on its face a penal notice and there is no issue, it was common ground in the previous proceedings, that the Respondent was served personally with that injunction and power of arrest by PC Crabtree on 3rd February 2018, and so the Defendant would have been well aware from service of that injunction of what she risked if she breached it.

7. The application was then listed for a short return hearing on 8th February 2018. Directions were given for exchange of evidence and the matter was listed for trial. However, on 12th April 2018, the Respondent was arrested and brought before the court for allegedly being within the area prohibited by the injunction and using threatening language and/or behaviour. At that hearing both parties were represented by solicitors. A judge recorded that the Defendant: "Makes a partial admission of being in the garden in the prohibited area, and as such, being in breach of the order, but denies the allegation as to what was said".

8. The court directed the exchange of evidence and listed the application together with the issue of the other dispute and alleged breaches for trial after 4th June 2018, and the court released the Respondent on bail on condition that she reside at 12 Botany Close in Wigan, where her friend Karen Jones lives. Ms. Jones is in court today as well.

9. On 6th May 2018, the Respondent was arrested and brought before the court sitting at Wigan police station, for allegedly shouting abuse at Ian Curran on 20th April 2018. The court released her on bail on condition that she did not enter Albion Drive, Wigan and complied with the terms of the injunction.

10. On 14th May 2018 there was a further directions hearing. The court gave further directions, including directing the Respondent to file a response to the schedule of allegations and any witness evidence in relation to the injunction and committal proceedings, which were adjourned pending the outcome of certain criminal proceedings. The court released the Respondent on bail on condition that she attended at the next hearing.

11. On 6th June 2018, the Respondent was again arrested and brought before the court, unrepresented, for further alleged breaches said to have occurred on 21st and 28th May 2018. I should say, I am taking this chronology from my previous judgment handed down on 14th September 2018. It was amongst other things noted that the criminal proceedings had been due to be heard on 31st May 2018, but had not taken place as the Respondent had been unwell, and no further date had been set.

12. Further directions were given and the court released the Respondent on bail on condition that she attended the next hearing and complied with the injunction. On 11th June 2018, the matter came before the court for further directions, directions were given and the application in committal proceedings listed for a two-day trial beginning 9th August 2018.

13. On 23rd July 2018, the Respondent was arrested and brought before the court for allegedly breaching the injunction on 20th July 2018, as detailed in the evidence of Adrian De Havilland, but as I noted earlier, the council did not pursue his allegations.

14. On 30th July 2018, the Respondent was brought back before the court, which released her on bail on condition that she attended the next hearing and complied with the injunction. On 8th August 2018, the day before the trial of the application in committal proceedings, the Respondent was again brought before the court under arrest for allegedly breaching the injunction on 8th August 2018. The court remanded her in custody to be produced the next day.

15. So it was that on 9th August 2018, the Respondent was produced from custody before me for the first time for the intended purpose of a two-day trial of the application in committal proceedings. There were numerous developments over the course of the 9th, 10th and 13th August 2018, not least of those was that the Respondent admitted allegation no. 8 on the schedule of breaches in those proceedings which related to approaching and communicating with Lauren Gibbons in Wigan town centre on 8th June 2018.

16. I should note that on the 9th and 10th August 2018, I remanded the Respondent in custody, in effect until 13th August 2018. Due to various developments it was not possible to proceed with the trial of the application for the injunction, the committal proceedings or what were referred to as the new committal proceedings and, in the end, on 13th August 2018, I directed that the underlying application for an injunction be listed for a two-day trial before me, which was due to commence on 20th September 2018.

17. I directed that the committal proceedings and the new committal proceedings be listed for a two-day hearing before me commencing on 10th September 2018. For the sake of completeness, I also bailed the Respondent on condition, amongst other things, that she comply with the terms of her fresh interim injunction backed by a power of arrest.

18. On 14th September 2018, I made a number of findings of fact in relation to the previous committal proceedings and on 17th September 2018, I sentenced the defendant to prison for 56 days. However, because Ms. Elliot had already spent 13 days on remand, reduced that sentence to 43 days.

19. On 25th September 2018, the interim injunction was further varied and made to last until 1st February 2019. Then we move to more recent developments. On 19th October 2018, I made a final injunction, which can be found at page F8 in the current bundle, in terms similar to the previous injunction but varied so as to include specific protection for local authority employees and agents, and attached a power of arrest for that purpose. The power of arrest can be found at page F10. That injunction and power of arrest were to last until 4 p.m., 1st February 2019.

20. At court that day, the Defendant had surrendered her tenancy in writing and it was anticipated by the parties that she would have left the property before 1st February 2019, hence that date was adopted for the termination of the final injunction and power of arrest. However, there was a further hearing before District Judge Gordon on 7th January 2019 and a copy of the order made on that date is found at page F13 in the current bundle.

21. It is instructive to note the recordings made on the face of that order: "Upon hearing the solicitor for the Claimant and the Defendant in person, and upon it being recorded that the Defendant accepts that she has signed this deed of surrender and has failed to remove her possessions from 5 Albion Drive, Wigan, the Defendant accepting that she is a trespasser at the property and the Defendant stating that she has been unable to remove her possessions from the address due to her neighbour creating an obstruction, the court recording that the Claimant updated the court that it has offered assistance to the Defendant in attending at the property whilst she removed her possessions, also that the police have also offered assistance to the Defendant, and during the hearing the Claimant reiterated its offer of assistance and attempts were made to agree a convenient date for both parties for the Defendant to remove her possessions, the court further recording that the Defendant refused any offer of assistance from the Claimant and refused to allow the police to assist".

22. The court ordered possession of 5 Albion Drive would be granted to the Claimant forthwith.

23. As Mr. Burns put it, the administrative process for the Claimant then recovering possession of the property was put into place. On 31st January this year, the Defendant was due to be evicted by bailiffs. That is the procedural background which gives rise to what is now the admitted breach of injunction by the Defendant, and I will return in a moment to the precise nature of the admission that has been made by the Defendant.

24. On 13th February 2019, in court, the Defendant admitted having been personally served with the injunction and power of arrest both dated 19th October 2018. As Mr. Burns put it earlier today, both parties are agreed that the Defendant has been served with all the relevant documentation in relation to this application to have her committed to prison. No point is taken with regard to non-service or late service of any relevant document.

25. On 31st January 2019, as a result of the now admitted breach of injunction on 30th January 2019, the council made a without notice application, which can be found at page A1, to vary the final injunction by extending it for a twelve-month period and attaching a power of arrest to clause 4 in order to protect council staff. Also, the council made an application for the court to issue a warrant of arrest. Both those applications were heard by me and I granted both.

26. On 1st February 2019, I granted them and varied the injunction and power of arrest, extending the duration until 1st February 2020 and adding a new prohibition 5 and attaching a power of arrest to prohibition 5. I listed the matter for an on notice hearing on 13th February 2019, in order to hear the Defendant should she wish to be heard.

27. On 1st February 2019, later that day, the police executed the warrant of arrest and the Defendant was produced before the Manchester Magistrates Court on Saturday, 2nd February 2019 and their bail order is found at page F19.

28. On 13th February 2019, the Defendant attended court before me and my order can be found at page F25. It was on that occasion that the Respondent admitted in court, being represented by a solicitor for the Respondent, Ms. Goodier, who appears instructing Mr. Keeling-Roberts today. She admitted that she was personally served with the injunction and power of arrest dated 19th October 2018, on that date.

29. The Respondent, on that date, denied the allegations of breach of injunction contained in the current committal application, but formally admitted the following facts. One, that she had telephoned Victoria Finlay, who is the council's solicitor, at approximately 1734 hours on 30th January 2019, and two, that this telephone call lasted approximately 14 minutes. I then gave numerous directions to bring the matter on for trial today. It is on that basis that the matter came before me today.

MS. ELLIOT: May I say something to you?

JUDGE HAISLEY: Yes, Ms. Elliot.

MS. ELLIOT: Mm, I'm just going to think first before I open my mouth.

JUDGE HAISLEY: Ms. Elliot, it may be wise if you wish —

MS. ELLIOT: — to say that on 1st February when I was getting paid, was when I was arranging to move all my stuff out, right? The phone call between Victoria and I - I don't know how to say it - both yourself, another judge and all these people heard Ian Curran's video footage threatening to slit my throat. He's assaulted me, he's smashed Karen's windows. They've warned him at every point of what's happening. As far as I'm concerned, right, I've been terrorised. Haven't I, Karen, by this man, right? You took him off the order so as to protect me. I asked the council, I was in bits on the phone

crying to Mrs. Jones, saying: "Just tell him not to go in the garden". He's punched me in the face outside the door and everything, right?

I've been absolutely terrorised by the whole situation, and at the end of the day, your Honour, I'm going guilty because I can't stand this any more. I can't do it any more, right? Yes, I don't agree with the conversation, I don't agree with any of it. I'm just going guilty for the sake of getting it out of the way, basically. Because I can't personally handle any more. I have everything set up to move (inaudible) my place, go to London for a couple of weeks while I sorted out the flat. And now here I am. I'm just going guilty for the sake of just finish it, get it out of the way."

JUDGE HAISLEY: Okay. I am going to stand the matter down for a short time. I am conscious, Ms. Elliot, obviously you are very upset. I want you to have the opportunity to speak to your legal team again —

MS. ELLIOT: Yeah, I know. Just please finish it. I can't handle any more.

JUDGE HAISLEY: I am so sorry, Ms. Elliot, but you cannot have it both ways. You cannot tell me that you are admitting the breach and then say that you are not admitting the breach, and then say that you are only admitting the breach because, as you put it, you cannot handle it. I am sorry?

MS. ELLIOT: I've been advised to, that it's the best way to go about it. So I'm just going to bite the bullet and, you know, do what you've got to do.

JUDGE HAISLEY: Okay. As I say, I am going to stand the matter down for a short time for you, Ms. Elliot, to speak to your legal team, and —

MS. ELLIOT: I don't want to speak to them.

JUDGE HAISLEY: Ms. Elliot, I think you do. So I will stand the matter down briefly.

Short adjournment

JUDGE HAISLEY: Hi again, everyone. Yes, this is the resumed hearing in Wigan v Elliot. Yes, Mr. Keeling-Roberts?

MR. KEELING-ROBERTS: Sir, I think we are resuming where we left off, I think that is the —

JUDGE HAISLEY: In what sense? Because when we left off, the Defendant had just told me that she no longer admitted the alleged breach.

MR. KEELING-ROBERTS: My understanding, sir, is that that is not how she feels, and that she is content with the admission, although it might assist if you clarify that for the court's purposes.

JUDGE HAISLEY: Yes. Ms. Elliot, so what Mr. Keeling-Roberts tells me is that contrary to what you told me a moment ago, you do still admit the alleged breach of the injunction as set out at page B3 in the hearing bundle. In other words, that during the telephone call that we are concerned with, you were shouting and swearing at Victoria Finlay, frequently using the word "Fucking", said: "If I see Tracy Jones I will fucking slit her throat". Repeated your threat that if you saw Tracy Jones you would "Fucking slit her throat". Said that when the injunction expired: "I will get my baseball bat and go round to Ian Curran's and I will fucking smash his head in and there is nothing that you lot can do about it". Repeated your threat towards Mr. Curran, saying: "I'll tell you what, Vicky, when the injunction expires I will go round to Ian's and smash his head in with my baseball bat", "Was shouting abuse, had been swearing throughout the call which lasted for approximately 14 minutes".

Is it right that you admit all that, or not?

MS. ELLIOT: Absolutely.

JUDGE HAISLEY: It is. Okay. Thank you, Ms. Elliot, if you can take a seat, please.

JUDGE HAISLEY:

30. Now, at the outset of today's hearing the position was that the Defendant admitted only the fact that she had made a telephone call to Victoria Finlay on 30th January 2019 and that it had lasted 14 minutes. She denied all six elements of the alleged breach as set out in the schedule at page B3. Furthermore, although not obliged to do so, she chose to provide the court this morning with a witness statement signed by her and bearing a statement of truth, taking issue with much of the evidence of Victoria Finlay.

31. It was only when Victoria Finlay had started giving evidence and during a brief adjournment that the Defendant decided to admit all six elements of the alleged breach.

32. As I remarked before the lunch adjournment, in sentencing the Defendant I take into account the editorial notes at paragraph 3A-1782 of volume 2 of the White Book. I have found the following cases of particular assistance in this case, although as I say, I take all those editorial notes into account. Firstly, the case of *Wolverhampton City Council v Green* [2017] EWHC 96 (QB), a decision of Mr. Justice Holroyd. As set out by him at paragraph 1 of his judgment, he stated: "On 1st December 2014, His Honour Judge Owen, QC granted an injunction against persons unknown pursuant to section 22

—" I think that should be 222 "— of the Local Government Act 1972 prohibiting car cruising in the Black Country area".

33. Then at paragraph 6 he stated: "At a hearing before me on 21st December 2016, these two respondents, now aged 19, each admitted breaches of that order. They each admitted that they had participated in the car cruise near the Flood Street car park in Dudley. They each admitted that they had driven in a moving convoy travelling at speed and causing excessive noise, which was conduct which caused or was capable of causing significant public nuisance and significant annoyance to the public".

34. At paragraph 17, Mr. Justice Holroyd continued: "It is, however, to their credit and a significant factor in their favour that on that occasion (being the first appearance before the court) each had now admitted the breaches of the injunction with which I am now concerned".

35. At paragraph 19 he continued: "When determining the appropriate sanction for an admitted breach of an injunction of this kind, the court has a number of objectives. First, the sanction is intended to ensure compliance in the future with the court's order. Secondly, it is intended to protect the public —" and I should say, in the case of Ms. Elliot it is intended to protect the persons protected by the injunction in question. But picking back up at paragraph 19 of Mr. Justice Holroyd's judgment: "— who would be affected by future breaches and who have been affected by past breaches. Thirdly, it is intended as a punishment to those who have breached the order to bring home to them the seriousness of breaching a court's injunction".

36. At paragraph 26, Mr. Justice Holroyd said this: "I have hesitated over whether the sentences I am about to pass must take effect immediately or can properly be suspended. In the end, by a narrow margin, what saves these two young men from having to serve their sentences immediately is that they have come before the court, in my view, genuinely remorseful for what they did. They are able to point to their previous good character and very importantly, they are able to rely upon their good sense in admitting their breaches at the earliest opportunity".

37. The second decision which I found particularly helpful on the facts of this case is the Court of Appeal's decision in *Nottingham City Council v Cutts* CCRTF 99/0778/B2. At paragraph 1 of his speech, Lord Justice Swinton Thomas stated: "It is relevant that the committal was a committal for contempt and was not a sentence of imprisonment imposed for a criminal offence. A committal order is frequently made and in this case clearly was made with a view to punishing the contemnor for disobedience of a court order and for the protection of those who have suffered by reason of the breach or breaches of the relevant order".

38. He continued further down in paragraph 2: "In the case of this appellant, he had ample warning of the likelihood of being sent to prison if he breached court orders made against him". I pause there to note, the same applies in this case, and indeed I have sent Ms. Elliot to prison once before. Again returning to Lord Justice Swinton Thomas' speech, in the same paragraph: "But he continued quite blatantly to flout the orders and to make life unpleasant and sometimes frightening for other people on the estate".

39. Then at paragraph 4 he continued: "Within a short time of that order being made, the appellant was in breach of it and on 28th October 1998 he was committed to prison by

His Honour Judge Brunning for a period of 42 days". As I have already noted, similarly here in the case of Ms. Elliot I have sentenced her to a period of imprisonment previously.

40. Then at paragraph 5, Lord Justice Swinton Thomas continued: "There then followed the application the subject matter of this appeal, which was heard on 5th July 1999. A Mr. Biant lives at 15 Heaton Close. He gave evidence that on 29th May, the appellant abused him, threatened him with violence, tried to punch him and used racist and other epithets towards him".

41. Now, just pausing there for a moment, in this case, on the basis of Ms. Elliot's admission, there were threats of violence, extremely serious threats of violence. In fact, at least two threats to kill. I do note that the facts were different in the *Cutts* case, in that there there was an attempt to punch a complainant and also there was use of racist epithets. Both of those factors are absent in this case.

42. Lord Justice Swinton Thomas continued: "Mr. Michael Weston also gave evidence in relation to an incident which had occurred on the previous day, 4th July. Mr. Weston said that he was in his house when the appellant was looking through the living room window and made a gesture as though cutting his throat. He came up to the living room window and made further threatening gestures. Mr. Weston locked his front door. The appellant then kicked the door or banged it with his fist. He continued shouting and swearing. He used more threatening language, including saying that he wanted to 'fucking kill Mr. Weston".

43. At paragraph 6, Lord Justice Swinton Thomas continued: "A comparison with criminal cases may have some value, but the value, in my judgment, is limited". Then importantly for present purposes, he said this: "As I have already indicated, when committing a person to prison for breach of a court order, it is true that, as in a criminal case, an element in the sentencing process is punishment. But the court has to take into account the importance of obedience to court orders and disobedience to them and importantly, in the presence case, the protection of the people in respect of whom the court order was made".

44. At paragraph 8 he continued: "It is clear that this appellant pays no attention whatever to court orders made against him. His behaviour deserved the condemnation that the judge gave it in his judgment and in his sentencing comments. The behaviour of this appellant is not just anti-social, though it was that, it was also frightening and threatening to those to whom it was directed". That applies with equal force in this case, in my judgment: "The judge, as Mr. Anderson accepts, was undoubtedly right in this case to impose a substantial term of imprisonment. The sentence was a stiff one but that was precisely the judge's intention in this case. In my view, a committal to prison for a period of twelve months on the facts of this case was not manifestly excessive".

45. The final case which I found helpful on the facts of this case is the Court of Appeal's decision in *Birmingham City Council v Flatt* [2008] EWCA Civ 739. In that case, in his speech, Lord Justice Tuckey at paragraph 3, gave some of the background, which was: "The injunction was granted on 11th June 2007. It followed a number of incidents including one which resulted in the appellant being convicted on 11th October 2006 for an assault on his neighbour, Mr. Masters. The assault was charged as common assault

but it was a particularly nasty one, because the appellant had poured petrol over Mr. Masters and threatened to light it. He received a community sentence for that offence from the Magistrates".

46. "The injunction which followed restrained the appellant from —" and then he set out the terms of that injunction. At paragraph 4, Lord Justice Tuckey continued: " - The first of the two breaches of the injunction found proved by the Recorder after a hearing which took place over three days, occurred on 16th November 2007. Mr. Masters was walking in the area of the close designated for car parking and marked as such by bricks set into the road surface, when the appellant drove into the close in his van and drove at Mr. Masters in this parking area. To what extent he actually entered the parking area is not entirely clear to me, but Mr. Paget says his wheels only touched the brickwork denoting its boundary. But whatever course it actually did, Mr. Masters thought that he was going to be struck by the vehicle and in order to avoid it doing so, he had to jump out of the way and in doing so he landed on the hard surface of the parking area and hurt his back. Which did not require any hospital treatment but was still causing him pain some days after the incident. He was understandably shaken and frightened by what had happened".

47. "The Recorder heard evidence about this because the appellant had denied that he had gone anywhere near Mr. Masters, and at the end of the day he concluded that the appellant had not intended to hit Mr. Masters but had intended to scare him".

48. Then at paragraph 5: "The second breach found proved occurred on 9th December 2007. The appellant then made allegations to the anti-social behaviour officer of the council that Mr. Rose had obstructed his van. The Recorder found that the allegations were false and the situation had been contrived by the appellant so as to cause nuisance or annoyance to Mr. Rose in breach of paragraph 5 of the injunction. As I have said, the appellant denied both breaches of the injunction and the Recorder had to resolve issues about what had actually happened. We only have a note of this judgment".

49. "Having found the two breaches proved in the way I indicated, he came to sentence the appellant after hearing mitigation on his behalf and he said: 'It is the first breach that concerns me. You wanted to frighten Mr. Masters. You achieved your objective, that was an extremely stupid thing to do. Also, I find that later you were making up allegations about Mr. Rose. In relation to the first breach it was an incident that was denied. Just over a year before you had been convicted of pouring petrol over Mr. Masters. On that occasion you were given a community sentence, and I am sure you were given a forewarning of what the consequences would be if you breached the anti-social behaviour injunction on 11th June 2007'".

50. "'I have had the opportunity to sit and watch you whilst mitigation was presented. I take the view that you hold the court in poorly-disguised contempt and you do not have proper regard for these proceedings'". I pause there to echo those comments in the context of this case.

51. At paragraph 6, Lord Justice Tuckey continued: "Mr. Paget, who appears for the appellant today, has referred us to the case of *Hale v Tanner* [2000] 2 FLR 879, a decision of this court in which Lady Justice Hale said a number of things about sentencing for contempt of court but making it clear that she did so only in the context of family cases. Nevertheless, she did make the point and indeed it is a point which is

applicable to contempt of court cases generally, that it does not follow that imprisonment is to be regarded as the automatic consequence of the breach of an order. She also made the point that it is common practice to take some other course on the first occasion when someone has to be dealt with for contempt of court for breaching an injunction". I absolutely bear that in mind in this case.

52. At paragraph 7, Lord Justice Tuckey continued: "Mr. Paget accepts that this is a case where the aggravating feature is the proof of a history of violence or threats by the offender". At paragraph 8 he continued: "As well as the identified aggravating feature in this case, it seems to me that it was appropriate for the Recorder to take account of the fact that the appellant did not have the mitigation which undoubtedly is strong mitigation in a case of this kind, of his having admitted the alleged breaches. Or, more importantly, any sign of remorse from him for what he had done, which must have had a serious effect on the victim of the main breach, Mr. Masters".

53. I pause there. I am in no doubt whatsoever that the Defendant in this case has not one shred of remorse for her admitted breach. Lord Justice Tuckey continued: "The Recorder also took into account the appellant's attitude to the proceedings and the sentencing remarks to which I have referred, which again seems to me a further aggravating feature of this case. So, was a sentence of imprisonment wrong in principle? Mr. Paget accepted that it was not, but only with the caveat that it should be a suspended sentence".

54. "That I do not think is the right approach. The courts have said that in fixing the term of any sentence of imprisonment, one should not take account of the fact that it should be suspended. In this case, it seems to me that a sentence of imprisonment was clearly justified for the serious breach in relation to Mr. Masters. The length of that sentence, a four-month term was, I would accept, at the top end of the range of sentences available to the judge for this breach. I might have imposed a lesser sentence, but I am unable to say that four months was manifestly excessive".

55. "So that does leave the remaining question as to whether or not that sentence should have been suspended. There are no guiding principles as to when a sentence should be suspended so far as contempt of court is concerned. The court has an absolute discretion as to whether to do so or not and might well have done so in this case had the appellant admitted the breaches and shown some remorse. But in the light of the fact that he did not and also the attitude he displayed to this matter, I think the Recorder was perfectly entitled to take the view that this was not a case for suspending the sentence".

56. In sentencing the Defendant, I bear in mind the Sentencing Council's Breach Offences Definitive Guideline effective from 1st October 2018, in respect of breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order) Anti-Social Behaviour, Crime and Policing Act 2014. In doing so, I bear fully in mind that that definitive guideline relates to breach of an ASBO which can attract a higher maximum sentence than breach of the anti-social behaviour injunction that I am dealing with in these proceedings. Breach of what is colloquially referred to as an "ASBO" can attract a sentence of up to five years' imprisonment, whereas breach of an anti-social behaviour injunction can attract up to a maximum of two years' imprisonment.

57. The guideline sets out a number of steps for a judge in my position to follow, and I do so. Step 1 is for me to determine the offence category. Having heard the very helpful

submissions of both counsel, in my judgment, in its totality the breach in this case falls within culpability B, in that it is a deliberate breach falling between A and C but towards the upper end. The harm category is 2, i.e. cases falling between categories 1 and 3 but again towards the upper end.

58. I bear in mind the harm described in particular by Mrs. Finley and Mrs. Jones; the threat has been, rightly, taken seriously. It has caused fear and distress. It is objectively justified as there is a history in this case of disobedience of court orders both in terms of at the lower end in terms of breach of bail, but more significantly in relation to previous breaches of injunction. I bear in mind that those two witnesses were aware of the defendant's previous history as set out at page 8, item 7(ii) and item 8(i) on page 8 and at page 10 of 27, item 10(i) and 10(ii) in the PNC print-out which I have.

59. It is right to say that on the one hand, those convictions are historic, but equally I am sure they will have, in combination with the history of these proceedings, meant that what was being said by the Defendant to Mrs. Finley about Mrs. Jones and about Mr. Curran would, rightly, have been treated seriously and was impactful.

60. Step 2 is for me to determine the starting point in category range. Given that I am satisfied that I am dealing with a culpability B harm category 2, the starting point is twelve weeks' custody. The category range is medium level custody order to one year's custody. I must also identify any additional factual elements providing context in the breach and factors relating to the offender, identifying whether any combination of these or other relevant factors should result in an upward or downward adjustment from the starting point. Having considered these factors, I note, according to the guideline, it may be appropriate to move outside the identifying category range.

61. In my judgment, the aggravating factors in this case include the following. During the course of the injunction proceedings, the Defendant had previously spent a number of periods on remand, as I have already referred to, and on 17th September 2018 I sentenced her to a total of 56 days in custody, less the 13 days already spent on remand at that stage for those admitted and proved breaches.

62. The breach with which I am concerned today occurred just four months after the Defendant had been released from custody imposed for those previous breaches. The admitted breach that I have to sentence the Defendant for today relates to the order that had only been made on 19th October 2018, specifically having been altered to protect council staff. In this case, I am entirely satisfied that there is a recent history of disobedience of court orders.

63. It is a further aggravating factor that at court on 13th February 2019, the Defendant breached her bail conditions. Despite having been warned by me immediately before lunch that she remained on bail and was not to leave the court building, she informed me after lunch that that was precisely what she had done, telling me then on that day that it had been to go to buy a packet of crisps. She further informed me that she had done so against the advice of Mrs. Goodier.

64. Even if I did accept the contrary explanation provided by the Defendant today and, for sentencing purposes today, I am prepared to do so, the Defendant's fresh, inconsistent explanation, poses two aggravating features in itself. Firstly, when I warned her on 13th February that she remained on bail and was not to leave court, she did not at that point

claim that she needed to obtain any female hygiene product. Instead of asking the court in an adult way to vary her bail for that intended purpose, which in all likelihood I would have done, she chose to lie to her solicitor about her intention and then lied to me after lunch when seeking to explain why she had just breached her bail. This falls within the pattern in this case of disobedience to court orders and her disregard for the court process.

65. I have had the opportunity of observing the Defendant's behaviour in court on a number of occasions. This includes during the committal trial in September 2018. I commented then in my judgment that her behaviour in court had been poor, and given that she was in court with alleged breaches of an injunction, one would have expected her to be on her best behaviour, likewise today. So her behaviour on 13th February 2019 was poor. Though her behaviour has been somewhat better today, even observing her today, again it appears to me that the Defendant has little regard for the seriousness of these proceedings or the position in which she has placed herself.

66. Also, by her admitted breach, there has been targeting of two specific individuals. Two of the admitted threats were to slit the throat of the lead council officer in this case. Although not made to her face, Mrs. Finley was duty-bound to, and did, make Mrs. Jones aware of those threats, leaving her, totally understandably, afraid of what the Defendant might do. In my judgment, local authority employees have a difficult job to do at the best of times and are entitled to do them without being placed in fear by the Defendant.

67. The other two threats were made against Ian Curran, who was a witness in the original injunction and committal proceedings. I take into account the evidence and I accept entirely the evidence given by Victoria Finley and Tracy Jones of the impact of the Defendant's admitted breach on them, as set out particularly in paragraphs 19, 23 and 25 of Victoria Finley's witness statement dated 31st January 2019, and paragraphs 5 to 11 of Tracy Jones' statement of the same date. All of these aggravating features should result in an upward adjustment from the starting point.

68. I turn then to factors reducing seriousness or reflecting personal mitigation. These include the following. I am prepared to accept for today's purposes that this incident arose out of another confrontation between the Defendant and Ian Curran. I have previously found that they have an antagonistic relationship with no love lost. I also accept that the Defendant had only just discovered that she was due to be evicted the next day. I also take into account that the threats were not made directly towards Tracy Jones and Ian Curran.

69. Step 3 according to the guideline involves considering any factors which indicate a reduction for assistance to the prosecution, and that has no relevance here. Step 4: I should take into account a reduction for guilty pleas or, by analogy in this case, the Defendant's admission. She has admitted the alleged breach and by analogy with criminal proceedings, I do and will make a 10 per cent reduction in sentence. Step 5 involves applying the totality principle, but that only applies where sentencing an offender for more than one offence or where the offender is already serving a sentence. Neither of those apply in this case, so the totality principle is not relevant.

70. Step 6 deals with ancillary orders which do not apply in this case. Step 7 involves giving reasons, which is exactly what I am doing now. In my judgment, even after taking into

account the mitigating features that I have referred to, the aggravating features are such that there should be an adjustment upward from the starting point and a substantial one at that.

71. Ms. Elliot, please would you stand? So, having regard to the totality of the circumstances in this case, all the aggravating features and all the mitigating features, I sentence you, Ms. Elliot, to eight months' imprisonment. For the avoidance of any doubt, I will calculate that in terms of days by treating a month as having 30 days, so it is eight times 30: 240 days. I do then give consideration for time spent on bail, and I do exercise my discretion in favour of reducing that sentence.

72. In fact, let me just pause there. That eight months, the 240 days, I then reduce by 10 per cent to reflect your admission, Ms. Elliot, okay? So, 24 days immediately comes off for that 10 per cent reduction. I then also exercise my discretion in favour of reducing the sentence of imprisonment to reflect the amount of time that the defendant has spent on remand. I would be obliged if counsel could help me in terms of how many days she has spent on remand in relation to this committal application.

MR. KEELING-ROBERTS: Sir, I think it is from the night of 1st February to today, which would be 26 days. Sir, I was under the impression that she was in custody from 1st February, but I am told that is not the case. So it is 15. I think it is 201 net.

JUDGE HAISLEY: In fact, I think Ms. Elliot just gave the correct figure, did she not, 15 days.

MS. ELLIOT: 15 days.

JUDGE HAISLEY: Thanks, Ms. Elliot.

MS. ELLIOT: 14 days in jail and one day in the police cells and - 15.

JUDGE HAISLEY: Thanks, Ms. Elliot. Ms. Elliot, please take a seat.

[For the particular contempt, the court imposed a penalty of 201 days' custody, being 240 days reduced by 24 days for the admission and by 15 days for time spent on remand – please see the Committal Order.]

This Judgment has been approved by the Judge.