

**Before :**

**HIS HONOUR JUDGE MURCH**

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**CITIZEN HOUSING GROUP**

**Claimant**

**- and -**

**ANNIE HARLEY**

**Defendant**

**Ms Wilmott-Lascelles (counsel) for the Claimant**  
**The Defendant did not appear and was not represented**

Hearing date: 9 January 2023

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**NOTE OF JUDGMENT**  
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1. On 9 January 2023, I imposed sentence of 28 days imprisonment upon the defendant following her admitted breaches of an injunction made on 26 October 2021. The purpose of this note is to record the reasons for the sentence which I imposed. I have been told that there was a defect with the recording equipment on the day of the hearing, with the result that the transcribers have not been able to provide a transcript. This note records the sentence I imposed and the reasons for my having done so. I have prepared it from the notes I made immediately prior to and during the hearing for the purposes of giving an oral decision on the day.
2. The history of the proceedings was as follows. On 26 October 2021, the court made an order under the Anti-social Behaviour, Crime and Policing Act 2014. I shall refer to it as the Order. So far as was relevant to the matters before me, it was in the following terms:

“The defendant, Miss Annie Harley, must:

1. Leave any areas edged in red on the attached maps which includes Thomas King House, Paul Stacey House, Pioneer House and Hillfields House and their immediate surrounding areas (“the exclusion area”) within 15 minutes of being served with this order and, having done so, must not enter or remain in any part of the exclusion area.”

The Order was expressed to remain in force until 26 October 2023. A penal notice in the appropriate form appeared in block capital letters which were underlined. On the same day a power of arrest was attached to paragraph 1 of the Order.

3. I was satisfied that the defendant was personally served with a copy of the Order and power of arrest.
4. On 28 October 2021, following a breach of the Order, the defendant was sentenced to a term of imprisonment of 7 days suspended for 12 months. It was suspended on condition that the defendant complied with the terms of the Order.
5. On 20 September 2022, the defendant was arrested on suspicion of having breached the Order on 6 occasions. As was required by section 9(3) of the 2014 Act, she was brought before HH Judge Mithani KC. She was remanded into custody until an adjourned hearing on 28 September 2022. At that adjourned hearing, she was remanded into custody again until a further adjourned hearing on 4 October 2022. The matter came before HH Judge Mithani KC again on 5 October 2022. In an order made on that occasion, it was recorded that the defendant was content to proceed without legal representation and that she admitted each of the 6 breaches. The order noted that she had been on remand since 20 September 2022. Although His Honour did not in terms record that it was the reason for doing so, it is perhaps unsurprising that against that background, the defendant was released from custody forthwith, releasing her on bail on condition that she complied with the Order. The order of HH Judge Mithani on 5 October 2022 (being a hearing attended by the defendant) made clear that the matter was adjourned for sentencing on 9 January 2023. I am satisfied therefore that the defendant knew of the purpose of the hearing before me. I record that each of the hearings to which I have just referred took place in the County Court sitting at Coventry. I also record that it was not expressly a term of her bail that she attend court on 9 January 2023.
6. On 9 January 2023, the defendant did not appear before me. The matter had been listed for hearing in the County Court sitting at Nuneaton. I was concerned that the defendant might have gone to the County Court sitting at Coventry. Upon enquiry being made at my direction of the staff at that court, I was told that she had not done so.

7. I was of the view that I had the power to order that the defendant be arrested to be brought before me. I took the view however that given the sentence which I was likely to impose, particularly in the light of the time which had elapsed since the arrest with no further allegations of breach having been made, it would have been disproportionate to do so. While the breach of a court order is a serious matter, having regard to those matters and the fact that the defendant had not specifically been bailed to attend before me, I decided to proceed with the hearing.
8. I now record the breaches which the defendant had admitted at the hearing before HH Judge Mithani KC on 5 October 2022.

One	On 6 September 2022 at 18:59, she was present in Hillfields Village Square, being part of the exclusion zone.
Two	On 6 September 2022 at 22:50, she was outside the front of Thomas King House, being within the exclusion zone
Three	On 7 September 2022 at 18:16, she was at the corner of Wellington Street, within 100 metres of Thomas King House, being within the exclusion zone.
Four	On 13 September 2022 at 13:59, she was outside the front of Thomas King House, Wellington Street, on the corner of Thomas King House carpark, within 100 metres of Thomas King House, being within the exclusion zone.
Five	On 13 September 2022 at 16:55, she was in Hillfields Village Square, being part of the exclusion zone.
Six	On 20 September 2022 she entered a stationary vehicle on Yardley Street, being part of the exclusion zone. On being arrested and told she should not be in that area she replied: "I know, I am just getting a lift"

9. In approaching the question of penalties which I should impose following these admitted breaches of the Order, I had regard to the decision of the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631. I kept in mind that the objectives of sentencing for the breaches of an order made under Part I of the 2014 Act were (i) ensuring future compliance with the order, (ii) punishment and (iii) rehabilitation. Those objectives were to be considered in that order. The options open to me were (i) an immediate order for committal to prison, (ii) a suspended order for committal to prison, with conditions, (iii) adjourning the consideration of the penalty, (iv) a fine and (v) no order. I had in mind that custody should be reserved for the most serious breaches, and for less serious cases where other methods of securing compliance with the order have failed. In particular, I had in mind that a custodial sentence should never be imposed if an alternative course is sufficient and appropriate and that if I

decided to impose a term of imprisonment, that term should always be the shortest term which would achieve the purpose for which it is being imposed.

10. In considering the matter, I had regard to the guidelines set out in the Report by the Civil Justice Council dated July 2020 entitled “Anti-Social Behaviour and the Civil Courts”. This was because those guidelines were endorsed by the Court of Appeal in *Lovett*. This required me to consider in respect of each breach both the level of culpability on the part of the defendant and the level of harm caused by it. The levels of culpability were: A, namely high culpability being a very serious breach or persistent serious breaches; B, namely deliberate breach falling between A and C; and then C, being lower culpability consisting of minor breaches. The levels of harm were: 1, being where the breach caused very serious harm or distress; 2, being cases falling between 1 and 2; and then 3, being breaches causing little or no harm or distress.
11. With those points in mind, I reminded myself that the allegations which were admitted by the defendant were supported by witness statements prepared on behalf of the claimant. In turn, they made reference to matters upon which the claimant did not rely as amounting to a breach of the Order. I did not therefore have regard to those matters when considering the question of the appropriate penalty for each breach because given their nature, to do so might have led to me regard them as aggravating factors affecting the degree of harm caused. No such allegation of harm had been made. On no occasion was there evidence of a resident or person lawfully present in the exclusion zone suffering any adverse consequences as a result of the defendant being present. Had it been before me, such evidence might have been taken to be an aggravating factor affecting the degree of harm caused. I also had in mind that these were not the first breaches of the Order by the defendant, albeit that the previous one had been shortly before 28 October 2021, that is to say almost one year before the first breach with which I was concerned. Finally, I had in mind that there was no allegation that the defendant had committed any further breaches since the last one with which I was concerned. This meant that for over three months there was nothing to suggest that the defendant had not been complying with the Order.
12. I then considered each breach in turn having regard to the level of culpability and harm for each and then determining which penalty I should impose. In respect of the first, I was satisfied that it was culpability C and had caused level 3 harm. I determined that a sentence of 7 days imprisonment was appropriate. In respect of the second breach, I was satisfied that it was culpability B and had caused level 3 harm. I took the view that for this and for each of the remaining breaches, as they were not the first before me and indeed followed relatively quickly afterwards, I could no longer conclude that they met the requirements of culpability C. I had been satisfied that the defendant was aware of the terms of the injunction as she had already been before the court and received a suspended sentence of imprisonment. This led me to conclude that each successive

breach was deliberate but fell short of culpability A even if I had given the benefit of the doubt for the first of this most recent set. For the second breach, I imposed a sentence of 14 days imprisonment. For the third breach, I concluded that it met the requirements of culpability B and had caused level 3 harm. I imposed a sentence of 14 days imprisonment. For the fourth breach, I concluded that it met the requirements of culpability B, causing level 3 harm. I imposed a sentence of 14 days imprisonment. For the fifth allegation, having concluded that it had been deliberate so as to be culpability B, I concluded that the harm caused had no approached level 2. I had regard to the pattern which was emerging of breaches of the Order and on balance concluded that it could no longer be regarded as causing “no harm” as to do so risked overlooking the fact that an order of the court was being breached. Finally in relation to the sixth allegation, having concluded that it was culpability C, the comments made by her on arrest caused me to conclude that it caused level 2 harm. For each of the last two breaches I imposed sentence of 21 days imprisonment.

13. I then stood back and looked at the totality of the sentences I had imposed. This was a course of conduct within a relatively short period. The defendant had admitted the breaches on the fourth occasion she was brought before HH Judge Mithani KC. She was entitled to credit for that. She had also served some 15 days in prison while on remand pending that fourth appearance.
14. I concluded that the appropriate sentence was one of a total of 28 days. This meant that I was able to order that the defendant not serve any further time in prison. This followed from the time she had already served on remand. Given the time which had elapsed between the imposition of the suspended sentence and the first breach with which I was concerned, I further concluded that justice did not require me to activate the sentence of imprisonment which had been imposed on 28 October 2021. Given the time already served, I concluded that not only would there be no purpose in suspending the sentence which I had imposed, albeit with the aim of ensuring compliance with the Order, but that it would be unjust. I was also mindful that there had been no allegation of further breach since October 2022.
15. My order made clear that I was imposing a sentence of 28 days imprisonment but that having regard to the time already served, that the defendant would not actually be committed to prison. This was therefore an end to the matter.
16. Had the defendant attended court, as a result of CPR 81.8(7) I would have informed her of her absolute right of appeal to the Court of Appeal against my decision.