IN THE COUNTY COURT AT SLOUGH

Case No. K02RG263

Courtroom No. 1

The Law Courts
Windsor Road
Slough
SL1 2HE

Thursday, 2nd May 2024

Before:
HIS HONOUR JUDGE RICHARD CASE

B E T W E E N:

ABRI GROUP LIMITED

and

OMONDI

MR T GALLIVAN appeared on behalf of the Claimant
THE DEFENDANT appeared In Person

JUDGMENT

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HHJ CASE:

1. This is my judgment in K02RG263. The claimant is Abri Group Limited and the defendant is Romeo Omondi. Abri Group are represented by Mr Gallivan of counsel and Mr Omondi represents himself. Mr Omondi has been assisted through the course of this hearing by a Swahili interpreter.
2. This is an application for Mr Omondi's committal for breach of an anti-social behaviour injunction. I am going to start by setting out the brief background. On 5 October 2021, Mr Omondi was granted an assured tenancy of Flat 5, Huddlestone House in Ascot by the claimant. That is said to be a one-bedroom flat on the second floor of a block of flats.
3. On 18 December 2023, the claimant made an application for an anti-social behaviour injunction against Mr Omondi together with a power of arrest under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014. On 19 December, District Judge Harrison gave directions in relation to that. The application had been for a without-notice hearing which District Judge Harrison had refused, and on 21 December, the claimant applied to set aside the order of District Judge Harrison and invited the Court to list a without-notice hearing.
4. On 4 January 2024, Deputy District Judge Shah granted an injunction as sought to last until 17 January 2024 and a power of arrest was attached to various of the terms. On 17 January 2024 the matter came before a different deputy district judge, Deputy District Judge Shaw, and the order of 4 January was continued until 2 January 2025. The terms of the injunction are as follows, Mr Omondi is:

> "(1) forbidden to enter Liddell Way in Ascot.
> (2) forbidden to use or threaten to use violence towards:
> a) any person engaged in lawful activity including residing, visiting or occupying Huddlestone House in Ascot;
> b) any member of the claimant's staff, agents or contractors.
> (3) forbidden from using or threatening to engage in conduct that causes or is likely to cause harassment, alarm or distress to any person mentioned in paragraph 2(a) or 2(b);
> (4) forbidden from using foul or abusive language including body language and gestures to any person in mentioned in paragraph 2(a) and 2(b);
> (5) forbidden from using, supplying, storing, smoking cannabis or any other illegal controlled drug as defined under the Misuse of Drugs Act 1971 inside the property or the area".

5. Pausing there, the property being Flat 5 and the areas being those shown on a plan attached to the injunction together with Flat 5:

> “(6) forbidden from allowing any person in the property in possession of or under the influence of psychoactive substances as defined by section 2 of the Psychoactive Substances Act 2016;
> (7) forbidden from having any visitors to Flat 5, Ascot, save for medical professionals, persons working in an official support capacity, the claimant’s officers, staff and contractors or anyone that the claimant has confirmed in writing to the defendant is permitted to attend the property. In any event, having no more than two visitors at any given time;
> (8) forbidden from causing nuisance or annoyance to any person mentioned in paragraph 2(a) and 2(b). For the purpose of this order ‘nuisance’ and ‘annoyance’ includes any conduct that includes or is likely to cause inconvenience, offence or trouble or injury to anyone whether directly or indirectly”.

A power of arrest was attached to paragraphs one, two, three, five, six and seven.

6. On 21 June 2024, that order was personally served on the defendant. On 23 February 2024, at 11.59am, the defendant was arrested on suspicion of breach of the order and was brought before HHJ Auerbach on 24 February 2024 at 12.35pm. HHJ Auerbach was obliged to release the defendant from custody he having been arrested more than 24 hours before he was brought to court.

7. On 27 February 2024, the claimant made an application for committal for contempt in form N600 alleging various breaches. On 7 March 2024, that application came before Deputy District Judge Child who gave directions, listing the matter on 27 March and giving directions for service of the application. On 14 March 2024, the defendant was arrested on suspicion of further breach of the order and on 15 March, within the 24-hour period required, was brought before District Judge Nicholson. District Judge Nicholson remanded the defendant in custody and listed the matter to be heard on 22 March and gave permission to the claimant to amend the contempt application that had already been made on 27 February 2024.

8. The application in its original form was personally served on the defendant on 15 March 2024. The amended contempt application was personally served on 20 March 2024. There was a hearing before me on 27 March 2024 and I dismissed the defendant’s application for bail and remanded him in custody until 4 April. On 4 April, I further remanded him in custody to 8 April which was listed as the final hearing of the amended contempt application. I gave a direction for the bundle and skeleton argument to be served on the defendant in prison by tracked delivery by 12.00 noon on 5 April which was the working day immediately preceding the final hearing which was listed on the Monday.

9. On 8 April. The defendant was produced at East Berkshire Magistrates' Court for an in-person hearing. It was not possible to complete the final hearing on 8 April, principally because the defendant had not read large parts of the bundle. With the assistance of the interpreter who attended on that day, he was taken through the relevant parts and it was translated to him. Because it was not possible to complete the hearing on 8 April, I adjourned the final hearing to a second day on 24 April at High Wycombe Magistrates' Court. I remanded the defendant in custody for a further eight days. The matter then came back before me on 16 April to reconsider remand and the defendant was further remanded to 24 April when the second day of the final hearing was to take place.

10. On that day, the defendant was produced at court from prison but it was not possible to produce him in court from the cells as a result of his violent behaviour as was reported by members of the custody staff. Because it was not possible for him to be produced in court, it was not possible for any substantive progress on the final hearing to be made and it was necessary for me to consider remand in his absence. Accordingly, I remanded him in custody but listed a hearing the following day to take place by video, that hearing to consider whether a further adjourned day of the final hearing should be in person or remote given the events of 24 April.

11. At the hearing on 25 April, I further remanded the defendant to what would now be day three of the final hearing on 29 April and having heard representations from Mr Omondi, determined that by reason of his behaviour on 24 April, thereafter, the final hearing should proceed fully remote by video. On 29 April, what was to have been the third day of the final hearing, the defendant was not produced until 3.00pm. The reason for that was the production order that I had made on 25 April for him to be produced by video had not been sent to the prison. The prison was able to produce him later in the day at short notice.

12. In order to make best use of what was left of the day, the defendant started to give evidence, the claimant's evidence having been heard on day one back on 8 April. The defendant gave evidence having been advised by me that he was not required to give evidence but he may do if he wished to. At the end of that third day, he made a further application for bail which I refused and I remanded him in custody to today, 2 May 2024. I also listed a further two days, that is today, 2 May and tomorrow, 3 May, to ensure that there would be sufficient time even with possible difficulties with producing the defendant to complete the final hearing.

13. Insofar as the law is concerned, I remind myself of a number of important principles. First of all, in *Wigan Borough Council v Lovett* [2022] EWCA Civ 1631, at paragraph 25, the Court of Appeal stated:

> "Breach of an order made under Part 1 of the 2014 Act is dealt with by proceedings for contempt of court. There are no special rules related to proceedings for breach of orders under the 2014 Act and the general provisions governing such proceedings apply. They are CPR Part 81".

14. In this application, the claimant bears the burden of proving to the criminal standard the breaches that are alleged. That is, they have to satisfy me beyond reasonable doubt or I have to be satisfied so I am sure that the allegations which are made are proved. The defendant has the opportunity to give evidence, written and/or oral if he wishes to do so. If he refuses to do so, the Court can draw adverse inferences. If the defendant does give evidence, he may refuse to answer questions the answers to which might tend to incriminate him of a criminal offence. Mr Omondi decided to give oral evidence. Whilst I had given him permission to file a witness statement, he had not taken up that offer. In the course of his oral evidence, on two occasions, he refused to answer a question on the basis that the answer might tend to incriminate him, they related to drug use.

15. I also remind myself more generally that:

> "Findings of fact in these cases must be based on evidence including inferences that can properly be drawn from the evidence and not on suspicion or speculation…
> When considering cases, the Court must take into account all the evidence and furthermore, consider each piece of evidence in the context of all the other evidence. The Court invariably surveys a wide canvas. A judge in these difficult cases must have regard to each piece of evidence to other evidence and to exercise an overview of the totality of the evidence in order to reach the conclusion whether the case put forward has been made out to the appropriate standard of truth".

16. I am reading an extract, with some parts of the paragraph omitted, from the judgment of Baker J as he was, in *Re L and M (Children)* [2013] EWHC 1569 (Fam). The observations of Baker J in that case are as relevant to this case as they were to that which was before him on that occasion. I also remind myself that a witness's recall is not fixed. CPR Practice Direction 57AC Appendix paragraph 1.3 states that:

> "Human memory:
> (a) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time; but
> (b) is a fluid and malleable state of perception concerning an individual's past experiences and, therefore;
> (c) is vulnerable to being altered by a range of influences such that the individual may or may not be conscious of the alteration".

17. Frequent recall may corrupt or change the original memory; a fact that a witness may be wholly unaware of and from which it is not necessarily the case an adverse inference can or should, therefore, be drawn.

18. I am also entitled to rely upon hearsay evidence pursuant to the Civil Evidence Act 1995. Section 4 provides as follows:

> "Consideration is relevant to weighing of hearsay evidence:
> (1) In estimating the weight if any to be given to hearsay evidence in civil proceedings, the Court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
> (2) Regard may be had, in particular, to the following:
>   a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>   b) whether the original statement was made contemporaneously with the occurrence or existence of the matter stated;
>   c) whether the evidence involves multiple hearsay;
>   d) whether any person involved had a motive to conceal or misrepresent matters;
>   e) whether the original statement was an edited account or was made in collaboration with another for a particular purpose;
>   f) whether the circumstances in which the evidence is adduced is hearsay or such as an attempt to prevent proper evaluation of its weight".

19. I also direct myself to the words of Macur LJ in *Re A* [2021] EWCA Civ 451, reading from paragraph 54:

> "54. That a witness' dishonesty may be irrelevant in determining an issue of fact is commonly acknowledged in judgments...In formulaic terms:
> 'that people lie for all sorts of reasons including shame, humiliation, misplaced loyalty, panic, fear, distress and emotional pressure and the fact that somebody lies about one thing does not mean it actually did or did not happen and/or that they have lied about everything'.
> But this formulation leaves open the question how and when is a witness's lack of credibility to be factored into the equation of determining an issue of fact. In my view, the answer is provided by the terms of the entire *Lucas* direction as given, when necessary, in criminal trials.
> 55. Chapter 16-3, paragraphs one and two of the December 2020 Crown Court Compendium provides a useful legal summary:
> (1) 'A defendant's lie whether made before the trial or in the course of evidence or both may be probative of guilty. A lie is only capable of supporting other evidence against D if the jury are

> sure that: (1) it is shown by other evidence in the case to be a deliberate untruth i.e., it did not arise from confusion or mistake, (2) it relates to significant issue, (3) it was not told for a reason advanced by or on behalf of D or for some other reason arising from the evidence which does not point to D's guilt.
>
> (2) The direction should be tailored to the circumstances of the case but the jury must be directed that only if they are sure that these criteria are satisfied can D's lie be used as some support for the prosecution case but that the lie itself cannot prove guilt'".

20. For completeness, I have also reminded myself of the case of *Wookey v Wookey* [1991] 3 All ER 365. I need only read from the first part of the headnote as follows:

> "Held: the fact of disability was not itself a bar to the granting of an injunction against the person suffering under a disability. However, in the case of mental incapacity, the question was whether the person suffering under that disability understood the proceedings and the nature and requirements of the injunction. Where the person against whom the injunction was sought was incapable of understanding what he was doing or that it was wrong, an injunction ought not to be granted because he would not be capable of complying with it and the injunction would not have a deterrent effect and furthermore, any breach by him would not be subject to effective enforcement proceedings since he would have a clear defence to an application for committal to prison for contempt".

21. Having set out the law, I turn to briefly summarise the evidence. Within the trial bundle I have considered the application for an injunction, the witness statement of Ms Susan Sorce dated 18 December 2023, the injunction and the power of arrest which I have already referred to, an affidavit of Ms Sorce dated 29 February 2024 in support of the committal application including exhibited witness statements of PC Sophie Beaumont dated 5 February 2024 and 20 February 2024, PC Madelene Dudley dated 5 February 2024 and PC Jack Hynard dated 23 February 2024. I have also considered a statement of Ms Sorce dated 19 March 2024 including exhibited statements of PC Mackenzie dated 14 March 2024 and PC Brancato dated 19 March 2024.

22. At the close of the claimant's case on day one of the final hearing, I gave permission to rely upon those witness statements. I heard oral evidence from Ms Sorce and PC Hynard on day one and from the defendant today, day four. The defendant has had the assistance of an interpreter. The language being interpreted is Swahili. The interpreter assisted with reading parts of the bundle to Mr Omondi on day one and with translating parts that were not understood and interpreting occasionally in the course of the submissions that were made that

day. The interpreter today has occasionally assisted Mr Omondi as he required it when giving evidence.

23. Turning to an analysis then of each of the breaches alleged, there are four and they are set out in an amended schedule of allegations that accompanied the amended application for committal. I am not going to read out each of them now but will in turn as I come to consider them. Before doing that, there is some general evidence that is relevant to the matters raised in *Wookey*. At page 151D of the bundle, in the witness statement of Ms Sorce dated 19 March 2024 at paragraph 5(f), she says this:

> "The defendant's psychiatrist advised that he has a good understanding of the consequences of his behaviour and that the defendant can travel and be supportive with his mental health as he remains open to him".

24. I have had the benefit of seeing Mr Omondi on a number of occasions and including his cross-examination of the claimant's witnesses and his evidence today. I am satisfied from that, together with the evidence that Ms Sorce reports from the defendant's psychiatrist that the defendant was able to understand the terms of the injunction at all material times.

25. Of the allegations then, I will take the second first of all. That is that on 21 February 2024, the police advised that they received information from an informant of multiple visitors and drug dealing from the property and the door buzzer was being pressed throughout the night with a woman's voice from the property answering the buzzer. I read that from the schedule of allegations at page 30, paragraph 2.2. The claimant says that that incident amounts to a breach of paragraph seven of the injunction; that is to say the prohibition on having visitors to Flat 5, Huddlestone House, Ascot and also says that I can infer from the fact of the complaint to the police that the behaviour had caused harassment, alarm or distress and was, therefore, in addition, a breach of paragraph three of the injunction of prohibition on using or threatening conduct that causes or is likely to cause harassment, alarm or distress.

26. The evidence in support of that allegation is extremely limited. It, on the claimant's side, amounts to this: in the affidavit of Ms Sorce at paragraph 5.2, she sets out verbatim, the allegation that I have just read out. When the defendant gave evidence, he said this in respect of the allegation:

> "There's been multiple visitors. Always multiple visitors but no one coming to my flat to drug deal. They come to visit me. I need lifts to places after my carers have withdrawn my care".

27. That evidence is, of course, an admission of visitors coming to the flat but it is not an admission that they went to the flat as a matter of fact on 21 February 2024 as appears to have

been alleged. When he was cross-examined on that allegation by Mr Gallivan, Mr Omondi said he could not remember the date. It was put to him that:

> "It's not your case it didn't happen? You're saying you don't remember?".

28. The answer was "I don't remember". The allegation itself is ineptly drawn. It is an allegation of the police advising that they had received information about visitors and dealing at the property. It is not an allegation that that is actually what had happened. In any event, apart from Ms Sorce's evidence which is multiple hearsay evidence reporting that which the police reported they had had reported to them, there is nothing in support. I find that notwithstanding Mr Omondi's somewhat vague admission that visitors had come to the property, there is insufficient evidence to be satisfied that people were at the property on 21 February 2024 as it might be possible to construe this allegation as alleging. Accordingly, I do not find that second allegation of breach to have been proved to the necessary standard.

29. The third allegation is that on 23 February 2024, the police received a call in the morning from an informant of loud music and visitors at the property. The police attended the property and found a young woman hiding in the wardrobe. This woman is not known to the claimant and it had not given the defendant written permission to the defendant to have her in the property. The defendant was arrested for breach of the injunction. The claimant alleges that that is a breach of paragraph seven of the injunction prohibiting visitors and also paragraph three, harassment by reason of the loud music again, it being necessary to infer that there had been harassment because of the fact of a complaint about the same to the police.

30. The evidence in support of that allegation is slightly more extensive than that in relation to the second allegation. In Ms Sorce's affidavit, there is again, a verbatim copy of the allegation itself. In the witness statement of PC Hynard at page 149 of the bundle, the following evidence is given:

> "On 23 February 2024, I was on duty in full uniform…at around 11.15 hours we were asked by duty sergeant 2240 Smith to make towards an address in Ascot after it had been reported that the occupant was currently breaching an injunction order".

31. The statement continues:

> "Omondi answered the door to the other officers. I, therefore, went back inside and Omondi reluctantly allowed us inside to check his address after we explained that it was reported that he was breaching his injunction order. PC Taylor then went into the first room on the right-hand side and almost immediately found a female hiding inside of the wardrobe. I, therefore, brought up a copy of the injunction order on

> my phone and explained to Omondi that her being within the address was a breach of condition seven of the order as this prevented him from having any visitors. I then arrested Omondi".

32. When the defendant gave evidence, he said:

> "The woman hiding in the wardrobe was a friend who was scared. She came to help me out as I had a mental breakdown. I did not know what was happening. I left her in the living room or bedroom and she hid in the wardrobe, banging at the door. When I opened the door, I saw the police".

33. This amounts to an admission specific to the allegation that a visitor was found in the wardrobe. I am satisfied, therefore, on that admission that the allegation that there was a visitor to the premises unauthorised by the claimant on 23 February is proved to the criminal standard. The claimant invites me to infer the further breach of paragraph three by reason of the music. Again, the allegation is poorly drafted. It is an assertion that the police were called about the loud music, not that there actually was music. I do not find I can draw the inference that distress must have been caused from that multiple hearsay evidence. In those circumstances, I am not satisfied to the criminal standard that there was in relation to that allegation a breach of paragraph three.

34. Allegation four is set out at paragraph 2.5 of the schedule of allegations at page 31 as follows:

> "On 14 March 2024, the defendant was arrested for breach of the injunction by the police for having males who were then searched under section 23 of the Misuse of Drugs Act. This was due to the smell of cannabis within, persons being present with heavy, glazed eyes and what looked like the remnants of smoked spliffs on the coffee table".

35. The claimant alleges that that demonstrates a breach of paragraph seven of the injunction not to have visitors at the premises. I do not, as I understand it, believe that the claimant seeks to persuade me that there is a further breach in respect of supplying, storing or smoking illicit drugs or permitting anybody in the property to be in possession of or under the influence of illicit drugs. Were that to have been the claimant's case, again, I would have found that given the poor drafting of the allegation, that could not have been proved.

36. The written evidence in respect of that allegation is to be found in the statement of PC Alex Mackenzie at page 151G of the bundle. That records on 14 March 2024 that he or she was on duty and requested to attend Flat 5, Huddlestone House, Ascot. On arrival at 18.40, an enforcer was used to enter the property and once inside, Mr Omondi was found to be present together with three other males. Mr Omondi was arrested. Other evidence is given about the

possession of drugs but for the reasons I have just given, I do not understand that forms part of the alleged breach of the injunction.

37. When the defendant gave evidence, he said:

> "That is also another day I had a mental breakdown and my friends decided to pass by and the police found people in my house".

38. Again, as with the third allegation, I find that that is a specific admission of the allegation on 14 March. Accordingly, I am satisfied to the criminal standard that the claimant has proved there were visitors present whose presence they had not authorised and accordingly, have proved a breach of paragraph seven of the injunction.

39. I turn, now, to deal with the first allegation. The allegation is set out in the schedule at page 30 of the bundle. Paragraph 2.1 reads as follows:

> "On 5 February 2024, at approximately 05.30am, the police were called to the property where the defendant had hired an escort to provide a sexual service for him within his property. The defendant did not have enough money to pay for the escort service so it is alleged that he pushed the escort into his bedroom and locked her in, preventing her from leaving the property. The escort was distressed and asked the defendant to let her leave the property but the defendant punched her in the stomach and held a pair of scissors to her throat threatening to kill her. The escort managed to contact a friend via her mobile phone who arrived at the property. A disturbance broke out and the police attended. When the police officers arrived at the scene, there was blood on the wall in the hallway of the property and a large amount of blood by the front door. There were used condoms within the property and white power lined up on the side believed to be cocaine. The escort was located locked in the bedroom of the property and the defendant was found naked with an injured eye.
> The defendant was arrested at the scene for possession of a knife blade, assault and false imprisonment. He was later bailed until 17 April 2024 with conditions not to contact any parties or witnesses involved".

40. The claimant alleges three breaches: firstly, a breach of paragraph two of the injunction, that is the use or threatened use of violence towards a lawful visitor, paragraph three, that is using or threatening to engage in conduct likely to cause harassment, alarm or distress and paragraph seven, having visitors not authorised by the claimant.

41. The evidence in respect of this allegation forms the bulk of the relevant evidence both in the bundle and given orally. PC Sophie Beaumont in her statement dated 5 February 2024, that is to say, the day on which the allegation is said to have happened which is relevant to the consideration of the weight to be attached to this hearsay evidence says as follows:

> "On Monday, 5 February 2024, I was on duty…We were deployed to an address on Queen Street in Ascot following multiple calls that an IC3 male was in possession of scissors and was trying to force his way into Flat 5…One of the calls to the police was from a female escort at that address who stated he was threatening her and not allowing her to leave the property. The male that lived in this flat was an IC3 male called Romeo.
> When we arrived on scene, lots of members of the public were directing us towards Flat 5 and I could hear shouting coming from outside and within the flat. There was an IC2 female and two IC4 males stood at the front door so I shouted at them to move away from the front door and get onto the floor which they did. I then made my way into the flat where I could hear a female screaming from within one of the rooms. She was unable to open this door. A completely naked IC3 male then presented. I challenged him with my taser to get onto the floor which he did. I then cleared the flat to make sure there was no one else inside. The IC3 male confirmed to me that his name was Romeo and the three persons outside of the address stated that he was the one that had been in possession of scissors. The three of them were searched under section 1 PACE and no weapons were recovered from them. The female within the flat had been locked in the bedroom and once the door had been breached, she confirmed that she had been locked in the room and also threatened with scissors by the IC3 male…The three outside of the address were friends of the female that had been imprisoned within the address and they had attempted to help her.
> Romeo had a laceration to his left eye…He did not confirm how he had obtained these injuries".

42. She prepared a subsequent statement dated 20 February in which she says:

> "The female locked within the bedroom of the address was locked in there by the IC3 male, Romeo that I arrested. She did not lock herself in the room. She was locked in there by Romeo and held against her will".

43. PC Madelene Dudley in her statement dated 5 February 2024 (again, noting the same day as the alleged incident) gives written evidence as follows:

> "An armed unit has come upstairs and forced the door open. Inside was a female called [redacted]. Has been crying and panicking behind the door. I have gone into the room and asked her to sit on the bed and try to calm down. She has told myself and PC Lalik 8372 her details and that she is an escort. She explained that she has met Romeo today as he wanted an escort. Romeo owed [redacted] £200 for 35 minutes. Romeo only had £110. She explained that during the time Romeo had paid for, he was just taking cocaine and rolling weed so the time that he paid for ran out. She has gone to leave after 20 minutes as this is all he paid for. Romeo has then punched her in the stomach, pushed her into his bedroom and said 'I am drug dealer and a black man. I can do what I want'. At this point, her has got naked and then tried to take

> [redacted's] clothes off. She has told him 'No'. She has then shut the bedroom, taken the handle off and put something in the lock to stop her from being able to open the door. [Redacted] has then messaged her friend saying she needs help. She has then considered jumping out of the window but realised it was too high".

44. There is no mention within PC Dudley's witness statement of a threat to the victim sex worker with the pair of scissors. That is mentioned in PC Beaumont's statement. PC Dudley also seems to have confused pronouns at page 146. However, I am entirely satisfied that is an error on the part of the officer when I look at the broader context. The statement says, "At this point, her has got naked and then tried to take [redacted's] clothes off". That phrase is grammatically incorrect unless it is read as, "At this point, he has got naked". The victim's name coming after "…and then tried to take…" must mean the first person being referred to is the defendant, not the victim sex worker.

45. The next sentence, "She has then shut the bedroom, taken the handle off and put something in the lock to stop her from being able to open the door", cannot be correct as it would read as the victim shutting herself in and putting something in the lock to stop herself getting out. It only makes sense if it is read as "He has then shut the bedroom…to stop her from being able to open the door" or "She has then shut the bedroom…to stop him from being able to open the door". The latter of those two alternatives requires a substitution of "him" in place of "her" whereas the former only requires a substitution of "he" in place of "her", i.e., removing the letter "r". On balance, that seems more likely but, in any event, when read with PC Beaumont's second statement which makes clear "She did not lock herself in the room", I am satisfied beyond reasonable doubt that the first of the two options is how the statement of PC Dudley was intended to be read. In other words, in summary, PC Dudley is recording that the sex worker reported to the officer that Mr Omondi got naked, tried to take the sex worker's clothes off and then Mr Omondi shut her in the bedroom, took the handle off and put something in the lock to stop the sex worker from being able to open the door. The sex worker then messaged her friend saying she needed help.

46. When the defendant gave his evidence-in-chief, having described to me the process of engaging the sex worker, he went on as follows:

> "Me refusing to pay and her saying I should pay, that really got to me. I said 'Hand me the money' as I'd paid her. She got aggressive about it and said not giving me the money because been there for 30 to 60 minutes. I was like 'That's not possible been there that long and not rendered the service'. I said 'Please call the driver and explain'. That was the pimp. I asked to talk to the pimp. The pimp came in banging

> on the doors. When I heard the door being banged, I picked up my scissors because he was being aggressive saying 'I will kill you'. They spoke. The lady and pimp spoke to each other in a different language. I went to the door holding onto the door, blocking access and the lady was 'Let me out, let me out', so I was a bit confused. I got onto the phone to the police.
> Woman tried to grab the scissors and she wasn't successful so she went back to the bedroom and locked herself in the bedroom and my bedroom had no door handle. So, she locked herself in and I was outside trying to hold the door from the pimp, trying to get into the door and that's when the police arrived and I was arrested".

47. That evidence is an admission of a breach of paragraph seven, that is visitors to the property not authorised by the claimant. I find that element of the allegation proved beyond reasonable doubt. It is also an admission on the part of the defendant that he refused to let the sex worker leave the flat. I will return to the relevance of that in a moment.

48. There is a dispute about the use or the threat of use of violence; that is whether there is a breach of paragraph two of the injunction and whether the defendant engaged in conduct likely to cause distress; that is a breach of paragraph three of the injunction. The use or threat of use of violence is likely to also be conduct likely to cause distress. However, the converse is not necessarily the case.

49. I turn to consider then whether the allegation of the use or threat of use of violence is made out to the criminal standard. The defendant accepts that the situation "really got to me". He accepts picking up the pair of scissors. He accepts blocking the front door and the sex worker saying "Let me out". He accepts he was "a bit confused". That evidence, to some degree, matches that which is alleged by the claimant. The confusion which the defendant spoke about in his evidence-in-chief was highlighted when he was cross-examined today. He spoke about the scissors. Having said in his evidence-in-chief that he picked them up with the sex worker present, there was then this exchange in cross-examination:

> Q: "Then you said that after you went to the door to block access to the pimp, you called the police and the woman tried to grab scissors and locked herself in the bedroom?".
> A: "Yes".
> Q: "Who was she taking them from?".
> A: "From me".
> Q: "You went to the door with a pair of scissors before she was leaving?".
> A: "No. She locked in the bedroom and then I grabbed the scissors".

50. In other words, a different order of events was adopted by the defendant in part of his evidence in cross-examination from that which he had given in his evidence-in-chief. However, a little later on in the course of the cross-examination, there was the following exchange:

> Q: "What was the protection of you being at the door?".
> A: "He was kicking it. I was using my energy. My right shoulder on the door. Left hand on the other wall. That's why there was blood".
> Q: "Why would there be blood?".
> A: "Lady sliced my eye with scissors that I was holding".
> Q: "How did the blood get on your hand?".
> A: "I touched my eye".
> Q: "How could she have sliced your eye as she never got the scissors?".
> A: "Before she went to the room".
> Q: "How, if she never got the scissors?".
> A: "When we were at the door, I was holding them and she was trying to grab it from me. Everything is coming back to life".
> Q: "You previously said that she was in the bedroom before you got the scissors?".
> A: "If I said that, I was wrong".

51. In other words, the defendant has given two different versions starting from the version where the sex worker was present when he had the scissors through to her not being present when he had the scissors and reverting eventually back to saying she was present and that is how he came to be injured and there was blood on the wall.

52. There were other elements of his evidence, particularly in cross-examination, that demonstrated a poor recall of the incident by the defendant. The defendant remembered paying the sex worker in the hallway but could not remember whether that was as she was leaving or at some other time. There was this exchange:

> A: "I'm not so clear in my recollection. It's been a while".
> Q: "And you'd been taking some drugs?".
> A: "Do I have to answer?".

53. I intervened:

> "No, because it might tend to incriminate you but it might assist me. It's a matter for you if you answer".
> A: "I choose not to answer but if you really want the answer, I was under the influence and had been drinking".

54. I intervened again:

> "We don't need to know what it was but you're saying that something has caused your recollection to be affected?".
> A: "Yes".

55. There was then a series of questions about the reason that the sex worker was leaving without having provided the service the defendant says that he had agreed with her. It was put to him that the time that he had paid for had been used up by him, the defendant, taking drugs. The exchange went as follows:

> Q: "When the sex worker arrived, you gave her some money but that was only sufficient for a period of time. Twenty to thirty minutes?".
> A: "Okay, yeah, if you say so".
> Q: "You paid her and you took cocaine and marijuana and the period you had paid for ran out before the service you were anticipating?".
> A: "Why would there be used condoms?".

56. I then intervened to ask a series of questions:

> Q: "Condoms plural, as in more than one?".
> A: "Yes, I think two or one. I don't remember. She switched them up".
> Q: "What do you mean by that?".
> A: "I don't know".
> Q: "Did she change the condom halfway through giving you a blowjob?".
> A: "I think when put in your mouth, it tastes different".
> Q: "How was there more than one condom if only one blowjob?".
> A: "I didn't say there was only one blowjob".
> Q: "Well, how many were there in the 20 to 30 minutes?".
> A: "I don't know but it was a continuous event".
> Q: "How many times did you experience an orgasm?".
> A: "I don't remember to be honest. I don't think I did to be honest".
> Q: "So, how did there come to be more than one used condom?".
> A: "Let me speak in Swahili".

57. The defendant then spoke in Swahili which was interpreted with this answer:

> A: "While she was doing the blowjob, the condom came out and she changed it to another one. My dick went down and she had to switch it up".
> Q: "She had to put your penis in another condom?".
> A: "Yes, as far as I can remember. I'm not really sure".
> Q: "Why not tell me that when I was asking about why there was more than one condom?".
> A: "That's as far as I can remember. I'm not sure".

58. Beyond there being very significant uncertainty in Mr Omondi's recall of matters which I would have expected a recall of, there were parts of his evidence that lacked credibility. When he gave evidence in cross-examination that the sex worker wanted to leave, he initially said he would rather she left than he paid her more money. However, he then said he was walking

her to the door when she went to the lavatory instead. He could not explain why, if she wanted to leave, she would then decide to go to the lavatory. He then said at the door, the door was partly open and the sex worker was leaving when he, Mr Omondi, saw someone coming with a bladed article, bigger than a knife but smaller than a machete and so he shut the door. This quite startling evidence of what transpired on that early morning was not evidence which he gave in-chief. Apart from that, it seems unlikely, given that on his evidence, he would have had to close the door on the sex worker who wanted to leave and whom he was escorting out in order to stop the person who had come to rescue her.

59. His evidence about the sex worker being locked in the bedroom also lacked credibility. He said that she shut the door and was locked in because there was no handle on the door but he did not let her out with a piece of wood which is what he said he would have used on the broken door latch normally because:

> "If I left the door, [i.e., the front door], the guy would have stormed in and seen her locked in and would think I locked her in".

60. One might have thought that letting the sex worker out, allowing her to leave, would have solved the problem of the angry man at the door who had come to rescue her.

61. Similarly incredible is the evidence that the defendant gave that notwithstanding the police attended and that they told the man at the door to lie down, the defendant did not think to report to them that that person had been attempting to break his door down and had a large knife about his person, quite apart from the unlikelihood of the police failing to discover that for themselves, noting that the evidence of PC Beaumont was that they were searched and no weapons were found. The defendant's explanation for not having reported it to the police officers was that he was "in another world".

62. The sex worker herself has not given evidence either in writing or orally. I have not heard from any of the police officers relevant to this incident but I do have their written statements. As I have already observed, those statements were prepared, at least in their initial form, on the day of the incident save for the subsequent correction of PC Beaumont's. No evidence is before me that either of those two officers were motivated in any way to fabricate that written evidence. There is no evidence that those statements were an edited account or made in collaboration with another person or for a particular purpose.

63. The claimant could have attempted to call those officers to give direct evidence in court. The evidence involves multiple hearsay in the sense that the police officers are reporting that which they were told by the sex worker. However, balancing all of those matters as I must, and

weighing that evidence with its admitted limitations against the evidence which the defendant has given me and which I have found lacks credibility in many respects, I have little difficulty in accepting the police officers' evidence. On the defendant's own admission, he was refusing to allow the sex worker to leave the property whilst he was holding a pair of scissors, there having been an altercation about money which made him cross. Accordingly, I find, beyond reasonable doubt, that the defendant engaged in conduct likely to cause distress; that is preventing the sex worker from leaving the flat.

64. As to the use or threatened use of violence, on the defendant's own case, he says that the sex worker went to the bedroom and locked herself in. It is not clear on his evidence if she meant to lock herself in or if she closed the door not realising there was no door handle. However, the mere fact of her going to the bedroom and removing herself from the defendant's presence tends to suggest that she was in fear of something. Otherwise, it is more likely that she would have remained near the front door trying to leave or calling the police for assistance or communicating with the person on the other side of the door who had come to rescue her. I am satisfied, therefore, beyond reasonable doubt, that there must have been some threat to her. That would be consistent with that which the police officers in the hearsay evidence have reported. I find that evidence credible when taken with the admissions that I have referred to on the part of the defendant and the lack of credibility that I have gone through on the part of the defendant.

65. However, the evidence of her being threatened with a pair of scissors is inconsistent. PC Dudley reports her saying she had been punched in the stomach without mentioning scissors and PC Beaumont does not mention the punch but does mention that she was threatened with scissors. That said, the defendant's evidence about the scissors is inconsistent. I have gone through that. The allegation of him threatening the sex worker with the scissors would be consistent with, as the defendant says, the sex worker injuring him with them because that may well have occurred in a struggle between the two of them or as she, the sex worker, was trying to defend herself. Accordingly, I am satisfied beyond reasonable doubt that there was some reason for the sex worker to remove herself to the bedroom and I am satisfied that that was because the defendant was both refusing to let her leave the flat and threatening her. His acceptance that he had a pair of scissors in hand and the consistency between that and her allegation reported by the police officers of being threatened with the scissors leads me to conclude that the defendant's denial that he was threatening her with the scissors is untruthful.

66. I have considered whether his lack of truthfulness might be for some other reason such as confusion or mistake but whilst he has been confused about events and his recall has been questioned even by himself, as I have set out above, the incident as described by the sex worker is consistent with what Mr Omondi has consistently said about him having a pair of scissors at some point during the course of the incident. Accordingly, I am satisfied beyond reasonable doubt that the defendant threatened violence towards the sex worker with a pair of scissors.

67. As to whether he punched her in the stomach, I cannot make a finding beyond reasonable doubt. The defendant denies it. The hearsay evidence of the sex worker reported by one of the officers is that he had assaulted her in that way. However, whilst I have found against the defendant in relation to the threat with the scissors, that is not sufficient, in my judgment, to make up for the lack of direct evidence or indeed any corroborative evidence from the defendant in relation to a punch to the stomach. Similarly, I cannot and do not make a finding as to what threat was actually made with the pair of scissors which resulted in the sex worker running to the bedroom.

68. Accordingly, I make the following findings in relation to this first allegation, that there was a breach of paragraph two of the injunction in that the defendant threatened violence towards the sex worker with a pair of scissors, that there is a breach of paragraph three in that he engaged in conduct likely to cause alarm or distress, namely threatening the sex worker with a pair of scissors and refusing to let her leave, and a breach of paragraph seven, namely having a visitor in the property not authorised to be there by the claimant.

69. By way of overall conclusion then, I have made the following findings beyond reasonable doubt: three breaches of the injunction by having people present in the property contrary to paragraph seven of the injunction on 5 February 2024, 23 February 2024 and 14 March 2024. one breach of the injunction by threatening violence with a pair of scissors towards a visitor on 5 February 2024 and one breach by engaging in conduct likely to cause alarm or distress to a visitor by threatening the visitor with scissors and refusing to allow them to leave on 5 February 2024.

70. That is the end of my judgment.

IN THE COUNTY COURT AT SLOUGH

Case No. K02RG263

Courtroom No. 1

The Law Courts
Windsor Road
Slough
SL1 2HE

Friday, 3rd May 2024

Before:
HIS HONOUR JUDGE RICHARD CASE

B E T W E E N:

ABRI GROUP LIMITED

and

OMONDI

MR T GALLIVAN appeared on behalf of the Claimant
THE DEFENDANT appeared In Person

JUDGMENT

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HHJ CASE:

71. This is my further judgment in K02RG263. I am not going to set out the general background which was set out in my judgment yesterday, 2 May 2024. However, in summary in that judgment I found that the defendant Mr Omondi had committed three breaches of the anti-social behaviour injunction by having people present in his flat contrary to paragraph seven of the injunction on 5 February 2024, 23 February 2024 and 14 March 2024, one breach of threatening violence with a pair of scissors towards a visitor on 5 February 2024 and one breach of engaging in conduct likely to cause alarm or distress to a visitor by threatening her with scissors and refusing to allow her to leave on 5 February 2024,

72. The claimant has informed me, and the defendant has not disagreed, that the police are not taking any further action in relation to the events of 5 February 2024. I do not understand that the police had ever intended any action in relation to the other breaches which I have found Mr Omondi to have committed. I will proceed to sentence on that basis.

73. Insofar as the law is concerned, the Court of Appeal in *Wigan Borough Council v Lovett* [2022] EWCA Civ 1631 set out a number of helpful pointers for courts when sentencing for breach of an anti-social behaviour injunction. At paragraph 39 of the judgment of Birrs LJ, it was said:

> "39. We can start with the objectives of sentencing for breach of an order under Part I of the 2014 Act. As these orders are injunctions made by a civil court, the objectives in sentencing for breach are the ones applicable to civil contempt, namely (in this order):
> i) ensuring future compliance with the orders;
> ii) punishment; and
> iii) rehabilitation.
>
> 40. For the same reason, that this is concerned with civil contempt, the five options available to the Court when dealing with a contemnor are:
> i) An immediate order for committal to prison.
> ii) A suspended order for committal to prison, with conditions.
> iii) Adjourning the consideration of a penalty.
> iv) A fine.
> v) No order.
>
> 41. Suspension and adjournment may also provide an occasion for amendments (if appropriate) to the injunction itself, as well as an opportunity to impose a variety of conditions, perhaps including a positive requirement.
>
> 42. The maximum term that can be imposed is two years' imprisonment (section 14 Contempt of Court Act 1981). One-half of the custodial term will be served in prison before automatic release (section 258 Criminal Justice Act 2003). Time spent on remand is not

automatically deducted, so, if credit is given for that, consideration should also be given to doubling the period deducted to take section 258 Criminal Justice Act 2003 into account.

43. The concept of a custody threshold, as used in criminal sentencing, has application here, bearing in mind that the civil context has its own objectives and range of penalties. 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. It is good practice to consider a penalty for each breach found proved, and the terms of imprisonment may be concurrent or consecutive to each other. Nevertheless, consideration must also be given to the totality of the penalties imposed. Simply adding up what may well be appropriate penalties for each individual breach is likely to lead to an excessive total. A custodial sentence should never be imposed if an alternative course is sufficient and appropriate. If the Court decides to impose a term of imprisonment, that term should always be the shortest term which will achieve the purpose for which it is being imposed.

44. If custody is appropriate, the length of the sentence should be decided without reference to whether or not it is to be suspended.

45. It has been observed that suspension is usually the first way of attempting to secure compliance with the underlying order (*Hale v Tanner* [2000] 1WLR 2377 at 2381 D). However, as was done in the case of Ms Hopkins, another first option in many cases will be to adjourn the consideration of a sentence. The Court can use this as an opportunity to speak directly to the contemnor about their behaviour. An indication of what sentence would have been imposed if the matter had not been adjourned is likely to be appropriate, together with a clear statement of what the consequences of good or bad conduct in the intervening period will be…In some cases, the Court may conclude that a fine will be sufficient. In the most minor cases, the Court may decide that the impact of the proceedings is likely to achieve the purposes of the contempt jurisdiction and that it may be appropriate to make no order, save for the finding of breach. All of these means of disposal will mean that any future breach of the order will be treated as substantially more serious.

46. The approach in crime of giving distinct consideration to the degree of harm and the degree of culpability also has application here…

47. The three levels of culpability are:

A High culpability; very serious breach or persistent serious breaches;

B Deliberate breach falling between A and C;

C Lower culpability; Minor breach or breaches.

48 The level of harm is determined by weighing up all the factors of the case to determine the harm that was caused or was at risk of being caused by the breach or breaches. In assessing any risk of harm posed by the breach(es), consideration should be given to the facts or activity which led to the order being made. The three levels of harm are:

Category 1 Breach causes very serious harm or distress;

Category 2 Cases falling between categories 1 and 3;

Category 3 Breach causes little or no harm or distress".

74. The Court of Appeal in *Wigan* made reference to the Civil Justice Council's proposals of a sentencing matrix which is set out at paragraph 54 of the judgment. Having done so, the judgment continues at paragraph 55:

> "55. The reference to adjourned consideration of sentence indicates that the table is focused on the first occasion in which the sentence is to be considered when a contempt has been found.
>
> 56. It cannot be overemphasised but the task of sentencing a defendant for breach of orders in contempt of court is a multifactorial exercise of judgment based on the particular facts and circumstances of the case before the judge. Any sentence must be just and proportionate. Nothing in what has been said above is intended to detract from that. However, the approach set out above should allow judges to approach the task of sentencing in cases like these in a relatively systematic manner.
>
> 57. Finally, it bears repeating that the approach set out above is concerned with breaches of orders under Part 1 of the 2014 Act".

75. I have also referred myself to the totality guidance in its most up-to-date form given by the Sentencing Council. That provides as follows under the heading "General Principles", the guidance being effective from 1 July 2023:

> - "When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:
> - reflect all of the offending behaviour with reference to overall harm and culpability together with the aggravating and mitigating factors relation to the offences and those personal to the offender and;
> - be just and proportionate.
>
> Sentences can be structured as concurrent, to be served at the same time or consecutive, to be served one after the other. There is no inflexible rule as to how the sentence should be structured:
>
> - If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional sentences. Ordinarily, some downward adjustment is required.
> - If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily, some upward adjustment is required and may have the effect of going outside the category range appropriate for a single offence".

76. Under the heading "General Approach as Applied to Determinate Custodial Sentences":

> (1) Consider the sentence for each individual offence referring to the relevant sentencing guidelines.
>
> (2) Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences, a combination of concurrent and consecutive sentences may be appropriate.

(3) Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.
(4) Consider and explain how the sentence is structured in a way that would be best understood by all concerned.

Concurrent sentences will ordinarily be appropriate where:
(a) offences arise out of the same instant or facts;
(b) there is a series of offences of the same or similar kind, especially when committed against the same person".

77. Under the heading "Structure and Concurrent Sentences", the following:

> "When sentencing for two or more offences of differing levels of seriousness, the Court can consider structuring the sentences using concurrent sentences. For example:
> - Consider whether some offences are of such very low seriousness that they can be regarded as 'no separate penalty', for example, technical breaches on minor driving offences not involving mandatory disqualification.
> - Consider whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentences for the most serious offences can be clearly identified.
>
> Consecutive sentences will ordinarily be appropriate where:
> (a) offences arise out of unrelated facts or incidents;
> (b) offences committed in the same incident are distinct, involving an aggravating element that requires separate recognition;
> (c) offences of the same or similar kind but the overall criminality will not sufficiently be reflected by concurrent sentences.
>
> Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate".

78. I also refer myself to the Sentencing Council guidance on suspended sentences in its most recent form effective from 1 February 2017. Under the heading "Imposition of Custodial Sentences" and the subheading "Can the Sentence be Suspended", the following:

> "The following factors should be weighed in considering whether it is possible to suspend a sentence. Factors indicating that it would not be appropriate to suspend a custodial sentence:
> - Offender presents a risk/danger to the public.
> - Appropriate punishment can only be achieved by immediate custody.
> - History of poor compliance with court orders.
>
> Factors indicating that it may be appropriate to suspend a custodial sentence:
> - Realistic prospect of rehabilitation.
> - Strong personal mitigation.
> - Immediate custody will result in significant harmful impact upon others".

79. Let me turn to culpability. I am going to consider the breaches in groups. First of all, I am going to consider the breach by threat of violence and causing harassment, alarm or distress on 5 February 2024. This was a single event with two breaches but a very serious event. It is an event that involved the use of a bladed article. It involved falsely imprisoning the sex worker. It is plainly a high culpability breach within the guidance in *Wigan v Lovett*.

80. Turning to the breaches by attendance of visitors who were not authorised by the claimant on 5 February 2024, 23 February 2024 and 14 March 2024, these are much less serious breaches but they occurred on three separate occasions involving different people and different circumstances. The first on 5 February 2024 was a sex worker. The second on 23 February 2024 was a woman who hid in the wardrobe. The third on 14 March 2024 were three males.

81. It is instructive to observe what seems to be an increasing severity of breach from a single female in the first two incidents to three males in the third case. It is also instructive to observe that the breaches were in relatively quick succession, within five weeks of each other and that after the second breach, the defendant was arrested although he was released on being brought before the out-of-hours judge because more than 24 hours had elapsed after his arrest. It seems that that was not sufficient deterrent to the defendant given the further breach on 14 March. Accordingly, I judge the culpability to be at level B; that is, it was deliberate but neither high culpability nor minor.

82. Turning to harm, again, I will consider the breaches in two groups. First of all, the threat of violence and the causing of harassment, alarm or distress on 5 February. The harm caused on that occasion was really very serious. The evidence suggests and I accept that on the arrival of the police, there was shouting. The sex worker had been crying and panicking whilst locked in the bedroom. In fact, her fear and distress were so great that she is reported to have considered jumping out of the window of the flat before reflecting that it was too high. Armed officers attended the flat and they forced their way into the bedroom in which she was present.

83. I also take account of the distress that there would have been to the neighbours of the property by reason of the shouting and the significant police presence including armed police presence at around 5.30am. My assessment is that the harm category is Category 1, that is very serious harm or distress.

84. Turning to the breaches by the attendance of visitors on 5 February, 23 February and 14 March 2024, there is very little evidence of harm apart from in relation to 5 February 2024 which I have already considered above. In relation to 23 February, there is hearsay evidence of a report of the door buzzer being pressed “throughout the night”. However, there is no direct

evidence in support of that or, indeed, any indirect or direct evidence of the effect of that. In relation to 14 March 2024, as on 5 February 2024, it was necessary to gain entry using force. The evidence is that an enforcer was used. Entry was gained at around 18.40. There would, no doubt, have been a number of police officers present, certainly at least two on the evidence before me.

85. I cannot conclude that the harm, however, was greater than "little harm or distress", that is Category 3 harm. Although I have no doubt that some harm or distress was caused to those who were in the vicinity of the flat at 18.40 on 14 March, there is no good evidence as to the extent of that and nothing in relation to 23 February.

86. Turning to aggravation, the defendant has shown a lack of genuine remorse. On 8 April 2024, at the end of day one of the proceedings when I was considering whether to remand the defendant in custody or grant him bail, he gave a very guarded apology. He said, "I would like to apologise for the breach I may have caused and actions that may have taken place" and, "I apologise if I may have done any disturbance to the residents". Today, the remorse that he has shown is similarly limited. He told me in mitigation, "I apologise for any misconduct or damage I may have caused". That does not really suggest genuine remorse.

87. I am also invited to take account of the incident that happened at court on 24 April 2024 to which I referred briefly in the chronology set out in my fact-finding judgment. That was to have been day two of the final hearing. I was initially not persuaded that it would be appropriate to take the events of that day into account in sentencing for breaches of an injunction that pre-dated that incident. However, I am persuaded by Mr Gallivan on behalf of the claimant that it is relevant. The behaviour of the defendant on that day gives me an indication of the effect on him of having been arrested on 14 March and thereafter remanded in custody and subject to these proceedings. It was an opportunity to assess if the defendant had changed his attitude or behaviour and the extent to which the public may need protection from him.

88. Because Mr Omondi was not produced on 24 April and because I needed an opportunity to consider whether the rest of the final hearing should be conducted by way of video link, on 25 April I directed that he be produced by video. Mr Omondi was present when Ms Stacey Kirby, the Serco regional operations manager attended by video to inform me what had happened the day before. She told me that it had been a violent episode, that 10 custody officers including officers who had to be drafted in from other locations were required to restrain the defendant. She told me that eight of those 10 officers suffered injuries. She told me that of those eight,

paramedics were called to treat one of them and that of those eight, two were unable to return to work that day. She also told me that in the course of the incident, Mr Omondi had caused such serious damage to the prison transport that it had to be taken off the road.

89. On that occasion, 25 April, Mr Omondi did not apparently dispute what Ms Kirby told me. In fact, he apologised to some extent for his behaviour the previous day. He went on to say, "The way the staff interacted with me could have been better". To me, that demonstrated a breathtaking lack of insight or acceptance of responsibility for his conduct. He confirmed to me in the course of his submissions in mitigation that he accepted that there might have been 10 officers present but did not think that he had damaged the van. He could not comment on the other matters such as the attendance of paramedics and reports of injuries to the custody officers' employer as that would have been after his removal from the magistrates' court back to HMP Bullingdon.

90. A further aggravating feature is the apparent lack of engagement of the defendant with statutory services and with the claimant. Within the bundle prepared for this hearing, in a witness statement of Ms Sorce dated 19 March 2024, she reports at page 151B, paragraph four, first of all, the following matters:

> "The claimant understands that the defendant suffers with bipolar and receives a monthly injection to manage his symptoms. The defendant also suffers with alcohol and drug dependency. The claimant has made numerous attempts to support the defendant as detailed.
>
> (a) On 8 February 2023, I was accompanied by police and Cranstoun (drug and alcohol support) to discuss anti-social behaviour at the property and to offer support with drug/alcohol use. The defendant accepted support from Resilience but his case was closed after they made three attempts to contact him and he failed to respond, as the defendant did not engage. This was in line with Resilience's policy.
>
> (b) On 25 April 2023, a further referral was sent to Cranstoun with consent on 25 April 2023 which was accepted but later closed as the defendant did not engage after three attempts at contact.
>
> (c) On 16 July 2023, the police made a referral to Redsnapper for support with drugs and alcohol as part of the community resolution order due to a domestic abuse incident at the property. However, the defendant did not engage or complete the course".

91. Paragraph five:

> "On 16 November 2023, I sent a letter and an email to the defendant requesting consent to allow the claimant to make enquiries into the support plan in place with the community mental health team. To date, I have yet to receive consent from the defendant to contact external agencies to gain a better understanding of his mental health and other issues".

92. She continued a little further on in the paragraph:

> "On 8 March, I had a meeting with partner agencies where the following information was disclosed to me by the community mental health team:
>
> (a) The community mental health team last visited the defendant in February 2024.
>
> (b) On 7 March 2024, the defendant called the care agency to ask for the carer to help him with transport. I have been told that the carers had concerns that the defendant was seeking transportation not for care purposes. The carers are not attending the property due to risks to the staff.
>
> (c) The community mental health team continue to offer treatment to the defendant but this must be at a secure environment due to a recent firearm and violent offences linked to the defendant.
>
> (d) The defendant has been offered to receive this treatment at Maidenhead as he has been able to travel to Bracknell, it is felt that this is a suitable location for the defendant. The community mental health team have also secured a treatment room to see the defendant at his GP surgery but this has to be risk-assessed.
>
> (e) I am aware that the defendant was due to have a psychiatrist appointment on 13 March but he failed to attend.
>
> (f) The defendant's psychiatrist advised that he has a good understanding of the consequences of his behaviour and that the defendant can travel and be supported with his mental health as remains open to him…
>
> (i) On 18 March 2024, I referred the defendant to the high dependency chaotic lifestyle panel which is a multi-agency meeting that manages complex cases and risks to the public. This is due to the defendant leading a chaotic lifestyle and posing a risk to himself and the public".

93. The claimant says that insofar as that evidence demonstrates a lack of engagement with services, it is relevant to sentence because it is clear that other methods of support have been offered to the defendant but have not been successful in preventing the breaches that I have found proved.

94. Finally, it said that my finding that the defendant had lied about the incident on 5 February 2024 is relevant as it demonstrates the potential for a lack of honest compliance with the injunction in the future if released from custody.

95. I turn now to consider mitigation. There is very little in the way of mitigation. The defendant has clearly led a chaotic life. In part, that might be due to his mental health but that is being treated and is not such that he did not know the consequences of his actions on the evidence that I have found proved before me. He told me that he has learnt a lot in prison. He has started reading. He has found or changed religion. It was not possible to discern from his submissions which of those applied. However, he has decided to become a Rastafarian and would like to be out of prison so as to access further resources to improve his knowledge and

awareness. That seemed to be in the context of knowledge and awareness of Rastafarianism. He also made some general complaints about prison life although they seemed to mainly relate to sanctions that had been imposed after the incident I have described on 24 April 2024. He said he has been removed from the volunteer cleaning duties he was on and he has lost certain privileges.

96. Looking at matters overall, I conclude that there has been repeated non-compliance across the broad range of the order, in particular, paragraphs two, three and seven. It is difficult to see that anything other than a custodial sentence would now encourage compliance. Previous attempts at engaging him, his arrest and release, these proceedings and his remand in custody appear to have had little effect on his violent behaviour as demonstrated on 24 April 2024. In any event, given the seriousness of the incident on 5 February 2024, that would seem to be an appropriate punishment.

97. I am again, going to consider the two separate groups, first of all, on 5 February 2024, the breach by way of a threat of violence and the causing of harassment, alarm or distress. By reason of the analysis I have set out above, I have concluded that those are breaches that fall within culpability and harm Category A1. The starting point in the matrix set out at paragraph 54 of *Lovett* is a sentence of imprisonment of six months. The claimant invites me to consider a term of imprisonment of 12 months. Whilst the incident on 5 February was undoubtedly a very serious incident and whilst there has been subsequent non-compliance and further violence, in terms of a breach of the order in respect of paragraphs two and three of the injunction, it is only one incident.

98. I consider that a 12-month term of imprisonment would be disproportionate for a first and single breach of this type. However, I do accept that six months, the starting point, does not sufficiently recognise the use of a bladed article on 5 February as an aggravating feature and the imprisonment of the sex worker together with the necessity of a very extensive police response and the alarm and distress that inevitably would have caused to the surrounding residents. Accordingly, I consider that the appropriate sentence is one of nine months' imprisonment for each of the two breaches. Given that they arise out of the same incident though, those terms of imprisonment will run concurrently.

99. Next, I have to consider whether the term of imprisonment should be suspended. None of the factors suggesting that I should suspend are met. Rehabilitation is not a realistic expectation having regard to the matters that are set out in Ms Sorce's witness statement I referred to a moment ago. Against that, there is a risk to the public plainly demonstrated by the defendant's

behaviour at court on 24 April and on 5 February 2024, of course, the violence that was threatened. I also take into account in considering whether to suspend the term of imprisonment, the lack of compliance with the injunction on the subsequent occasions I found proved, 23 February and 14 March. In the circumstances. I determine that that term of imprisonment should not be suspended.

100. Insofar as the breaches by permitting the attendance of visitors on 5 February, 23 February and 14 March 2024 are concerned, by reason of the above analysis, I have concluded that the category of breach is B3 within the table at paragraph 54 of *Lovett*. The starting point in B3 is to adjourn consideration of sentence. I do not consider that that adequately reflects the repeated breaches or the lack of remorse that I have set out above and I consider that a sentence of 14 days' imprisonment on each of the three breaches more adequately reflects their seriousness.

101. Again, I have to consider whether those terms of imprisonment should be suspended. For the reasons that I have already given in relation to the more serious breaches on 5 February 2024, my conclusion is that I should not suspend those terms of imprisonment. I also have to consider whether they should run concurrently with each other and conclude that they should given that they are breaches of the same or very similar character.

102. Overall, then, I have to consider if a period of imprisonment of nine months in relation to the threat of violence and harassment, alarm and distress on 5 February should run concurrently or consecutively with the 14 days' imprisonment for breaches in respect of permitting visitors to the premises. I consider the sentences should run concurrently; that is at the same time. Whilst they are breaches of a different nature from each other, one being the threat of violence and causing harassment, alarm and distress and the other being allowing people to attend the flat, I recognise that there is some overlap in relation to the breaches on 5 February 2024. Overall, a sentence of nine and a half months, an extra half-month, 14 days, would not further the objective of ensuring compliance with the order after release. It would do no more to assist in that than a term of imprisonment overall, totalling nine months. Accordingly, the sentences will run concurrently.

103. Having established that the term of imprisonment is nine months, that is 274 days, I then have to consider whether there are to be any deductions from that. Time on remand in custody is not automatically deducted but I consider it should be in this case. There is no reason why it should not and it would be manifestly unfair not to deduct a period of 49 days on remand from

this sentence. The time served on remand from the date of the remand on 15 March to today, 3 May, is 49 days.

104. Given that the Criminal Justice Act indicates that or requires that the defendant will only serve half of the sentence that I impose, the period that needs to be deducted for the 49 days on remand in custody is 98 days, that is twice 49. Accordingly, I will deduct 98 days from the sentence of 274 days. That results in a sentence that I impose today of 176 days running from today. Of that 176 days, I am required to inform the defendant that he will only serve half. That is a further 88 days.

105. That concludes my judgment.

End of Judgment.

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