

IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH

Case No. J02EC747

Courtroom No. 9

The Gee Street Courthouse
29-41 Gee Street
London
EC1V 3RE

Tuesday, 14th March 2023

Before:
DISTRICT JUDGE BEECHAM

B E T W E E N:

ISLINGTON & SHOREDITCH HOUSING ASSOCIATION

and

WAYNE BOWEN

MR MAHON appeared on behalf of the Claimant
MS O'CONNOR appeared on behalf of the Defendant

JUDGMENT
(Approved)

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DJ BEECHAM:

1. This is a final hearing on the defendant's arrest for breach of an injunction order made in July 2022. The defendant's mother is a tenant of 57 Croyley Street, London, N1 7JB. The defendant is not a tenant of the property but he does live there. On 25 July 2022, by order of District Judge Pigram, the claimant obtained a without notice injunction with power of arrest, to remain in force until 27 July 2024. The order was made final on 27 July 2022. The order prohibited Mr Bowen from: using or threatening violence to any neighbour, staff of the claimant or contractors, and anyone engaging in lawful activity in the area; engaging in conduct likely to cause harassment, alarm or distress towards neighbours on Croyley Street, against the claimant's staff or contractors or anyone in the locality of the property; using threatening, foul, racist or abusive, derogatory language including body languages, gestures towards the same categories of people; engaging in conduct capable of causing a nuisance or annoyance towards any of the people that I have described as protected; possessing or consuming illicit drugs or substances within or outside the property, and, finally, at paragraph six, contacting neighbours Belinda Buckley, Paul Rathbone or any member of their household.
2. The matter before me relates to a first alleged breach of that order some six months later, on 18 February 2023, by reason of events that are now admitted by the defendant. This matter first came before the Court on the alleged breach in February. The Defendant indicated that he wished to defend the proceedings on the basis he was not aware of the injunction or its terms. It does not appear that he was, per se, denying the allegations but he was saying that he was not aware of the injunction. He was represented on that day. Perhaps, unsurprisingly, he is no longer pursuing that position, I suspect, although I have not been told, because when the police arrested him, they found the injunction on him. There is, certainly, plenty of evidence of it having been posted to the property and left at the property address before the incident in question. I say no more about that because the defendant accepts he was aware of the injunction prior to 18 February.
3. The allegations admitted by the defendant are as follows: he accepted through his counsel and expressly before me this morning that on 18 February, he was outside Croyley Street on the pavement and he was shouting racist abuse at number 55. He used the words, "Black, racist cunt", "A dirty racist", "This black woman here". He went on to say, "You want a race war, you got one", and, further, he said, "Watch me put in your windows". All of those abusive comments are admitted by him and I am invited, today, to sentence on the basis of that admission. I have seen witness evidence from Aisling Hodson, housing manager for the claimant, and a statement from Belinda Buckley, the resident, who came to court via CVP and then left when it became apparent that the allegations were not contested. However, she has certainly been inconvenienced by having to come to court via CVP this morning.
4. Given the admissions, I have heard from counsel for both sides. Both agree that, by reference to the Civil Justice Council, October 2022 Guidelines, this is a B2 category breach.
5. Mr Bowen has not made a witness statement either in relation to his admissions or in relation to any mitigation but his mitigation has been made through his counsel and he has directly said to me that he is very sorry for what he has done. His counsel, by way of further mitigation, says that this is a first breach. He has complied with the injunction since July until 18 February. Certainly, on the evidence that I have before me, that is the position that I must take. She tells me that he is a vulnerable individual, he has problems with alcohol, he has taken efforts to disassociate himself from the people with whom he drinks and he no longer

goes into pubs, I am told. I am told that he is not only sorry but he is ashamed. I am told that he is vulnerable because he has mental health issues. He suffers with depression and anxiety. I am told that he attempted suicide, including last year, when he took an overdose and was admitted to hospital. He has been a vulnerable adult and he has had engagement with Social Services, including in the last year, although he currently does not have a mental health or social worker. He has requested counselling through his GP but that is a slow and difficult process, I am told. I am told that in the past, he has been sectioned for self-harm, again, including last year.

6. I would add that I have not seen any medical evidence of this but it is consistent with some of the claimant's own evidence, in that in her first statement in the injunction proceedings, Ms Buckley averted to having knowledge of the defendant having mental health problems. I think she also averted to the fact that he may have been sectioned. Therefore, it is common ground that this is a gentleman who has had a history of mental health difficulties. I am also told, and, again, I have not seen medical evidence, but I do not have a particular reason to doubt, that he has some learning disabilities. He has been to special schools in the past. He is now 48 years old. It is further submitted that I should take into account that he has now admitted the allegations and spared Ms Buckley and the professional witness the discomfort of cross-examination. She submits that I should, because of the significant personal mitigation, move down from the starting point of a one-month custodial sentence. I am invited by her, in all the circumstances, to award a financial penalty but she submits that if I am minded to consider a custodial sentence, in the first instance, I am asked to indicate a potential penalty and adjourn sentence. This is all really based on the significant personal mitigation taken together with the length of time that has elapsed since the making of the injunction and this being a first breach.
7. Mr Mahon, on behalf of the claimant submits that I must have regard to the abhorrent language used and the significant distress that hearing such language must cause the victims of this type of behaviour. He says the custodial threshold is met in such a case and that I should consider an immediate custodial sentence, or, in default of that, a suspended custodial sentence to mark the Court's serious disapproval of this type of language and behaviour.
8. It appears that Mr Bowen is due to be in court in May on an aggravated public order offence, relating to this incident. My understanding of the law, and I will be corrected by counsel if I am wrong on this, is the fact that there are concurrent criminal proceedings does not prevent me from sentencing in the usual way and the Criminal Court will have regard to any sentence I make, just as I would have had regard to the criminal sentence if that had been the first in line.
9. Turning then, to my decision, I bear in mind that the objective of sentencing for breach is, first, punishment for the breach of the court order and second, to secure future compliance with the court order, and third, rehabilitation which is a natural companion to the second objective. Having regard to the Civil Justice Counsel Guidelines, I have no hesitation in agreeing with both counsel that this is a Category B2 offence. This is Category B: it is a deliberate breach falling between the most serious breaches and persistent breaches and the lower culpability minor breaches. The level of harm is certainly much more serious than "little or no harm", Category 3, but perhaps not as serious as the "very serious harm and distress", Category 1. Nevertheless, it is squarely within Category 2 and perhaps the upper part of Category 2. The defendant should be under no illusion that the Court takes with the utmost seriousness, these racially aggravated abuses.

10. Therefore, the starting point is a one-month sentence, and the category range is adjourned consideration to up to three months. There is some significant personal mitigation. First of all, there is some credit for admitting the breach today, albeit perhaps not the most credit that would have applied if the admission had been at the earliest opportunity, although I do note that it was never indicated that the allegations, themselves, were contested in terms of the abusive behaviour. Second of all, and highly germane is that this is a first alleged breach. That is some six or so months after the making of the injunction. I am aware that there are allegations in the background of previous misconduct on the part of Mr Bowen but I cannot have regard to that. It is the first formal breach before this Court and that is a perfectly proper submission made by Ms O'Connor.
11. The third relates to the personal mitigation of the defendant's situation and whilst I have not got medical evidence, the position that he has vulnerabilities and has had serious mental health problems. The Defendant's neighbour is aware of the mental health problems. It seems to me, clearly, there is vulnerability on his part. He accepts that he has a problem with drink and he is, I am told, taking some steps to address that. Of course, he has come today to say not only is he sorry but also that he is ashamed. That is all powerful mitigation.
12. On the other side of the coin, I balance the very serious admissions. The wording is absolutely abhorrent and cannot be condoned in a civilised society, whether drunk or not. The impact on Ms Buckley must have been extremely distressing, and her family. I bear that in mind as well. It seems to me that in light of everything I have described, the custody threshold is met because of the seriousness of the allegations. This is a B2 offence and the harm being towards the upper end of the harm in that category. The period of potential imprisonment should be the shortest possible, to serve the purpose of the objectives that I outlined at the beginning of my judgment. The starting point in the B2 category is four weeks. Setting the personal mitigation and the fact of this being the first breach against the seriousness of the admitted breach, it seems to me that they weigh in the balance to produce a result that is the starting point of the category, namely four weeks.
13. Nevertheless, I do take the view that because this is a first breach, in relation to an injunction made as long ago as July last year, and because of the personal mitigation put forward on his behalf by his counsel, and given that he has expressed remorse and that he has accepted responsibility today, the appropriate order is a suspended sentence. Accordingly, I will impose a four-week suspended sentence for this offence, the period of suspension to dovetail with the period of the injunction.
(the form of the order is then addressed)

End of judgment

Transcript of a recording by Ubiquis
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