

**IN THE COUNTY COURT**  
**AT SWINDON**

Case No: D00TW258

The Magistrates' Court, Princes Street,  
Swindon. SN1 2JB

Date: 9<sup>th</sup> April 2019

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**Before:**

**DISTRICT JUDGE HATVANY**

**Between:**

**SELWOOD HOUSING AUTHORITY**

**Applicant**

**- and -**

**MICHAEL O'CONNELL**

**Respondent**

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**IAIN WIGHTWICK for the Applicant**  
**PAUL SHEARER for the Respondent**

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**EX TEMPORE JUDGMENT**

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**DISTRICT JUDGE HATVANY:**

1. This is not an application by Selwood to commit because, of course, Mr. O'Connell was arrested for breach of an antisocial behaviour injunction and it was an amended injunction that was made on 6<sup>th</sup> November 2018. It follows an unfortunate history.
2. Mr. O'Connell has been a tenant of Selwood for some 15 years, living at a property at 6 Kingsfield, Bradford-on-Avon. Following a long history of difficulties involving the neighbours and officers of Selwood Housing the injunction was made on 6<sup>th</sup> November 2018 and it was to last until 20<sup>th</sup> October 2019. It was made in fairly standard terms, prohibiting Mr. O'Connell from engaging in conduct likely to cause harassment, alarm, distress and nuisance or annoyance to other Selwood housing tenants and non-Selwood Housing owned households in the locality of the property (as I understand matters, Kingsfield development is a mixture of social housing and other housing) making an unreasonable amount of noise in the property, causing excessive noise over and above normal living noise, being rude, abusive or intimidating or causing harassment, alarm or distress to employees of Selwood Housing or their contractors; contacting in any way any members of the household at 8 Kingsfield, who are his neighbours; causing deliberate damage or neglecting the property, 6 Kingsfield, and having any alcohol at the property. In order to give the injunction some teeth a power of arrest was attached to all of those orders, save for paragraph 5, causing deliberate damage or neglecting the property.
3. I have expressed a view about whether having any alcohol at the property does in fact constitute antisocial behaviour, because as far as I can see, simply having an opened bottle of wine or alcohol or container of alcohol in my view actually would not constitute antisocial behaviour, although I can quite see the mischief the court was trying to address, in that it is accepted by everybody that what is unique about this case is that whenever Mr. O'Connell has appeared in front of me his behaviour has always been impeccable, he clearly makes an effort to come to court, to dress appropriately and he is clearly an articulate and educated man and he cannot be said to be of the character of the defendants this court is usually used to dealing with in terms of antisocial behaviour. His problem, as both his counsel and the court accept, is driven wholly by his addiction to alcohol, he seems to undergo a fundamental personality change and he has said and done some very unpleasant things as a result of being intoxicated. He has been directed by Selwood Housing and even others who have attempted to point him in the right direction in terms of providing help, but for years this has been to no avail. I have heard that he turned up, for example, to Turning Point intoxicated and he has not been able to successfully combat his addiction which has caused the behaviour that would otherwise be out of character when he is sober.
4. On 8<sup>th</sup> March I imposed a sentence of initially 12 months imprisonment. I was then reminded by Mr. Shearer on behalf of the defendant that as Mr. O'Connell had held his hands up and not wasted court time and had admitted the breaches at an early opportunity that the court ought to reduce the sentence by a third and a sentence of eight months was imposed. It has been referred to by Mr. Shearer in his submissions to me today as a steep sentence, and indeed eight months is a long period of time. I have heard that Mr. O'Connell, who is 70 and has a recent prostrate cancer diagnosis, has already been remanded in custody, he has been in prison before I am told for breach of a restraining order and he has found prison very difficult. On 8<sup>th</sup> March he

admitted breaches and was sentenced to eight months suspended for the duration as long as he complied with the terms of the order.

5. There were four separate breaches found. They essentially relate to events that took place on 27<sup>th</sup> February 2019. I was very concerned to learn that Mr. O'Connell on that occasion had tried to force his way into a next-door property owned by Mr. and Mrs. Moore. Mrs. Moore, herself elderly and vulnerable, is being treated for cancer, she was very frightened by the incident and also Mr. O'Connell referred to his neighbours as "fucking niggers" and I took that breach very seriously and I applied the sentencing guidelines. I was referred by Mr. Wightwick to the new guidelines of 1<sup>st</sup> October 2018 and I found that this matter fell into Category 1, a breach causing very serious harm or distress, and I found it caused very serious distress particularly to Mrs. Moore, and also a breach demonstrating a continuing risk of serious criminal and/or antisocial behaviour and I took the view that there was a serious risk of ongoing antisocial behaviour, given the unfortunate long history of this case and history essentially repeating itself in various guises. I then looked at the starting point for Category 1, I took the midpoint, there are three points for culpability, (a), (b) and (c), I imposed the starting point of one year's custody and then subsequently following Mr. Shearer's timely intervention reduced that down to eight months to reflect Mr. O'Connell's early admissions and I then considered whether to suspend the sentence and I did so on condition that Mr. O'Connell complied with the order.
6. I do not accept Mr. Shearer's submission that what I did was think: well I am going to suspend it anyway so I will make it quite a stiff sentence to act as a deterrent. Of course I wanted it to act as a deterrent because I did not want to be placed in the situation that I find myself in today with the possibility of having to send Mr. O'Connell to prison.
7. What then happened was that there were in this claim separate possession proceedings where Selwood had commenced possession proceedings for rent arrears and antisocial behaviour. Those were separate proceedings but, as has been pointed out by Mr. Shearer, were consolidated at some point and a possession order was made. It was during the process of Mr. O'Connell being evicted on 5<sup>th</sup> April that further breaches occurred and the matter did come back to me. Mr. O'Connell was arrested and under the rules he has to be brought before a judge within 24 hours and I dealt with him on 6<sup>th</sup> April.
8. On that occasion the breaches set out on the face of the remand order are that (1) the defendant behaved in a manner which was abusive, intimidating and caused harassment, alarm or distress to employees of Selwood Housing or their contractors when he stood at a rear window of 6 Kingsfield, Bradford-on-Avon threatening Ashley, a bailiff, Christopher Lutey and Sarah Draper, Louise Hartfield and others, saying: "If you come any closer I will rip your fucking heads off" and that was in breach of paragraph 3 of the injunction of 6<sup>th</sup> November 2018; (2) that the Defendant subsequently behaved in a manner which was rude, abusive, intimidating and/or caused harassment alarm or distress to employees of Selwood Housing or their contractors, in that he stood in the kitchen of the property and said aggressively to Sarah Draper repeatedly: "Shut the fuck up" or used other insulting words to her, causing her alarm and distress, again in breach of paragraph 3, and finally, that he behaved in a manner which caused or was likely to cause harassment, alarm, distress or nuisance or annoyance to other Selwood Housing tenants and non-Selwood

Housing tenants in the locality of the property by behaving in the manner set out in (1) and (2) above.

9. Although those are three separate breaches, as I said earlier, I think it may be somewhat artificial. They all occurred in the process of Mr. O'Connell being forcibly evicted from a property in which he had been for some 15 years and Mr. Shearer has indicated that in his view, and he is an experienced housing solicitor well-versed in helping those who find themselves in unfortunate circumstances, that Mr. O'Connell should have been re-housed by the Local Authority under their homelessness duties and he said that it was his experience that that re-housing takes place before the bailiffs eviction, and it seems to some extent that Mr. O'Connell, who was again intoxicated and again the route of the problem, as in all previous instances, said things. It is accepted and it is not suggested that there was any threat of violence on that occasion, but Sarah Draper, in particular, was badly affected by what occurred and it appears that Mr. O'Connell, who initially denied access and a locksmith started to force his way in, reacted in a sort of fright or flight mode and said these things and he has, through his counsel, expressed remorse and admitted all of those matters set out in the remand order that I have just read.
10. I have to look at, first of all, whether or not to activate the custodial sentence and Mr. Shearer has invited me not to activate the suspended sentence. He says that this is a housing related matter and nothing good would come out of sending Mr. O'Connell to prison. As I have said earlier, it may be the case that by sending him to prison at least he won't be able to drink and he may dry out. Mr. Shearer's response was: well that may be the case but in his experience on release many people start drinking again, and also that it is not one of the matters that I should rightly take into consideration in any event.
11. The question about whether or not to activate the custodial sentence is dealt with in the definitive guideline of 1<sup>st</sup> October 2018. What the guidance says is that the court must activate the custodial sentence unless it would be unjust in all the circumstances to do so, and under "unjust in all the circumstances" the court dealing with the breach should remember that the court imposing the original custodial sentence determined that a custodial sentence was appropriate in the original case, which is indeed what happened. In determining if there are other factors which would cause activation to be unjust the court may consider all factors, including any strong personal mitigation and whether immediate custody will result in significant impact on others. There is in this case a significant change in circumstances, and that I find to be one of the most relevant factors, and, as the guideline says, I can consider all factors that I consider to be relevant, and that is the ending of the relationship between Selwood and Mr. O'Connell, because the primary purpose of the injunction was to protect the employees of Selwood and, in particular, employees such as Sarah Draper, who was there at the eviction. I do not accept that Housing Officers should have thicker skins, as Mr. Shearer said, because they must get used to attending evictions; that is part of the job. I find that an unattractive argument. There was a need in particular for Selwood to do what was necessary to protect their employees and of course other neighbours, and in particular Mr. and Mrs. Moore next-door. The fact that Mr. O'Connell has been evicted is, in my judgment, a substantial game changer because the problem has effectively been removed. There will be no ongoing relationship between Mr. O'Connell and employees of Selwood Housing and there will be no

ongoing difficulties between Mr. O'Connell and his neighbours, and in particular Mr. and Mrs. Moore, who were subject to some appalling racially aggravated abuse.

12. What I propose to do, given in particular Mr. Shearer's submission that little will be achieved in sending Mr. O'Connell to prison, is to shorten substantially the length of the prison sentence from eight months, to stand back and take into account these other factors and to impose a sentence of two months, of which Mr. O'Connell will serve one month, but also give him a double credit for the time that he has already spent in police custody because I think it does become necessary to impose a custodial sentence but to take into account the significant change in circumstances and the fact that Mr. O'Connell has lost his home of some 15 years, and that in itself has a punitive effect and that was not the case when the court imposed the suspended sentence. That is my decision.

*This Judgment has been approved by the Judge.*

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