

**IN THE COUNTY COURT**  
**AT BOURNEMOUTH & POOLE**

Case No: D00BH937

Bournemouth & Poole County Court  
Courts of Justice  
Deansleigh Road  
Bournemouth  
Dorset BH7 7DS

Date: 23/08/2018

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**Before:**

**HIS HONOUR JUDGE DANCEY**

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**Between:**

**BOURNEMOUTH BOROUGH COUNCIL**

**Applicant**

**- and -**

**MICHAEL FABIAN**

**Respondent**

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**Robert Weatherley (instructed by Legal Services Bournemouth Borough Council) for the Applicant**  
**The Respondent appeared in person**

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**JUDGMENT**

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**HIS HONOUR JUDGE DANCEY:**

1. In accordance with the committal practice direction, I direct that a transcript of these sentencing reasons be obtained and published on BAILII.
2. I am dealing today with sentence in respect of breaches found of injunction orders made against Michael Fabian who is aged 73. Service of the notice of this hearing was effected on Mr Fabian during the afternoon of 16<sup>th</sup> August 2018. Mr Fabian attends this hearing in person. He has been told that he has a right to legal aid and legal representation but he has not exercised those rights.
3. Before coming to the question of sentence I need to deal with some procedural matters.
4. First of all, Mr Fabian has, during the course of his comments in mitigation today and in his documents, made allegations against me and against other judges, which amount to allegations of bias. He has not, in fact, made an application that I recuse myself; indeed, he indicates that he does not make such an application.
5. Nonetheless I have considered the test in *Porter v Magill [2002] 2 AC 357* where Lord Hope said that the test for the question of recusal for allegations of bias was, “whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”
6. It is in the nature of Mr Fabian’s conduct that he has, for many years now, made widespread allegations against all sorts of professionals, including lawyers and judges and others of corruption and bias. He says that these allegations are well documented; they are only, in fact documented in communications emanating from Mr Fabian himself and he has yet to establish, in my view at least, any basis for any of the allegations that he makes which are, in my judgement, wild and fanciful.
7. I ignore the fact that Mr Fabian has made allegations against me. I have dealt with Mr Fabian in the past. Mr Fabian has a habit of making allegations and complaints about any judge who deals with him and what I cannot allow to happen is that I recuse myself on some groundless basis, simply because Mr Fabian has made a complaint against me. I make clear at this point that his conduct in this respect is not taken into account when dealing with him for the breaches alleged. I am satisfied applying the *Porter v Magill* test that I should not recuse myself from dealing with this matter.
8. Three injunction orders were made on 11<sup>th</sup> July 2017, 13<sup>th</sup> December 2017 and on 17<sup>th</sup> April 2018 on the application of Bournemouth Borough Council being antisocial behaviour injunctions restraining Mr Fabian from any communications with residents of the block of flats where he lives, or with employees of Bournemouth Borough Council. It is a wide injunction but it was designed to protect those persons from the sort of insidious communication that Mr Fabian had been sending to them and to protect them from his behaviour.
9. Mr Fabian was arrested for breach on three occasions; first of all on 25<sup>th</sup> June 2018 when he was released on bail; again on 12<sup>th</sup> July 2018 when he was again released on bail; and finally on 6<sup>th</sup> August 2018 when I further bailed him to attend a hearing on 14<sup>th</sup> August when evidence would be heard and the question of whether breaches had been proved would be considered.

10. I warned Mr Fabian at the hearing on 6<sup>th</sup> August that if he did not attend the hearing on 14<sup>th</sup> August, it would proceed in his absence. I pointed out to him that he was entitled to Legal Aid for these proceedings, because they are quasi criminal in nature and his liberty is at risk. Mr Fabian told me at that hearing that he had London lawyers who are very anxious to represent him. I understand that since that time, the London lawyers have declined to represent him. Mr Fabian has had an opportunity to obtain legal representation with the benefit of Legal Aid but has not done so.
11. Mr Fabian did not attend the hearing on 14<sup>th</sup> August. I heard a number of witnesses on behalf of Bournemouth Borough Council, as a result of which I found nine breaches to be proved, two breaches not being proceeded with by the local authority because the witnesses concerned with them were unwell and unable to attend court.
12. Having found those breaches proved, I wished to give Mr Fabian a further opportunity to attend court to mitigate in respect of sentence and so adjourned to a further hearing today. Mr Fabian has attended court today. He is unrepresented but he has had an opportunity, as he was reminded in my orders of 6<sup>th</sup> and 14<sup>th</sup> August, to obtain legal representation. However, he has not taken that opportunity and so he appears before me today as a litigant in person.
13. I will go through the breaches in a moment when I deal with the question of individual penalty in terms of each breach. I do not intend repeating them at this point. They amount, in broad terms, to communications with employees of Bournemouth Borough Council which were insulting in nature; communications with residents at [address], where Mr Fabian lives; of planting plants and erecting trellis in the communal gardens at [address], in breach of injunction; and of using insulting words or behaviour towards one of the residents there, Miss R.
14. Those, in broad terms, are the breaches that have been found. I have regard to the Sentencing Guidelines for antisocial behaviour orders. The starting point for a first-time offender following a trial for harassment or breaches of this sort is, in my view, in the mid-range; that is the lesser degree of harassment, alarm or distress, where such harm was intended. The breaches do not involve allegations of violence.
15. The starting point for a first-time offender would be six weeks' custody but with a range of up to 26 weeks. That would be, of course, for a single breach. There are, in this case, a number of aggravating features which I must take into account; first of all, this is a breach of a protective order, designed to protect individuals from just such harassing and antisocial behaviour. The breaches that are alleged are, as Mr Weatherley for the local authority says, strikingly similar to the facts which gave rise to the original injunction application and are targeted towards those whom the orders were designed to protect.
16. So far as the residents of [address] are concerned, that accommodation is general needs accommodation but it houses, as a matter of fact, vulnerable and elderly people with the exception of Miss R, who is a young person but who has vulnerability by reason of serious physical disability.
17. I take into account secondly the harm caused to other residents but in particular to Miss R who gave evidence to me, which I accept, that Mr Fabian's behaviour towards her has impacted on her health. She has a medical complaint requiring her to control her

body temperature which she was unable to do because she was unable to open windows because of the conduct of Mr Fabian in planting plants and erecting trellises outside her window. It has also had an impact on her mental health and she told me that she felt like a prisoner in her own home.

18. So far as other victims of Mr Fabian's behaviour are concerned, they were generally speaking more inclined to treat Mr Fabian as a thorough nuisance rather than being directly impacted by his behaviour.
19. Thirdly, there is culpability. Two of the breaches that I found proved were committed following arrest for other breaches and were therefore breaches committed in the face of the court. That is in respect of breaches number 8 and 9.
20. Finally, I take into account the defendant's previous background and the fact that he has, in the past, shown disregard for obeying court orders. The Police National Computer record shows that Mr Fabian was, in 1999, sentenced to probation for harassment; in 2002 he received a one month prison sentence for harassment; in 2002 again he was sent to prison for five months for harassment; in 2004 he was sentenced to eight years' imprisonment for breach of a restraining order under the Protection from Harassment Act 1997; and again in 2016 he received a sentence of three years imprisonment for breach of a restraining order under the Protection from Harassment Act 1997. In 2012 he breached a civil injunction but District Judge Murphy, on that occasion, imposed no penalty save costs. So there is a long history so far as Mr Fabian is concerned, of breaching court orders and that aggravates the fact that some of the breaches in respect of which he appears before me today were, themselves, committed in the face of bail and arrest for other breaches.
21. Mr Fabian has not put before me any mitigating features other than the fact that he has never been involved in any violence of any sort. He seems to be under the impression that people are trying to portray him as a potentially violent person. I have not seen any evidence that he is portrayed as a potentially violent person and that assumption by him is part of his imagination rather than reality.
22. I accept that Mr Fabian has not, so far as I am aware, at least, used or threatened violence towards any of his victims. His conduct towards them is altogether of a far more insidious nature.
23. Secondly, although it is not mentioned by Mr Fabian, I do take from the facts a further mitigating feature, and that is that there was a period of compliance with the orders made since the first injunction on 11<sup>th</sup> July 2017 down to the first breach which took place on 31<sup>st</sup> May 2018.
24. Having taken into account the aggravating and mitigating features, I am satisfied that the threshold for custody in the case is crossed. No admissions have been made by Mr Fabian which would warrant any credit towards sentence.
25. Mr Fabian, so far as the breaches are concerned, I am going to go through them and tell you the penalty in respect of each of them.
26. In respect of the first breach, that on or around 14<sup>th</sup> May 2018 you sent correspondence addressed to the Chief Executive of Bournemouth Borough Council, including a copy

of a letter dated 12<sup>th</sup> May 2018, in which you made insulting comments towards Ms C and Ms J, officers employed by Bournemouth Borough Council in breach of paragraphs 5(a) and (d) of the injunction order. The penalty is that you will serve two months in prison.

27. In respect of breach 2, that on or around 22<sup>nd</sup> May 2018 you sent various correspondence in an envelope, hand-delivered, and addressed to the Chief Executive of Bournemouth Borough Council, including a copy of a letter dated 22<sup>nd</sup> May 2018 in which you made insulting comments towards Ms C in breach of paragraph 5 (d) of the injunction order. You will serve two months in prison, that to run concurrently with the sentence imposed in respect of breach 1.
28. Three; in respect of the breach that on or around 13<sup>th</sup> June 2018, you sent correspondence addressed in an envelope to Ms C at the Town Hall, Bournemouth including a copy of a letter dated 13<sup>th</sup> June 2018 that you had sent to Bournemouth & Poole County Court in which you made insulting comments towards Ms C, in breach of paragraph 5 (d) of the injunction order. You will serve a sentence of two months' imprisonment, to run concurrently with the sentence imposed in respect of breach 1.
29. In respect of breach 4, that on 31<sup>st</sup> May 2018, you sent a letter to Mr G at [address] in breach of paragraph 2 of the injunction order. You will serve a sentence of two months' imprisonment; that to be consecutive to the sentence imposed in respect of breach 1.
30. In respect of the fifth breach, that on or around 20<sup>th</sup> June 2018 you posted correspondence through the front doors of Mr S, including a letter addressed to him dated 18<sup>th</sup> May 2018. You will serve a sentence of two months' imprisonment; that to run concurrently with the sentence imposed in respect of breach number 4.
31. As to breach number 6, that on or before 27<sup>th</sup> June 2018 you erected hanging baskets and trellis and fencing to the outside of the building at [address] without permission of Bournemouth Borough Council, positioned under and by the side windows of another resident's flat, at [address], so obscuring light from entering her flat and preventing her from opening her windows, in breach of paragraph 7 of the injunction order. You will serve a sentence of two months' imprisonment, that to run consecutively to the sentences imposed in respect of breaches 1 and 4.
32. In respect of breach 7, that on 29<sup>th</sup> June 2018 you posted a letter to Ms R at [address], which included copies of letters you had sent to her parents at their home address and an additional letter which you had previously sent to third parties. You will serve a sentence of two months' imprisonment, that to run concurrently with the sentence imposed in respect of breach number 6.
33. In respect of breach number 8, that on 21<sup>st</sup> July 2018 at about 12.30 pm a letter from you was hand delivered to Ms R at [address], in breach of paragraph 2 of the injunction order. You will serve a sentence of two months' imprisonment, that to run concurrently with the sentence imposed in respect of breach number 6.
34. Finally, in respect of breach number 9, that on 3<sup>rd</sup> August 2018 Ms R, the resident at [address], opened her window to let some air in and, upon seeing you in the communal garden, you moved your face close to her open window and shouted, "Why are you making such a fuss? You are pathetic," which made Miss R, who suffered from ill-

health, scared and intimidated by you, that being in breach of paragraph 1 of the injunction order. You will serve a sentence of two months' imprisonment, that to run concurrently with the sentence imposed in respect of breach number 6.

35. The total sentence imposed on you, therefore, is one of six months' imprisonment. I am satisfied that the totality of that sentence is proportionate to your offending behaviour. That concludes these sentencing remarks.

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*This Judgment has been approved by the Judge.*