

# General Form of Judgment or Order

In the County Court at Central London	
Claim Number	F01BF022
Date	16 September 2020



THE COUNCIL OF THE LONDON BOROUGH OF EALING	<b>1<sup>st</sup> Claimant</b> Ref LEGAL/HD/00676654
KELLY O'BRIEN	<b>1<sup>st</sup> Defendant</b> Ref

Before Her Honour Judge Baucher sitting at the County Court at Central London, Central London, R. C. J, Thomas More Building, Royal Courts Of Justice, Strand, London, WC2A 2LL.

Pursuant to Paragraph 13 of Practice Directions Committal for Contempt of Court Open Court

On 16 September 2020 Kelly O'Brien was found in Contempt of Court

## IT IS ORDERED THAT:

Kelly O'Brien be committed for contempt to Her Majesty's Prison Bronzefield for a total period of 48 weeks (less 9 days on remand) see sentence below

## SENTENCE:

1. This sentencing document includes the findings I made on the 10<sup>th</sup> September to ensure that my sentencing remarks are set in context. The hearing was adjourned on the 10th September to allow the defendant one further opportunity to attend court not least because given my findings set out below she was found to be in breach of the suspended sentences orders made by HHJ Hellman.

2. On 13 September 2019 an anti-social behaviour injunction was made against Kelly O'Brien, the defendant, arising out of the defendant's emotional and financial exploitation of elderly and vulnerable men, utilising their homes, which are in sheltered accommodation, for sex working and Class A drugs. The terms of the order made by DDJ Chohan are set out below in the following Chronology of events relevant to the application and sentencing to commit the defendant for contempt in relation to breaches of the Injunction on the 22<sup>nd</sup> May 2020:

DATE	EVENT	REF
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The court office at the County Court at Central London, Central London, R. C. J, Thomas More Building, Royal Courts Of Justice, Strand, London, WC2A 2LL. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number. Tel: 0300 123 5577 Fax: 0870 739 4144 (GOLD FAX). Check if you can issue your claim online. It will save you time and money. Go to [www.moneyclaim.gov.uk](http://www.moneyclaim.gov.uk) to find out more.

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13 September 2019	ASB injunction made; return date 1 Nov 19; Defendant prohibited from: (“the <b>Injunction Order</b> ”)  Power of Arrest attached.	
16 October 2019	Defendant personally served with the Injunction Order	
8 November 2019	Pursuant to Power of Arrest, Defendant arrested and remanded on bail for breach of paragraph 1 of the Injunction Order (being in exclusion zone).  Notice of hearing for attendance at Brentford for breach of injunction hearing	
11 November 2019	<b>Hearing before DJ Jenkins at Brentford</b> in Power of Arrest proceedings <ul style="list-style-type: none"> <li>· No order made on the breach of the Injunction Order</li> <li>· DJ Jenkins’ order drawn on 18 November 2019</li> </ul>	
13 April 2020	<b>Hearing before HHJ Lucas QC (Westminster Magistrates’ Court)</b> in 2 <sup>nd</sup> Power of Arrest proceedings: <ul style="list-style-type: none"> <li>· Remanded on bail to attend County Court at Brentford on 15 April 2020, for breach of Injunction Order on 12 April 2020.</li> </ul>	
15 April 2020	<b>Hearing before DJ Hussain</b> <ul style="list-style-type: none"> <li>· Transfer of Power of Arrest proceedings to Central London</li> <li>· Order Drawn 28 April 2020</li> </ul>	
7 May 2020	<b>1<sup>st</sup> Committal Order: HHJ Hellman</b> <ul style="list-style-type: none"> <li>· 12 weeks imprisonment, suspended until 13 September 2020</li> <li>· Court finding that on 12 April 2020 there was a breach by Defendant of the Injunction Order (Defendant having admitted she was in the exclusion zone at the hearing on 13 April 2020)</li> <li>· 1<sup>st</sup> committal order personally served on 11 May 2020</li> </ul>	
14 May 2020	<b>2<sup>nd</sup> Committal Order: HHJ Hellman</b> <ul style="list-style-type: none"> <li>· 24 weeks imprisonment, suspended until 13 September 2020 for breach of paragraph 3 of Injunction Order on 10 May 2020</li> <li>· Court finding breaches of paragraphs 1 and 3 of the Injunction Order on 10 May 2020, no separate penalty for breach of paragraph 1</li> <li>· Service of 2<sup>nd</sup> committal order dispensed with, Defendant in attendance at court and terms had been explained</li> </ul>	
5 August 2020	<b>Application: by Claimant for committal of Defendant</b> <ul style="list-style-type: none"> <li>· Allegation: 22 May 2020, Defendant was in exclusion zone (breach of paragraph 1 of the Injunction Order) AND on 22 May 2020 Defendant was engaging in conduct capable of causing</li> </ul>	

	nuisance and annoyance in breach of paragraph 3 of Injunction Order	
3 September 2020	<b>Notice of Hearing:</b> Committal and variation applications (5 and 10 August) listed in person at 2pm on 10 September 2020	
9 September 2020	Witness statement of Daksha Bhatt regarding service of (a) the committal application and (b) variation application	

3. The defendant has admitted or found to have breached the terms of the injunction order on previous occasions; 11<sup>th</sup> November 2019 by DJ Jenkins, and on the defendant's own admission on 12<sup>th</sup> April 2020 and 10<sup>th</sup> May 2020.

4. On the 7<sup>th</sup> May 2020 in the defendant's absence HHJ Hellman sentenced the defendant in respect of her admitted breach of the injunction on 12<sup>th</sup> April 2020 to 12 weeks imprisonment suspended until 13<sup>th</sup> September 2020. His sentence is formally recorded.

5. On the 14<sup>th</sup> May 2020 HHJ Hellman sentenced the defendant to 24 weeks imprisonment for contempt of court suspended until the 13<sup>th</sup> September 2020. The basis of that sentence is set out in his judgment which forms part of the court orders in this case. There is therefore no purpose in my reiterating its content.

6. The matter proceeded before me on the 10<sup>th</sup> September 2020 the claimant had been unable to effect personal service. The defendant is of no fixed abode, the proceedings had been posted to her last known address and attempts had been made via the Claimant's Patrol Service to locate the defendant at another address but to no avail. Further the claimant served the defendant's known solicitors with the relevant documentation and they acknowledged receipt on 8<sup>th</sup> September 2020. Mr Norman who appeared for the defendant on the 10<sup>th</sup> September told the court that his instructing solicitors had sent the defendant a letter which had been signed for with a signature of Kelly on the 8<sup>th</sup> September 2020.

7. CPR 81.10 (4) requires that the application notice and evidence in support must be served personally on the respondent. Subsection (5) provides that the court may a) dispense with service.... (4) if it considers it is just to do so; or b) make an order in respect of service by an alternative method or at an alternative place."

8. Mr McCarthy who appeared for the claimant on the 10<sup>th</sup> September invited me to dispense with personal service because it is just to do so. I noted that the defendant on a prior occasion gave an address which was not her address when she appeared before HHJ Lucas QC. The defendant provided HHJ Hellman with an alternative address and the papers had been served at that address. Further her legal representatives have been served with the documentation and sent a letter to her address. Given that the defendant is of no fixed abode, has a chaotic lifestyle, was served at her last known address and her solicitors had been served I was satisfied on the 10<sup>th</sup> September that it was in the interests of justice to dispense with personal service and to proceed with the committal hearing.

9. On 10<sup>th</sup> September I granted leave pursuant to CPR 81.28 (1) for evidence to be received not in affidavit form from two police officers.

#### THE COMMITTAL APPLICATION

10. I was satisfied on 10<sup>th</sup> September that the defendant was aware of the hearing and I accordingly dealt with the hearing in her absence.

11. The two alleged breaches:

On the 22<sup>nd</sup> May 2020 between approximately 6.20am and 7am the defendant was present on Greatdown Road W7 within the exclusion area in breach of paragraph 1 of the injunction.

On 22<sup>nd</sup> May the defendant was engaged in conduct capable of causing a nuisance and/ or annoyance to persons residing at or visiting or engaged in lawful activity at Greatdown Road W7, which is within the area marked in bold on Map A. This was in breach of paragraph 3 of the injunction. In particular the defendant; acted disorderly, Screaming and shouting, intoxicated, attempted to kick out at police officers, spitting.

12. The following principles apply generally to an application to commit for contempt: 1) The burden of proof is on the applicant to show that the defendant has intentionally committed acts which are contrary to the order. 2) This must be proved to the criminal standard. 3) The conduct prohibited must be clearly stated in the order. 4) If the order is reasonably susceptible to more than one meaning the meaning favourable to the defendant should be adopted.

13. In relation to both breaches Mr Norman said that even if his client had been present he did not consider he would have any questions for the witnesses.

#### THE FIRST ALLEGED BREACH

14. Ms Bhatt was notified by a resident that the defendant was seen on Greatdown Road. PC Burberry and PC Davies both attended and they both stated that the defendant was arrested on the 22<sup>nd</sup> May outside Ellis Court on Greatdown Road.

15. I considered the plan annexed to the injunction and I was satisfied to the requisite standard that the defendant was in breach of the injunction by being present on Greatdown Road on the 22<sup>nd</sup> May.

16. I found the first breach proved.

#### THE SECOND BREACH

17. Ms Bhatt was also advised by the same resident that the defendant was intoxicated, shouting she had been raped and was challenging in her behaviour to the police who were attempting to execute a search warrant.

18. Pc Burberry stated that on attendance he found the defendant to be unsteady on her feet, with glazed eyes and smelling strongly of alcohol. When detained in handcuffs she lashed out at officers, attempted to kick out, spat and swore. He considered she was acting in a drunk and disorderly manner.

19. Pc Davies stated that the defendant's speech was slurred, she was unsteady on her feet, she alleged the officers were attacking an old lady and when the police tried to explain she became aggressive. She said that on approach of PC Burberry the defendant started to spit out to the extent that a spit hood needed to be deployed and placed over the defendant's head and the defendant was taken to the floor.

20. I considered the terms of paragraph 3 of the injunction and I was satisfied by her drunken aggressive behaviour which manifested itself in particular by shouting, swearing, lashing out with her feet and spitting that the defendant conduct and demeanour caused nuisance or annoyance.

21. I found the second breach proved.

22. After I determined the committal hearing in the defendant's absence on 10<sup>th</sup> September the defendant was brought before the out of hours court on Saturday 12<sup>th</sup> September. At that hearing the defendant accepted that she was in the area prohibited within map A and she told Upper Tribunal Judge Jackson she had alerted police to her presence there. She also indicated that she preferred to be remanded in custody as she was concerned that if she were released on bail she would again breach the injunction order. The court order also reflects that the defendant was aware of the further injunction order which this court made on the 10<sup>th</sup> September 2020.

23. The defendant was remanded in custody by Upper Tribunal Jackson to be produced at Brentford County Court on 15<sup>th</sup> September. On the 14<sup>th</sup> September I ordered that the defendant should be remanded until today to ensure that all matters were attended to at one hearing. The defendant is being held at HMP Bronzefield and I have been advised that despite endeavours to persuade her otherwise the defendant has refused to attend court. I was not persuaded, given her refusal to attend today that there would be any benefit in adjourning the matter to another date. It follows that the defendant will be sentenced in her absence. I have taken into account the mitigation presented by counsel on her behalf.

#### SENTENCE

24. I have been referred by counsel to a number of legal authorities; Solihull v Willoughby [2013] EWCA Civ 699, Leicester CC v Lewis (2001) 33 HLR 37 CA. I have also had regard to Hale v Tanner [2000] 1 WLR

2377 to which the court referred in Willoughby and the recent case of Centek Holdings Ltd v Tristram Giles [2020]EWHC 1682 (Ch)

25. I have applied the Sentencing Council Guidelines for breach of criminal behaviour order by analogy. However, I have taken into account that the maximum sentence for breach of a criminal behaviour order is five years whereas the maximum sentence for contempt of court is two years. This suggests that sentences for contempt involving breach of an anti-social behaviour injunction will tend to be lower than for breach of a criminal behaviour order. I find support for that in principle five as set out by Hale LJ in Hale v Tanner. I also have regard to the fact that this is a repeat offender and therefore the guideline does not strictly apply as per Willoughby.

26. The breaches on the 22<sup>nd</sup> May were deliberate breaches falling within culpability band B in the Guidelines. The level of harm fell within Category 2 of the guidelines. The defendant should not have been in the area and her conduct in breach of paragraph 3 of the injunction is of particular concern given that she spat at officers during COVID 19 and she acted violently by kicking out at officers. At a time of national crisis the court is particularly concerned that the defendant deliberately spat and continued to do so resulting in the need to deploy a spit hood potentially exposing public servants to the threat of a disease which led the country to be in lockdown. On the 22<sup>nd</sup> May the government had only recently slightly eased the full lockdown measures. Covid 19 then, and still is, a significant threat.

27. The starting point is 12 weeks custody. The aggravating factors are 1) This occurred very shortly after the defendant appeared before HHJ Hellman. At that hearing on the 14<sup>th</sup> May the defendant wrote to the judge describing her own behaviour as: “outrageous” and asking the court to: “give her a chance.” She assured the judge she would: “change.” I note that the defendant also assured HHJ Lucas QC on 13<sup>th</sup> April 2020 that: “she was sorry and that it would not happen again.” Despite her contrition and promise to HHJ Hellman the defendant breached the injunction a mere 8 days later 2) On the 14<sup>th</sup> May the defendant was given a suspended sentence and she is therefore in breach of that order. She is also in breach of HHJ Hellman’s earlier order for a suspended sentence on 7<sup>th</sup> May 2020. That was not activated on the 14<sup>th</sup> May 2020 as the defendant was not present in court on the 7<sup>th</sup> May 2020 when the suspended sentence was passed, albeit she was represented. She had also not been served with a copy of the suspended order of committal prior to her breach on the 10<sup>th</sup> May 2020. 3) she was under the influence of alcohol on 22<sup>nd</sup> May. 4) this is now the fourth breach of the injunction order. The defendant is not entitled to any sentencing discount as in her absence I found the allegations proved based on the evidence.

28. The defendant also openly breached the injunction order on the 11<sup>th</sup> September 2020 the very day after she failed to appear for her committal hearing. I have seen statements from PC Devine, Pc Phillips and Pc Gamblen those statements also indicate that the defendant could have been brought before the court for other breaches relating to the 11<sup>th</sup> September 2020. The Claimant did not invite me to adjourn for that purpose and it follows the only breach relates to the defendant’s presence in the exclusion zone. This was a deliberate breach aggravated by its occurrence within the operational period of the suspended sentence and being yet another breach of the injunction. Whilst the breach itself may well be Category 3 the defendant has now breached the order 5 times. Credit will be given for the defendant’s acceptance of the breach without the matter having to be formally proved.

29. The mitigating factors known to the court is that the defendant is of no fixed abode, is a drug addict and lives a chaotic life. She also clearly has a problem with alcohol but being intoxicated at the time of the breach is for sentencing purposes an aggravating factor.

30. I have also had regard to the Sentencing Council’s guideline in criminal courts on community and custodial sentences when considering whether a suspended sentence would be appropriate. Suspending a sentence may help in meeting two of the objectives of sentencing to secure future compliance with the court’s order and to secure the defendant’s rehabilitation.

31. I am satisfied that the breaches cross the custody threshold. I consider given the continued flagrant breach of the injunction that it is not appropriate to suspend any term I impose nor not activate the suspended orders made by HHJ Hellman. However I have had regard to paragraph 21 of his sentencing remarks on the 14<sup>th</sup> May when HHJ Hellman said that had the defendant been sentenced for both sets of breaches on 14<sup>th</sup> May 2020 the total period of 36 weeks would have been excessive and I therefore propose to reduce the period by 8 weeks.

32. I have had regard as to whether there should be a coercive element in the sentence and have had due regard to paragraph 45 JSC v BTA Bank vSolodchenko (No2) [2011] EWCA Civ 1241 about sentencing in this field: “first it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly in some instances, it provides an incentive for belated compliance because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.”

33. I do not intend to add a coercive element to this sentence given the nature of the breaches as such an element is not appropriate.

34. I have had regard to totality of the sentence in accordance with Sentencing Guidelines and I sentence the defendant as follows:

35. In the light of my findings the defendant is in breach of HHJ Hellman’s order. The defendant asked for one last chance, the terms of the order were clear but she breached it a mere 8 days later. I propose to activate the breaches of the suspended sentences for 28 out of the 36 weeks ordered.

36. In relation to the breaches on the 22<sup>nd</sup> May I propose to sentence her to a further 20 weeks having regard to the totality of the overall sentence for breach of paragraph 1 and in relation to paragraph 3. I consider administratively it is simpler to record the total of 20 weeks for each offence to run concurrently. I could have constructed the sentence differently with 20 weeks for one offence and no separate penalty for the other or split the sentence per offence but I consider it is simpler administratively to do so in this format. The sentence will run consecutively to the suspended sentences thus a total of 20 weeks for the two breaches.

37. In addition, for the breach on the 11<sup>th</sup> September taking into account the defendant’s acceptance of the breach and having regard to totality I propose to sentence the defendant to a further 2 weeks to run concurrently to the other breaches and the activation of the suspended sentences.

38. Thus, the total sentence is 48 weeks; 28 weeks for the breach of the suspended sentences, 20 weeks for the breaches on the 22<sup>nd</sup> May to run consecutively and 2 weeks for the 11<sup>th</sup> September to run concurrently.

39. The defendant will serve one half of that period in custody in accordance with the Criminal Justice Act 2003. The days the defendant has been remanded, which I calculate to be 6 days will be deducted from her sentence for the remand on this occasion and 3 days when remanded by HHJ Hellman, so a total of 9 days. If the days are inaccurate then I will allow the court order to be amended administratively without a further court hearing.

40. There be no order as to the Claimant's costs.

41. There be a detailed assessment of the Defendant's publicly funded costs.

Dated 16 September 2020





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KELLY O'BRIEN	<b>1<sup>st</sup> Defendant</b> Ref

Before Her Honour Judge Baucher sitting at the County Court at Central London, Central London, R. C. J, Thomas More Building, Royal Courts Of Justice, Strand, London, WC2A 2LL.

Pursuant to Paragraph 13 of Practice Directions Committal for Contempt of Court Open Court

On 16 September 2020 Kelly O'Brien was found in Contempt of Court

## IT IS ORDERED THAT:

Kelly O'Brien be committed for contempt to Her Majesty's Prison Bronzefield for a total period of 48 weeks (less 9 days on remand) see sentence below

## SENTENCE:

1. This sentencing document includes the findings I made on the 10<sup>th</sup> September to ensure that my sentencing remarks are set in context. The hearing was adjourned on the 10th September to allow the defendant one further opportunity to attend court not least because given my findings set out below she was found to be in breach of the suspended sentences orders made by HHJ Hellman.

2. On 13 September 2019 an anti-social behaviour injunction was made against Kelly O'Brien, the defendant, arising out of the defendant's emotional and financial exploitation of elderly and vulnerable men, utilising their homes, which are in sheltered accommodation, for sex working and Class A drugs. The terms of the order made by DDJ Chohan are set out below in the following Chronology of events relevant to the application and sentencing to commit the defendant for contempt in relation to breaches of the Injunction on the 22<sup>nd</sup> May 2020:

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Produced by: Alex Castle  
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London  
W9 2HU

13 September 2019	ASB injunction made; return date 1 Nov 19; Defendant prohibited from: (“the <b>Injunction Order</b> ”)  Power of Arrest attached.	
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9 September 2020	Witness statement of Daksha Bhatt regarding service of (a) the committal application and (b) variation application	

3. The defendant has admitted or found to have breached the terms of the injunction order on previous occasions; 11<sup>th</sup> November 2019 by DJ Jenkins, and on the defendant's own admission on 12<sup>th</sup> April 2020 and 10<sup>th</sup> May 2020.

4. On the 7<sup>th</sup> May 2020 in the defendant's absence HHJ Hellman sentenced the defendant in respect of her admitted breach of the injunction on 12<sup>th</sup> April 2020 to 12 weeks imprisonment suspended until 13<sup>th</sup> September 2020. His sentence is formally recorded.

5. On the 14<sup>th</sup> May 2020 HHJ Hellman sentenced the defendant to 24 weeks imprisonment for contempt of court suspended until the 13<sup>th</sup> September 2020. The basis of that sentence is set out in his judgment which forms part of the court orders in this case. There is therefore no purpose in my reiterating its content.

6. The matter proceeded before me on the 10<sup>th</sup> September 2020 the claimant had been unable to effect personal service. The defendant is of no fixed abode, the proceedings had been posted to her last known address and attempts had been made via the Claimant's Patrol Service to locate the defendant at another address but to no avail. Further the claimant served the defendant's known solicitors with the relevant documentation and they acknowledged receipt on 8<sup>th</sup> September 2020. Mr Norman who appeared for the defendant on the 10<sup>th</sup> September told the court that his instructing solicitors had sent the defendant a letter which had been signed for with a signature of Kelly on the 8<sup>th</sup> September 2020.

7. CPR 81.10 (4) requires that the application notice and evidence in support must be served personally on the respondent. Subsection (5) provides that the court may a) dispense with service.... (4) if it considers it is just to do so; or b) make an order in respect of service by an alternative method or at an alternative place."

8. Mr McCarthy who appeared for the claimant on the 10<sup>th</sup> September invited me to dispense with personal service because it is just to do so. I noted that the defendant on a prior occasion gave an address which was not her address when she appeared before HHJ Lucas QC. The defendant provided HHJ Hellman with an alternative address and the papers had been served at that address. Further her legal representatives have been served with the documentation and sent a letter to her address. Given that the defendant is of no fixed abode, has a chaotic lifestyle,

was served at her last known address and her solicitors had been served I was satisfied on the 10<sup>th</sup> September that it was in the interests of justice to dispense with personal service and to proceed with the committal hearing.

9. On 10<sup>th</sup> September I granted leave pursuant to CPR 81.28 (1) for evidence to be received not in affidavit form from two police officers.

#### THE COMMITTAL APPLICATION

10. I was satisfied on 10<sup>th</sup> September that the defendant was aware of the hearing and I accordingly dealt with the hearing in her absence.

11. The two alleged breaches:

On the 22<sup>nd</sup> May 2020 between approximately 6.20am and 7am the defendant was present on Greatdown Road W7 within the exclusion area in breach of paragraph 1 of the injunction.

On 22<sup>nd</sup> May the defendant was engaged in conduct capable of causing a nuisance and/ or annoyance to persons residing at or visiting or engaged in lawful activity at Greatdown Road W7, which is within the area marked in bold on Map A. This was in breach of paragraph 3 of the injunction. In particular the defendant; acted disorderly, Screaming and shouting, intoxicated, attempted to kick out at police officers, spitting.

12. The following principles apply generally to an application to commit for contempt: 1) The burden of proof is on the applicant to show that the defendant has intentionally committed acts which are contrary to the order. 2) This must be proved to the criminal standard. 3) The conduct prohibited must be clearly stated in the order. 4) If the order is reasonably susceptible to more than one meaning the meaning favourable to the defendant should be adopted.

13. In relation to both breaches Mr Norman said that even if his client had been present he did not consider he would have any questions for the witnesses.

#### THE FIRST ALLEGED BREACH

14. Ms Bhatt was notified by a resident that the defendant was seen on Greatdown Road. PC Burberry and PC Davies both attended and they both stated that the defendant was arrested on the 22<sup>nd</sup> May outside Ellis Court on Greatdown Road.

15. I considered the plan annexed to the injunction and I was satisfied to the requisite standard that the defendant was in breach of the injunction by being present on Greatdown Road on the 22<sup>nd</sup> May.

16. I found the first breach proved.

#### THE SECOND BREACH

17. Ms Bhatt was also advised by the same resident that the defendant was intoxicated, shouting she had been raped and was challenging in her behaviour to the police who were attempting to execute a search warrant.

18. Pc Burberry stated that on attendance he found the defendant to be unsteady on her feet, with glazed eyes and smelling strongly of alcohol. When detained in handcuffs she lashed out at officers, attempted to kick out, spat and swore. He considered she was acting in a drunk and disorderly manner.

19. Pc Davies stated that the defendant's speech was slurred, she was unsteady on her feet, she alleged the officers were attacking an old lady and when the police tried to explain she became aggressive. She said that on approach of PC Burberry the defendant started to spit out to the extent that a spit hood needed to be deployed and placed over the defendant's head and the defendant was taken to the floor.

20. I considered the terms of paragraph 3 of the injunction and I was satisfied by her drunken aggressive behaviour which manifested itself in particular by shouting, swearing, lashing out with her feet and spitting that the defendant conduct and demeanour caused nuisance or annoyance.

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#### SENTENCE

24. I have been referred by counsel to a number of legal authorities; Solihull v Willoughby [2013] EWCA Civ 699, Leicester CC v Lewis (2001) 33 HLR 37 CA. I have also had regard to Hale v Tanner [2000] 1 WLR

2377 to which the court referred in Willoughby and the recent case of Centek Holdings Ltd v Tristram Giles [2020]EWHC 1682 (Ch)

25. I have applied the Sentencing Council Guidelines for breach of criminal behaviour order by analogy. However, I have taken into account that the maximum sentence for breach of a criminal behaviour order is five years whereas the maximum sentence for contempt of court is two years. This suggests that sentences for contempt involving breach of an anti-social behaviour injunction will tend to be lower than for breach of a criminal behaviour order. I find support for that in principle five as set out by Hale LJ in Hale v Tanner. I also have regard to the fact that this is a repeat offender and therefore the guideline does not strictly apply as per Willoughby.

26. The breaches on the 22<sup>nd</sup> May were deliberate breaches falling within culpability band B in the Guidelines. The level of harm fell within Category 2 of the guidelines. The defendant should not have been in the area and her conduct in breach of paragraph 3 of the injunction is of particular concern given that she spat at officers during COVID 19 and she acted violently by kicking out at officers. At a time of national crisis the court is particularly concerned that the defendant deliberately spat and continued to do so resulting in the need to deploy a spit hood potentially exposing public servants to the threat of a disease which led the country to be in lockdown. On the 22<sup>nd</sup> May the government had only recently slightly eased the full lockdown measures. Covid 19 then, and still is, a significant threat.

27. The starting point is 12 weeks custody. The aggravating factors are 1) This occurred very shortly after the defendant appeared before HHJ Hellman. At that hearing on the 14<sup>th</sup> May the defendant wrote to the judge describing her own behaviour as: “outrageous” and asking the court to: “give her a chance.” She assured the judge she would: “change.” I note that the defendant also assured HHJ Lucas QC on 13<sup>th</sup> April 2020 that: “she was sorry and that it would not happen again.” Despite her contrition and promise to HHJ Hellman the defendant breached the injunction a mere 8 days later 2) On the 14<sup>th</sup> May the defendant was given a suspended sentence and she is therefore in breach of that order. She is also in breach of HHJ Hellman’s earlier order for a suspended sentence on 7<sup>th</sup> May 2020. That was not activated on the 14<sup>th</sup> May 2020 as the defendant was not present in court on the 7<sup>th</sup> May 2020 when the suspended sentence was passed, albeit she was represented. She had also not been served with a copy of the suspended order of committal prior to her breach on the 10<sup>th</sup> May 2020. 3) she was under the influence of alcohol on 22<sup>nd</sup> May. 4) this is now the fourth breach of the injunction order. The defendant is not entitled to any sentencing discount as in her absence I found the allegations proved based on the evidence.

28. The defendant also openly breached the injunction order on the 11<sup>th</sup> September 2020 the very day after she failed to appear for her committal hearing. I have seen statements from PC Devine, Pc Phillips and Pc Gamblen those statements also indicate that the defendant could have been brought before the court for other breaches relating to the 11<sup>th</sup> September 2020. The Claimant did not invite me to adjourn for that purpose and it follows the only breach relates to the defendant’s presence in the exclusion zone. This was a deliberate breach aggravated by its occurrence within the operational period of the suspended sentence and being yet another breach of the injunction. Whilst the breach itself may well be Category 3 the defendant has now breached the order 5 times. Credit will be given for the defendant’s acceptance of the breach without the matter having to be formally proved.

29. The mitigating factors known to the court is that the defendant is of no fixed abode, is a drug addict and lives a chaotic life. She also clearly has a problem with alcohol but being intoxicated at the time of the breach is for sentencing purposes an aggravating factor.

30. I have also had regard to the Sentencing Council’s guideline in criminal courts on community and custodial sentences when considering whether a suspended sentence would be appropriate. Suspending a sentence may help in meeting two of the objectives of sentencing to secure future compliance with the court’s order and to secure the defendant’s rehabilitation.

31. I am satisfied that the breaches cross the custody threshold. I consider given the continued flagrant breach of the injunction that it is not appropriate to suspend any term I impose nor not activate the suspended orders made by HHJ Hellman. However I have had regard to paragraph 21 of his sentencing remarks on the 14<sup>th</sup> May when HHJ Hellman said that had the defendant been sentenced for both sets of breaches on 14<sup>th</sup> May 2020 the total period of 36 weeks would have been excessive and I therefore propose to reduce the period by 8 weeks.

32. I have had regard as to whether there should be a coercive element in the sentence and have had due regard to paragraph 45 JSC v BTA Bank vSolodchenko (No2) [2011] EWCA Civ 1241 about sentencing in this field: “first it upholds the authority of the court by punishing the contemnor and deterring others. Such punishment has nothing to do with the dignity of the court and everything to do with the public interest that court orders should be obeyed. Secondly in some instances, it provides an incentive for belated compliance because the contemnor may seek a reduction or discharge of sentence if he subsequently purges his contempt by complying with the court order in question.”

33. I do not intend to add a coercive element to this sentence given the nature of the breaches as such an element is not appropriate.

34. I have had regard to totality of the sentence in accordance with Sentencing Guidelines and I sentence the defendant as follows:

35. In the light of my findings the defendant is in breach of HHJ Hellman’s order. The defendant asked for one last chance, the terms of the order were clear but she breached it a mere 8 days later. I propose to activate the breaches of the suspended sentences for 28 out of the 36 weeks ordered.

36. In relation to the breaches on the 22<sup>nd</sup> May I propose to sentence her to a further 20 weeks having regard to the totality of the overall sentence for breach of paragraph 1 and in relation to paragraph 3. I consider administratively it is simpler to record the total of 20 weeks for each offence to run concurrently. I could have constructed the sentence differently with 20 weeks for one offence and no separate penalty for the other or split the sentence per offence but I consider it is simpler administratively to do so in this format. The sentence will run consecutively to the suspended sentences thus a total of 20 weeks for the two breaches.

37. In addition, for the breach on the 11<sup>th</sup> September taking into account the defendant’s acceptance of the breach and having regard to totality I propose to sentence the defendant to a further 2 weeks to run concurrently to the other breaches and the activation of the suspended sentences.

38. Thus, the total sentence is 48 weeks; 28 weeks for the breach of the suspended sentences, 20 weeks for the breaches on the 22<sup>nd</sup> May to run consecutively and 2 weeks for the 11<sup>th</sup> September to run concurrently.

39. The defendant will serve one half of that period in custody in accordance with the Criminal Justice Act 2003. The days the defendant has been remanded, which I calculate to be 6 days will be deducted from her sentence for the remand on this occasion and 3 days when remanded by HHJ Hellman, so a total of 9 days. If the days are inaccurate then I will allow the court order to be amended administratively without a further court hearing.

40. There be no order as to the Claimant's costs.

41. There be a detailed assessment of the Defendant's publicly funded costs.

Dated 16 September 2020

