

Case No: F03CL314

IN THE COUNTY COURT AT CENTRAL LONDON

Date: 5<sup>th</sup> July 2021

**Before :**

**HHJ BAUCHER**

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**Between :**

**Lambeth London Borough Council**

**Claimant**

**- and -**

**Elijah William Carr**

**Defendant**

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**Ms Caroline Addy Counsel for the Claimant**

**Mr Carr in person**

Hearing dates: 5<sup>th</sup> July 2021

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**SENTENCE**

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**HHJ BAUCHER:**

INTRODUCTION

1. This sentencing document needs to be considered in conjunction with the judgment I gave following the Committal hearing on the 6<sup>th</sup> April 2021. On that date the defendant failed to appear. I was satisfied that the defendant was on notice of the hearing and I heard the case in his absence. I found the pursued allegations proved and I adjourned the matter in accordance with Oliver v Shaikh [2020] EWHC 2658 (QB).
2. The defendant made an application following my order which I dismissed today.
3. It follows that the defendant falls to be sentenced in relation to: 1) threatening or otherwise harassing employees of the claimant via email for 14 breaches (two were not pursued). 2) Threatening or otherwise harassing employees of the claimant or any of the represented persons via telephone on 12 occasions.3) Communicating with employees of the claimant or any of the represented persons via email and telephone on 27 occasions.
4. The defendant has been repeatedly reminded both by the claimant and this court as to right to be legally represented. I ensured he was sent a further email on the 18<sup>th</sup> May 2021 at 10.23 reminding him that his application to set aside and the sentencing hearing would proceed on the 5<sup>th</sup> July 2021 and that he was entitled to legal representation. In the same email he was sent a copy of the Central London County Court contempt of court leaflet which provides details of solicitors who offer legal representation. The defendant has appeared today without legal representation simply stating that he has tried to obtain assistance

but to no avail. I am satisfied that the defendant's legal rights have been protected see paragraph 36 of Oliver.

#### MITIGATION

5. The defendant has said there is nothing he wishes to say in respect of mitigation.

#### SENTENCE

6. I have considered 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] 1WLR 2377 to which the court referred in Willoughby and the case of Centek Holdings Ltd v Tristram Giles [2020]EWHC 1682 (Ch).

7. In Willoughby LJ Pitchford said at paragraph 18:

“Counsel recognises, however, that the severity of orders for committal will depend upon the particular facts of the case, and little assistance can be gained by an attempt closely to analyse the difference between one set of facts and another.”

8. In Hale v Tanner in Hale LJ gave guidance stressing she did so in the family context saying at paragraph 24 and following :

“24. Furthermore, I would not wish to suggest that there should be any general principle that the statutory provisions relating to sentencing in ordinary criminal cases should be applied to sentencing for contempt. The circumstances surrounding contempt cases are much more various and the objectives underlying the court's actions are also much more various. There are, however, some points which it may be worth making.”

Hale LJ continued at paragraph 26:

“26. Having said that, firstly, these cases have to come before the court on an application to commit. That is the only procedure which is available. Not surprisingly, therefore, the court is directing its mind to whether or not committal to prison is the appropriate order. But it does not follow from that

that imprisonment is to be regarded as the automatic consequence of the breach of an order. Clearly it is not. There is, however, no principle that imprisonment is not to be imposed at the first occasion: see *Thorpe v Thorpe* [1998] 2 FLR 127, a decision of this court. Nevertheless, it is a common practice, and usually appropriate in view of the sensitivity of the circumstances of these cases, to take some other course on the first occasion.

27. Secondly, there is the difficulty, as Mr Brett has pointed out, that the alternatives are limited. The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn, and in a case where the alleged contemnor has not attended court, that may be an appropriate course to take, although I would not say so in every case. It depends on the reasons that may be thought to lie behind the non-attendance. There is a power to fine. There is a power of requisition of assets and there are mental health orders. All of those may, in an appropriate case, need consideration, particularly in a case where the court has not found any actual violence proved.

28. Thirdly, if imprisonment is appropriate, the length of the committal should be decided without reference to whether or not it is to be suspended. A longer period of committal is not justified because its sting is removed by virtue of its suspension.

29. Fourthly, the length of the committal has to depend upon the court's objectives. There are two objectives always in contempt of court proceedings. One is to mark the court's disapproval of the disobedience to its order. The other is to secure compliance with that order in the future. Thus, the seriousness of what has taken place is to be viewed in that light as well as for its own intrinsic gravity.

30. Fifthly, the length of the committal has to bear some reasonable relationship to the maximum of two years which is available.

31. Sixthly, suspension is possible in a much wider range of circumstances than it is in criminal cases. It does not have to be the exceptional case. Indeed, it is usually the first way of attempting to secure compliance with the court's order.

32. Seventhly, the length of the suspension requires separate consideration, although it is often appropriate for it to be linked to continued compliance with the order underlying the committal.

33. Eighthly, of course, the court has to bear in mind the context. This may be aggravating or mitigating....

34. Ninthly, in many cases, the court will have to bear in mind that there are concurrent proceedings in another court based on either the same facts or some of the same facts, which are before the court on the contempt proceedings. The court cannot ignore those parallel proceedings. It may have to take into account their outcome in considering what the practical effect is upon the contempt proceedings. They do have different purposes and often the overlap is not exact,

but nevertheless the court will not want, in effect, the contender to suffer punishment twice for the same events.

35. Tenthly, it will usually be desirable for the court to explain very briefly why it has made the choices that it has made in the particular case before it. One understands all the constraints in a busy county court, dealing with large numbers of these cases these days, and one would not wish to impose too great a burden on the judiciary in this respect. Nevertheless, it would be appropriate in most cases for the contemnor to know why he or she was being sentenced to a period of imprisonment; why it was the length that it was; if it was suspended, why the suspension was as it was, but only very briefly.

36. An important part of the exercise is that the contender should understand the importance of keeping court orders, of not breaking them and the likely consequences if they are so broken. There is no doubt that the judge in this case made that part of the exercise entirely plain, whether or not to good effect is another matter, but he might have perhaps devoted three sentences to the earlier part of the explanation.

9. Ms Addy prepared a very helpful Skeleton argument and provided a number of legal authorities to assist the court but quite rightly did not direct the court to any particular form or indeed length of sentence. I confirm I have considered the authorities of Lightfoot v Lightfoot [1989] 1FLR 414, Delaney v Delaney [1996] QB387 Oliver v Shaik [2020]EWHC 2658 QB and Crystal Mews Ltd v Merrick [2006] EWHC 3087. I have considered the guidance contained therein and the principles applicable when considering this sentence.
10. 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. 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.

11. The order was clear on its face and explained to the defendant by HHJ Saunders. Within 2 months of that clear explanation the defendant breached the order he then continued to breach it thereafter in spates of correspondence and calls in at times offensive and oppressive terms. The claimant's solicitors sought to end the abuse by emailing and writing to the defendant but he not only ignored their overtures to stop breaching the Injunction but then has continued since the committal proceedings commenced. I have read an Affidavit from Mr Carson dated 8<sup>th</sup> March 2021 whereby he states that the defendant has sent him 50 -60 emails which he describes as being: "unpleasant and threatening." He also says that Capita who monitor telephone calls for the council have contacted him in relation to further vexatious calls from the defendant recorded on the system.
  
12. I have also read a witness statement from Mr Andrews of Pinsent Masons LLP who is their Director for Risk and Compliance. Pinsent Masons are the Claimant's legal representatives in these proceedings. Since February 2020 the firm has received nearly 4,000 telephone calls from the defendant some of which are racist, abusive or threatening terrorism against the firm. As a result a complaint has been made to the police. They sought an extension to the Injunction Order because of the defendant's actions. Whilst the defendant does not fall to be sentenced for any of the matters after the committal proceedings were commenced (there being no application to amend) nor for the amendments to the Injunction the defendant's actions are relevant as they show that the defendant targets any party that he perceives to be acting for the claimant or operates in relation to the rule of law. In relation to the latter the defendant has since the instigation of these proceedings also been sending the court innumerable emails and one of the problems the court office have had is trying

to discern which are relevant to any hearings. Again, this is indicative of the defendant's attitude.

13. I am satisfied the breaches for which the defendant falls to be sentenced are deliberate and they are persistent breaches falling within culpability band A in the guideline. The level of harm falls within Category 2 of the guideline.
14. The starting point as per the guideline is 12 months custody with a category range of community order to 2 years custody. The aggravating factors as per the guideline are the innumerable breaches of the injunction order against the background of the history of disobedience of other court orders. The history of which is set out in the statement of Bayo Dosunmu dated 4<sup>th</sup> October 2019. The defendant is not entitled to any sentencing discount as in his absence I found the allegations proved based on the evidence. I refused to set aside that order. I also note that the breaches are against those undertaking their public duty in the conduct of their services to the local taxpayer.
15. In relation to any mitigating factors none known to the court and the defendant has not expressed any remorse or given an indication he will comply in the future. Indeed, in his oral representations the defendant constantly referred to the claimant as acting falsely, lying and seeking to evade their responsibilities rather than recognising his own actions.
16. 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.

17. I am satisfied that the breaches cross the custody threshold. I consider given the continued flagrant breaches of the injunction that it is not appropriate to suspend the sentence.
18. 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 v Solodchenko (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.”
19. I do not intend to add a coercive element to this sentence given the nature of the breaches.
20. I have had regard to totality of the sentence in accordance with Sentencing Guidelines. I also have paid regard to the Covid pandemic and the affect that has on those detained in custody, but I note we are entering the end phase in that regard.
21. I consider that rather than break down the sentence for each component part the defendant will be sentenced to a period of 9 months in custody for each of the 3 breaches and their multiple components each sentence to run concurrently.
22. The defendant will serve one half of that period in custody in accordance with the Criminal Justice Act 2003.