

Claim No: J01BM492

IN THE COUNTY COURT AT BIRMINGHAM

Priory Courts
33 Bull Street
Birmingham

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

BIRMINGHAM CITY COUNCIL (Claimant)

-v-

(1) ADRIAN KING
(2) VANESSA KEARNEY (Defendants)

MISS HEATH of Counsel appeared on behalf of the Claimant
THE FIRST DEFENDANT did not attend and was not represented
MR HARRINGTON, solicitor, appeared on behalf of the Second Defendant

APPROVED JUDGMENT
10th APRIL 2024

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JUDGE KELLY:

1. The defendant, Vanessa Kearney, appears before the court for the determination of the appropriate sentence in respect of a matter of contempt arising from her actions on 30 November 2023. The contempt was found approved to the criminal standard at a trial which occurred on 11 March 2024. That trial took place in the absence of Ms Kearney, when she failed to attend court, but in the presence of her solicitor. The defendant is represented today as she has been throughout these contempt proceedings by her solicitor, Mr Harrington.

Background

2. On 7 October 2022 District Judge Griffiths granted an injunction under the Anti-social Behaviour, Crime and Policing Act 2014. By paragraph 2 of the order the defendant, Ms Kearney, was prohibited from using or threatening to use violence, harassing or intimidating Adrian King of 46 Station Road, King's Heath, Birmingham or Shirley McDonald of 38 West Mead Drive, Birmingham B14 or any person lawfully present in West Mead Drive.

3. By paragraph 3 of the order the defendant was prohibited from behaving in a manner likely to cause nuisance or noise to any person by, in particular but not limited, to shouting, screaming, banging or slamming doors or being abusive.

4. For the reasons given in an ex tempore judgment on 11 March 2024 the court found the defendant to be in breach of paragraphs 2 and 3 of the injunction by her behaviour towards her neighbour, Shirley McDonald, on 30 November 2023.

5. On that occasion the defendant was verbally abusive to Ms McDonald in an incident part of which was recorded on a CCTV doorbell camera which was positioned on Ms McDonald's front door. The front doors to Ms McDonald and the defendant's properties are on the side of their homes such that the front doors face each other. Each home has a path leading to their front door and the paths are separated by a low, waist height, horizontal barrier.

6. The defendant was verbally abusive to Ms McDonald by shouting and swearing at her, calling her "a fucking grass" and "a fucking slag", complaining about Ms McDonald having been to the council and having her boyfriend, Ade, "run out." She also threatened violence against Ms McDonald threatening to "rip her fucking face off". It was a very unpleasant incident which occurred on the doorsteps of the parties' respective homes in very close proximity to each other. Ms McDonald had returned home with her young, autistic grandson, who was just under two years old, and she had to put him into her home as events unfolded because he was said to be terrified.

7. When approaching sentencing the court bears in mind that the objectives of the exercise are, in the following order, to ensure future compliance with the injunction, punishment and rehabilitation. The court adopts the approach to sentencing for contempt arising from breaches of anti-social behaviour injunctions as endorsed by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631. That approach involves assessing the level of harm and culpability by reference to the matrix prepared by the Civil Justice Council's report of July 2020.

8. I agree with the submissions made by both parties that this matter falls within culpability category B being a deliberate breach falling between culpability A, which would be a very serious breach or persistent serious breaches, and culpability C, being a minor breach or breaches. The verbal abuse was clearly deliberate.

9. As to the category of harm, I also agree with the parties that it is to be categorised as category 2 falling between the highest category 1, where there is very serious harm or distress, and category 3 where there is little or no harm or distress. The harm is higher than the lowest category given the verbal onslaught in close proximity to Ms McDonald who was on the threshold to her home with her young grandson.

10. The starting point for a culpability B, category 2 harm case is a one month custodial sentence with a category range from adjourned consideration of sentence to a three months' imprisonment.

11. There are a number of aggravating factors that need to be taken into account in this case. Firstly, Ms McDonald was one of the individuals who was specifically named in the injunction order as someone whom the order was designed to protect.

12. Secondly, the incident occurred on the threshold of Ms McDonald's home which is an environment she should be entitled to feel safe in.

13. Thirdly, this is the defendant's second breach of the injunction. The defendant appeared before this court on 31 July 2023 having admitted a breach again involving verbal abuse of Ms McDonald in her home environment in relation to events on 21 May 2023. On that occasion the defendant was sentenced to 12 days' imprisonment suspended until 7 October 2024 on the condition that she complied with the terms of the injunction. The original tariff for that breach was 14 days but it was reduced to 12 days to reflect the defendant's admission on the day of the trial. The index breach before the court today thus occurred in the operational period of that suspended sentence.

14. Fourthly, the defendant has some relevant previous convictions including a conviction in 2019 for assaulting an emergency worker and an older conviction in 2014 for abusive

insulting words and behaviour. She also had a caution in 2016 for common assault. I take limited account of the oldest conviction given the passage of time, but the more recent conviction does create a concerning overall picture of someone who keeps returning to differing forms of anti-social behaviour.

15. The court does however take into account the mitigating factors in this case. Firstly, that the defendant has a number of serious health issues. The court accepts that she has chronic pancreatitis, suffers from depression, and from alcoholism. I agree with the submission made on her behalf that she presents as a very vulnerable individual who engages in very poor decision making when she is under the influence of alcohol. That poor decision making was demonstrated on Monday of this week when she turned up at court for the sentencing hearing intoxicated having met acquaintances shortly before her court appearance. The court has been told that her acquaintances take advantage of the defendant when she is in drink relieving her not only of money but also of her possessions. The court is that the defendant's vulnerabilities were exacerbated when her child was taken into care some eight years ago.

16. I also take into account that since the incident on 30 November 2023 a period of just over four months has passed without there being any further incident. The defendant has demonstrated that there are periods of time when she can live peacefully next to her neighbour.

17. Taking into account the aggravating and mitigating factors against the suggested starting point of one month's imprisonment, the contempt remains so serious that only a custodial sentence is appropriate. The mitigation in the defendant's case is such that notwithstanding the significant aggravating factors, the least sentence that can be imposed would have been one of 21 days. The court does however have to take into account the time the defendant has spent in custody on remand. The civil courts unlike the criminal courts have to make a manual calculation and deduction from any term of imprisonment when passing sentence as that is not something the prison authorities can do. The defendant spent a night in custody following her initial arrest in December 2023. She also spent two nights in custody following her remand on Monday of this week. She therefore has spent three days in custody, which is the equivalent to a 6 day sentence. It is therefore appropriate to reduce the 21 days by 6 days to give a sentence of 15 days' imprisonment. No credit can be given for any admission because the contempt was proved at trial.

18. As the Court of Appeal acknowledges in *Lovett* suspension is usually the first way of attempting to secure compliance with an underlying order. The defendant has already been

given that opportunity when she appeared before the court on 30 July 2023 in relation to the earlier breach. It is not therefore, in my judgment, appropriate to further suspend the sentence in relation to the breach before the court today.

19. Furthermore, the court has to consider whether the earlier suspended sentence should be activated. The starting point is that the sentence should be activated unless it would be unjust to do so. It is appropriate to take into account whether the defendant has demonstrated any period of compliance with the terms of the suspended sentence and to consider overall totality. The instant contempt occurred about four months after the passing of the suspended sentence and six months after the first incident. It is therefore appropriate to mark that period of some compliance when considering the extent of any activation. It is however concerning that the defendant's conduct on 30 November was remarkably similar to that which she subjected Ms McDonald to earlier in 2023. That suggests the defendant has not learnt from her past experience of being before the court. In my judgment, it is not unjust to activate the suspended sentence in principle but there should be downward movement to reflect the period of some compliance and to take account of totality. I consider it appropriate to activate 7 of the 12 days of the original sentence.

20. The defendant will thus serve 15 days' imprisonment in respect of the contempt relating to the breach on 30 November 2023 plus 7 days consecutive in respect of the partial activation of the suspended sentence. The total period of imprisonment will therefore be 22 days. The defendant will serve half that period in custody before being released.

21. The claimant makes an application for its costs of the contempt application to be paid by the defendant. The general rule is the successful party is entitled to its costs but the court may make a different order. In deciding what costs order to make, the court has regard to the circumstances including those set out in CPR 44.2(4). The contempt application has been successful and there is no reason to deprive the claimant of its costs. The defendant is of limited means, being in receipt of state benefits, namely Universal Credit and a personal independence payment attributable to her chronic pancreatitis and depression, but that is not a sound reason not to make a costs order. I propose to make an order that the defendant pay the claimant's costs which will be subject of summary assessment momentarily.

22. It is submitted on behalf of the defendant that any costs awarded should not be enforced without the leave of court. I disagree. Although the defendant has the benefit of public funding, criminal legal aid for the purposes of defending contempt proceedings does not give rise to the costs protection that is afforded to those in receipt of civil legal aid. See *The Secretary of State for Transport v Cuicurean* [2022] EWCA Civ 661. Therefore the costs

order that I make will be enforceable. The reality of the position may well be that the claimant can never recover the costs given the defendant's limited financial means but that does not mean that they are not entitled to enforce the order in principle.

23. A committal order has been made and therefore the defendant has a right to appeal the sentence without the need for permission to appeal. An appeal lies to the High Court or Court of Appeal within 21 days of today.

24. I direct that a transcript of this judgment be obtained at public expense on an expedited basis and the approved transcript be published on the judiciary website.
