

Case No: F00DD664

IN THE COUNTY COURT AT BIRMINGHAM

Civil Justice Centre, Priory Courts,
33 Bull Street, Birmingham B4 6DS

Date: 15/11/2022

Start Time: 1206 Finish Time: 1229

Before:

HIS HONOUR JUDGE MURCH

Between:

**DUDLEY METROPOLITAN BOROUGH
COUNCIL**

Claimant

- and -

PETER STEAD

Defendant

**MR. LAWAL (C) for the Claimant
MR. RICKETTS (S) for the Defendant**

JUDGMENT

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

JUDGE MURCH :

1. The purpose of this hearing is to consider the question of the sentence I must impose upon Mr. Stead following a hearing on 5 October 2022 when I made a number of findings of breach of an injunction granted in this court by His Honour Judge Boora on 9 February 2021.

2. To give the judgment its context, I shall read out first the terms of that injunction. It read as follows:

“The defendant, Mr. Peter Stead, is not, whether by himself or by instructing or encouraging any other person, to:

- i) Threaten to use and/or use violence anywhere, against:
 - a) Any person (who need not be a particular identified person) who resides, visits or is otherwise engaged in a lawful activity in Forest Road, Dudley, West Midlands;
 - b) Any servant, agent, employee or contractor of the claimant.
- ii) Approach, contact or in any way or anywhere communicate, either directly or indirectly with Ms. Lauren Homer, Mr. Jason Boswell and Ms. Kay Ward and their families and visitors.
- iii) Engage in any conduct which is capable of causing nuisance or annoyance to any person (who need not be a particular identified person) who resides, visits or is otherwise engaged in a lawful activity in Forest Road, Dudley, West Midlands. Such conduct is to include but not be limited to:
 - a) Being intimidating towards, swearing at or abusing others, including making abusive or insulting comments;
 - b) Engaging in any kind of noise nuisance, particularly shouting, banging or playing loud music.
- iv) Engage in conduct which is capable of causing nuisance and annoyance to any person employed in connection with the exercise of the claimant’s housing management function”.

3. A power of arrest was attached to paragraphs 1 and 2 of the order and both were expressed to run until 9 February 2023. An application has been made

by the applicant today to extend the duration of the order for reasons I shall set out during the course of this judgment.

4. The following chronology should give my comments some context.. On 9 February 2021, HH Judge Boora in this court made the injunction in the terms I have just set out. On 3 February 2022 there was a series of contempt proceedings before me. I found twelve allegations of breach proven in the absence of the defendant. I was satisfied, for reasons I gave at the time, that the defendant had been served both with the injunction and the contempt applications and therefore proceeded in his absence. I found twelve of the allegations proved to the relevant standard. There were others which I did not find proved. The hearing before me lasted one day.
5. I issued a warrant for the arrest of the defendant so that he could be brought to court for sentencing. On 4 February 2022 he was brought to court and had the benefit of the representation of Mr. Ricketts, who has appeared on his behalf today. At that stage he said he wanted to make an application to set aside my order, as indeed he was entitled to do under CPR 39. It was agreed by the parties in those circumstances that I should not proceed to sentence on that day but rather, wait for the outcome of that application.
6. On 22 April 2022, that application came before HH Judge Truman. Her Honour heard submissions from the parties and refused the respondent's application to set aside my findings of contempt listed in my order of 3 February 2022. Her Honour listed the matter for sentence before me and it came before me on 7 June 2022.

7. On that occasion I imposed a total sentence of eleven weeks in custody and I suspended it for the duration of the final injunction. In that order, having heard submissions from the parties and by agreement, it was recorded that in the event that I made further findings of contempt in relation to a contempt application which was before the court but had not been heard, then they would not amount to a breach of the suspended order that I was imposing on that occasion.
8. I repeat the observations I made during the course of submissions. In the event that in future there is a further finding of contempt after today, it may well be that the court will need to consider whether to activate the sentence I imposed on 7 June 2022. However, following the terms of that order it is common ground before me today that I do not need to consider whether to activate that particular suspended term of imprisonment.
9. That second contempt application came before me on 4 and 5 October of this year. I heard evidence from the claimant's witnesses. I heard evidence from the defendant. Having heard that evidence I found a number of breaches proved and therefore the matter is before me today for the purposes of considering which sentence I should impose.
10. I remind myself of the purposes of the exercise upon which I am about to embark. The Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ at 699 said there are three objectives to the exercise I am about to carry out. Lord Justice Pitchford described them as follows. The first is punishment for the breach of an order of the court. The second is to secure future compliance with the court's order

if possible and the third is rehabilitation, which is a natural companion to the second objective.

11. I have in mind the Sentencing Council Guidelines' Definitive Guidance for Breach Offences. I apply them by analogy, that being what the Court of Appeal in *Amicus Horizon Limited v Thorley* [2012] EWCA Civ 817 has said that courts sitting at first instance should do. There are no direct Sentencing Council Guidelines for the exercise I have to carry out. I make that observation for the following reasons. The Breach Guidelines to which I have referred are concerned with the powers of the criminal courts where up to five years' imprisonment and various community orders in addition to fines might be imposed. Sitting in the County Court, my powers are limited to a maximum term of two years' imprisonment and a fine. I do not have before me the range of community orders that a criminal court might be able to impose. To that extent my hands are rather tied compared to the criminal court's ability to deal with breach offences before them.
12. I have in mind also that in July 2020 the Civil Justice Council considered the question of breaches of anti-social behaviour injunctions. There are draft guidelines which have been published but they do not have the force of the breach guidelines imposed by the Sentencing Council and therefore I do not have regard to them.
13. Against that background I shall consider the breaches having first looked at the defendant's circumstances. He has been represented today by Mr. Ricketts. Mr. Ricketts has said a number of points on Mr. Stead's behalf. Many of them are points he made before me in June when I had to sentence Mr. Stead in

respect of the first set of breaches, but they bear repetition. He is a man of previously good character subject to what I have just said about the breaches of the injunction in the past. He has lived in the Birmingham area for about 28 years. For 20 years he and his late wife ran a successful manufacturing business, as I understand it, and in retirement he assisted people in other jurisdictions, in particular Ghana, Nigeria, Sierra Leone and the Cote d'Ivoire. He assisted them by sending machinery to those jurisdictions so that people could be employed there as well.

14. His wife sadly died. He remarried. I am told he has five boys and five girls, each of whom are adults, and six grandchildren. Most of them live independently. He is in his retirement but he still has a nine-year-old son and a 19-year-old daughter who live at home. Mr. Ricketts described his home life as one where he spends a lot of time trying to tend to his garden, creating what was described as an oasis. The difficulty is that he lives in close proximity to neighbours who have been the subject of this protective injunction.

15. Mr. Stead tells me through Mr. Ricketts that he has a desire to have nothing to do with his neighbours. His difficulty as I see it is he has expressed no remorse through Mr. Ricketts for the findings I have made. I accept he wants nothing to do with his neighbours. I accept the difficulty of the close proximity of those neighbours. I am concerned that the making of the injunction by Judge Boora clearly has not abated the difficulties faced by his neighbours and I shall now turn to the various breaches which I found proved on the last occasion.

16. The first breach was that on 27 July 2021, at 1330 in Forest Road, Dudley the defendant threw a bundle of documents at a process server instructed by the claimant, one Christopher Atkinson. I record that no injury was caused to Mr. Atkinson on that occasion but clearly it was an unpleasant experience. Mr. Atkinson was engaged in official business and was entitled to go about it without that kind of behaviour. I am afraid I am satisfied that this was a category B culpability causing category 2 harm within the meaning of the guidelines. For that breach I impose a sentence of 21 days' imprisonment.

17. The second breach was that on 28 September 2021 at 1605, the defendant racially abused a process server instructed by the claimant, Mr. Atkinson, saying: "Fuck off, you Irish bastard". That was outside his home. Again, I am satisfied that meets the custody threshold. It is category B in terms of culpability and it caused category 2 harm. Again, Mr. Atkinson was entitled to go about his business without being spoken to in that manner. It was a clear breach of the injunction. Given the language used, it was more serious than the last breach and in my view, merits a term of 28 days' imprisonment.

18. The third breach was that on 21 December 2021 at 1435 the defendant was abusive towards a process server instructed by the claimant, again Mr. Christopher Atkinson, by raising his middle finger to him from the first floor window. Again, I am satisfied this meets the custody threshold. It meets category B culpability and caused category 2 harm. It merits a further sentence of 28 days' imprisonment. These are serious matters. Mr. Atkinson is entitled to go about his business without being treated in that manner.

19. The next allegation was allegation number 5 on the schedule before me. On 28 January 2022 at 1600 hours the defendant made abusive comments in Forest Road, Dudley about Kay Ward and Jane Aris. The comments made were: “Have you seen the witches? Can I smell a stench?” knowing that Kay Ward and Jane Aris would hear them. I heard both Ms. Ward and Ms. Aris give their evidence. I am satisfied that they were caused distress by those words. These are, as Mr. Lawal says, very similar to the allegations I found proved in the first set of proceedings. Again, I am satisfied the custody threshold is met. It meets category B in terms of culpability and category 2 in terms of the harm caused. Again, 28 days’ imprisonment, in my view, is the appropriate sentence for that.

20. The next allegation which I found proved was the sixth. In January 2022 the defendant abused Jason Boswell in Forest Road Dudley, calling him: “Angina man”. Mr. Boswell suffers from poor health. I heard him give evidence at the trial. That caused him distress, to have that said to him. I impose for that a sentence of 28 days, satisfied again that it meets the custody threshold, being category B in terms of culpability and category 2 in terms of the harm caused..

21. The next breach was on 1 February 2022. At 10.05, the defendant abused the partner of Kay Ward by calling him: “Dickhead” from the front window of his house in Forest Road, Dudley. I did not hear evidence from Ms. Ward’s partner but I heard it from her. She was distressed to know that her partner was being spoken to in that manner, understandably so. Again, I am satisfied that this meets the custody threshold. It is category B in terms of culpability and category 2 in terms of the harm which was caused.

22. The next allegation I found proved was on 1 February 2022. At 1044, the defendant abused Kay Ward from his front window in Forest Road, Dudley by saying: “Stop the germs and stench, stinky, filthy stench from out here, stinky cow”. Those were abusive comments, in my view. They were intended to cause harm and they did cause harm. I am satisfied, having heard Ms. Ward, that was the effect of being spoken to in that manner. Again, I am satisfied that it meets category B in terms of culpability and category 2 in terms of the harm which was caused and merits a sentence of 28 days’ imprisonment.
23. The next allegation found proved was on 3 February 2022. To give this some context, this is the day when Mr. Stead was arrested for the purposes of being brought to court for the purposes of sentencing as a result of the first set of proceedings to which I have already referred. The allegation I found proved was in the following terms. During his arrest by the police on 3 February 2022, after a warrant was issued by the court, the defendant said in Forest Road: “You can go and tell Jason now, I’ll give him another hiding”. That was aimed at Mr. Boswell, to whom I have already referred.
24. Now, during the course of his mitigation the point was made by Mr. Ricketts on Mr. Stead’s behalf, it was the first time he had been arrested. It was a matter of some shock to him. I have seen the video. I accept that Mr. Stead was concerned the handcuffs were too tight, albeit the police disputed that, at the time of the arrest. It was a period, I am sure, which was quite alarming and frightening for Mr. Stead. Nonetheless, the comments that were made were equally alarming to Mr. Boswell and totally unmerited. They were a clear breach of the terms of the order which had been made. That, in my view,

again meets the custody threshold. Category B in terms of culpability and category 2 in terms of the harm which was caused. It merits a sentence of 35 days' imprisonment.

25. The final breach which I found proved was on 20 March 2022. The point bears making by way of chronology, this is the first allegation which follows the making of the committal order in February in the first set of proceedings. The finding I made was as follows. At midnight the defendant sang abuse loudly from his landing window in Forest Road, Dudley: "Losers, losers, losers", knowing that it could be heard by Kay Ward. Again, I am satisfied that this is culpability B in terms of culpability and category 2 in terms of the harm which was caused and merits a sentence of 21 days' imprisonment.
26. I need to stand back and apply the totality principle to the sentencing exercise. I remind myself on the last occasion when I did that I concluded that a total sentence of eleven weeks' imprisonment was justified, suspending it for the terms of the remainder of the injunction. Having stood back and considered the terms of the injunction which were breached and the findings I have made, I am satisfied again that the totality principle requires me to impose a total sentence of eleven weeks' imprisonment.
27. I have had regard to the mitigation which was made on behalf of the defendant. I have also had regard, though, to the alarm that his conduct has caused his neighbours. I have also regard to the fact that no apology has been forthcoming other than the assurance that the defendant wants nothing to do with his neighbours.

28. As I said during the course of submissions, if this were a case where everybody was a tenant of the claimant, it may well be that possession proceedings would have followed, with a very different outcome. I am not to be misunderstood. Mr. Stead is entitled to live in the house where he lives. I am told it belongs to his wife and he is not required to remove himself from the property. Nonetheless, I have to impose a sentence which reflects what has happened and the reality that everyone is going to be living with one another in the future. I need to have regard to the sentencing observations made in the case of *Willoughby v Solihull* to ensure that this does not happen again. In my view, eleven weeks meets the totality principle.
29. I am satisfied, however, that it is appropriate to suspend the term of imprisonment, very much for the reasons I gave last time. I have regard to the defendant's age. He is 67 years of age, he is in his retirement. I have regard to his good conduct when he was working and the benefits he brought to people both in this jurisdiction and in jurisdictions overseas. For those purposes I am persuaded that it is appropriate to suspend the activation of this sentence for the duration of this order. It will be on the terms that the defendant complies with the terms of the original order made by HH Judge Boora.
30. I turn now to the application made by the claimant for an extension of that order. I made a point of listing that application after the determination of the contempt application. I wanted there to be no confusion between the contempt proceedings, when of course Mr. Stead had the right to remain silent (although he chose to give evidence), and the application to extend the life of the

injunction where very much he had the right to be engaged and to make submissions. He has made submissions through his solicitor today. He does not accept the necessity for the making of the injunction in the first place. I hope it is clear from the order I have made and the comments I have made during the course of this judgment that I disagree. It was very necessary for Judge Boora to have made this injunction.

31. Unfortunately, as the claimant points out, it does not until recently appear to have had the desired effect. As I have said, the only breach which has come before the court since the first set of proceedings before me is the one on 20 March 2022. That was the allegation of the abuse, singing loudly from his flat in circumstances where he knew Ms. Ward would hear it. That is the only breach since that date.

32. Nonetheless, each of the matters to which I have had regard and which have found to be proven have largely occurred within the first year of the life of this injunction. They have continued. I am very concerned by that. I remind myself that there has been no allegation of a breach since March of this year. Nonetheless, there are a number of breaches and irrespective of when they occurred, it persuades me there is a need to extend the life of the injunction. I am satisfied the injunction should be extended until 9 February, or whatever weekday it is, 2024. Armed with that starting point, I am satisfied the activation of this sentence should be suspended for as long as the order of HH Judge Boora now remains in force.

33. Mr. Stead is represented by Mr. Ricketts today. Nonetheless, it falls upon me to state that he has the right of appeal against the order I have just made. Any

appeal is to be made to the Court of Appeal within 21 days of the making of this order. The permission of this court is not required.

34. I shall also order that there be a transcript of this order in the usual way at public expense, which again in the usual way I shall direct be published on the Judiciary of England and Wales website.

JUDGE MURCH: Is there anything I did not deal with there or which requires clarification?

MR. LAWAL: Your Honour, just for my note, the sentence to be imposed for breach no. 7, was that 28 days?

JUDGE MURCH: Yes, it was. Was that not clear? I am sorry. So can the two of you draw up the order, please?

MR. RICKETTS: Your Honour, there was just one other factual inaccuracy, just —

JUDGE MURCH: Oh, I am sorry.

MR. RICKETTS: Not any major issue. I think you indicated that when Mr. Stead appeared before you on 4th February he was represented. He was not in fact, that was adjourned on that date to 22nd February and it was on 22nd February he was represented.

JUDGE MURCH: I am sorry, I thought you were there. Thank you.
