IN THE COUNTY COURT AT SHEFFIELD

Case No. G20SE079

Courtroom No. 11

The Law Courts
50 West Bar
Sheffield
S3 8PH

Friday, 15th March 2024

Before:
HIS HONOUR JUDGE ROBINSON

B E T W E E N:

Matina GILERT

Claimant

and

Natalie WILKINSON

Defendant

THE APPLICANT appeared In Person
THE RESPONDENT appeared In Person

JUDGMENT
(Approved)

HHJ ROBINSON:

1. On 20 May 2021, the defendant gave undertakings to the Court following an application by the claimant for injunctive relief pursuant to the Protection from Harassment Act 1997.
2. On 27 May 2021, the claimant issued proceedings applying for the committal to prison of the defendant for contempt of Court. It was alleged that the defendant had breached certain terms of the undertaking. I shall refer to that committal application as CA1.
3. On 9 September 2021, I conducted the trial at which both the claimant and the defendant gave written and oral evidence. The claimant appeared in person. The defendant had the benefit of legal representation by a solicitor and counsel, Mr Holsgrove.
4. At the conclusion of the trial, I gave an oral judgment. I was satisfied beyond reasonable doubt that the defendant was in contempt of Court by breaching two terms of the undertaking that she had given. Namely, that the defendant would not "(4) use abusive…language directed at [the claimant]; (5)…harass…[the claimant]".
5. I found that:
   (i) On 5 June 2021, the defendant shouted "Martina can fuck off" when the defendant was in her garden, when she knew that the claimant was in her home and the words were shouted at such a volume, that the defendant intended that the claimant should hear them, and that the claimant did in fact hear them. This constitutes a breach of paragraph four of the undertaking.
   (ii) On 13 June 2021, the defendant deliberately threw from her garden into the garden of the claimant, items such as footballs and children's toys. This constitutes a breach of paragraph five of the undertaking.
6. I adjourned the question of appropriate penalty to a date to be fixed in 2022. That hearing is yet to take place.
7. Also on 9 September 2021, I made an order granting injunctive relief in favour of the claimant against the defendant. On the claimant's version of events, things have not gone well. It is alleged by her that the defendant has breached that injunction on numerous occasions.
8. On 26 November 2021, the claimant issued a committal application against the defendant in Form N600. I shall call this CA2.
9. I decided that it would not be appropriate to determine the penalty in respect of the two proven breaches of undertaking amounting to contempt of Court until CA2 had been determined.
10. According to the claimant, things did not improve. This has led to a further committal application, CA3, issued in Form N600 on 8 September 2022. I directed that CA2 be tried first. There were various unfortunate delays, but a trial was listed to commence on 30 November 2022.
11. I vacated that trial on the day of the trial following an application made on 29 November 2022 by the defendant's solicitors. No advocate could be found to represent the defendant.
12. At the same time as vacating the trial, I directed that CA2 and CA3 be tried at the same hearing during February or March 2023. It was later listed to start on 21 March 2023 with a time estimate of three days.
13. Early on 21 March 2023, the Court received a message from the claimant's daughter, Olivia Gilert, to the effect that her mother had fallen suddenly ill and would not be able to attend the trial. Any hope that the claimant might be able to attend on any of the three days set aside for the trial, rapidly evaporated.

14. Ultimately, the trial was listed to start on Tuesday, 5 September 2023, and it did. Each committal application contained a schedule of numbered breaches and in due course I shall refer to them by their numbers.
15. At the outset of the trial, Mr Holsgrove stated that the defendant admitted breach number eight in CA3. I asked if there was what I described as a "basis of plea". There is not. I shall deal with the facts of this breach in more detail at the appropriate time.
16. The evidence in support of the alleged breaches of the injunction in CA2 and CA3 comprises written evidence from the claimant and from her daughter, Olivia Gilert, whom I shall refer to, with no disrespect intended, as Olivia. The evidence from the claimant comprises,
    (i) A document headed "Statement of Truth", dated 26 November 2021, verified by both a statement of truth in proper form and also sworn before an officer of the Court. In my judgment, this is an affidavit complying with CPR 81.
    (ii) Affidavit sworn on 1 September 2022. The purpose of this affidavit was to ensure that various exhibits were properly introduced into evidence.
    (iii) Affidavit sworn on 8 September 2022, in support of the alleged breaches in CA3.
    (iv) Second affidavit sworn on 8 September 2022, exhibiting various pieces of evidence.
17. The evidence from Olivia comprises affidavits sworn on 26 November 2021, in respect of CA2 and late September 2022, in respect of CA3. Both the claimant and Olivia were cross-examined by Mr Holsgrove.
18. By 12.30pm on day three of the trial, Thursday, 7 September 2023, the evidence on behalf of the claimant was complete. The events thereafter have been recited elsewhere. Suffice it to say, the trial was adjourned to be completed at a later date.
19. By order made on 5 January 2024, I granted the defendant's solicitors' application to be removed from the record. Thereafter, the defendant has proceeded as a litigant in person.
20. The second part of this trial began on Monday, 11 March 2024. The defendant had indicated by email dated 28 February 2024, that she would be making an application that I recuse myself.
21. Having read written arguments from both sides and after hearing oral argument, I gave an oral judgment dismissing the application, concluding at about 3.30pm on 11 March.
22. Earlier on Monday, in open court, the defendant told me that she had not been able to get from her former solicitors her papers relevant to this case. Following a telephone call to the solicitors, the papers were delivered to the court at about 3.00pm. However, examination of the material after I had given judgment on the recusal application, revealed there was no copy of the trial bundle within the papers.
23. With the consent of both the claimant and the defendant, the bundle to be used by witnesses was given to the defendant for her to use as her own. She had not had a chance to familiarise herself with it. I proposed at 3.40pm that we adjourn until Tuesday morning. The defendant said that would give her enough time to read the bundle of documents, but I made it clear that more time would be given on Tuesday if it was needed. In fact, it was not.

Evidence and findings of fact

24. In making findings of fact, I have had regard to the entirety of the evidence which includes materials relied upon which appear in the bundle and what has been shown on data sticks comprising videos and photographs which have been shown on screen in Court.
25. I remind myself of the substance of observations I made when giving judgment in CA1. Committal proceedings are serious. The ultimate outcome is committal to prison for a period not exceeding two years.

26. Whilst they are civil proceedings, there are similarities with a trial for a criminal offence. In particular, the standard of proof is not the civil standard, which is the balance of probabilities. It is what is often described as the criminal standard. Beyond reasonable doubt.
27. I repeat, in making findings of fact, I have had regard to the entirety of the evidence, and I once more remind myself that all facts relied upon by the claimant must be established beyond reasonable doubt. See *Re Bramblevale Limited* [1970] Ch 128 CA.
28. Put more simply, before the judge can find any allegation proved, the judge must be *sure* that it happened and be *sure* that what happened amounts to a breach of the relevant term or terms of the injunction.
29. Additionally, it seems to me, I must also be sure that the defendant intended to breach the relevant term or terms of the injunction. Conduct which is accidental or inadvertent is not conduct which amounts to a breach of the injunction.
30. In making those observations, I had in mind the case of *Winchester City Council v Deroubaix* [2021] EWHC 1118 (QB) where Cavanagh J said this at paragraph 49:

> "There are two main conditions that must be satisfied for a finding of contempt to be made. First, it must be established to the necessary standard that the relevant orders have not been complied with. But that is not enough to establish a contempt.
>
> The second condition is that in order to show that a person is in contempt, it must also be established that his or her conduct was intentional and that he or she knew all of the facts which made the conduct in breach of the order, though it is not necessary also to prove that he or she appreciated that the conduct did breach the order. See *Heaton's Transport (St Helen's) Ltd v Transport & General Workers' Union* [1973] AC 15, *F W Farnsworth v Lacy & Ors* [2013] EWHC 3487 (Ch) and *Sectorguard plc v Dienne plc* [2009] EWHC 2693 (Ch) at paragraphs 32 to 33".

31. The terms of the injunction I made on 9 September 2021 are,
    (i) The defendant must not utter the word "Martina", or any colourable imitation or pastiche of that word, in circumstances where such utterance is capable of being heard by the claimant. Non exhaustive examples of a colourable imitation or pastiche of the word Martina, include Marty, Mart and Tina.
    (ii) In this paragraph, the red ball incident, means an incident where the defendant has alleged that the red ball with a smiley face was punctured by the claimant. The defendant must not make verbal reference to the red ball incident or anything touching or concerning that incident, in circumstances where such verbal reference is capable of being heard by the claimant. A non-exhaustive example of such verbal reference would be to utter the words, "Have we got that ball back from that bitch yet".
    (iii) The defendant must not deposit any item or material on any part of the claimant's property, at 40 Winder Avenue, Halfway, Sheffield, S20 4AA.
    (iv) The defendant must not include in any communication to any official agency, things about the claimant which are not true. For the avoidance of doubt, if the defendant does make any communication to such agency about the claimant, the claimant is deemed to have consented to the identity of the defendant as informant, being disclosed to the claimant. Explanatory note to the provision. In the absence of the "consent to disclosure" provision, it would be impossible to monitor the prohibition in this paragraph.
    (v) The defendant must not take, access, acquire, download, or possess any still or moving image or images of the claimant or her children in any circumstances whatsoever. Any

such images which may have been inadvertently taken, accessed, acquired, downloaded, or otherwise come into the possession of the defendant, must be immediately destroyed, or deleted from any device capable of storing such image.

(vi) The defendant must not post on or send by any means of any medium, whether social or otherwise and whether it exists at present or is created in the future, any communication at all concerning or relating to the claimant on her children. This includes but is not limited to postings on Facebook, tweets on Twitter, messages sent via Snapchat, WhatsApp, and Instagram and also texts and letters sent to other persons. It is stressed that these are only a few examples and that all communications or postings are prohibited.

Provisos,

(i) The defendant is permitted to communicate matters concerning the claimant or her children to any legal professional or to any Court without restriction.

(ii) The defendant is permitted to communicate matters concerning the claimant or her children to any official agency subject to the prohibition set out in paragraph four above, which deals with lies and disclosure.

(iii) If the defendant does not have legal representation in connection with any legal proceedings to which both the claimant and defendant are parties, the defendant may communicate with the claimant in writing in connection with such proceedings but all and any such communications must be polite.

(vii) The defendant must not use or threaten to use violence against the claimant or her children.

(viii) The defendant must not block or prevent access to the claimant's property at 40 Winder Avenue, Halfway, Sheffield, S20 4AA.

(ix) The defendant must not enter or attempt to enter any part of the claimant's property which includes the drive and gardens at 40 Winder Avenue, Halfway, Sheffield, S20 4AA.

(x) The defendant must not damage or threaten to damage any property of the claimant or her children.

(xi) The defendant must not approach the claimant except with permission of the judge during a Court hearing.

(xii) The defendant must not speak directly or indirectly to the claimant except in a courtroom when the judge is present.

(xiii) The defendant must not use verbal language directed at the claimant or her children which is abusive or threatening.

(xiv) The defendant must not harass or pester or intimidate the claimant or her children.

(xv) The defendant must not get anyone else to do or try to do the things set out in paragraphs one to 14 inclusive above.

32. I am satisfied that the injunction, the committal applications and all relevant evidence have been properly served on the defendant.

33. Whilst it is convenient to consider the allegations individually or in groups so far as is possible, I am also entitled to look at the factual findings collectively. I start with committal application two.

34. Allegations one, two and three. These all comprise allegations that the defendant threw things into the claimant's garden. If that was so, each allegation amounts to a clear breach of paragraph three of the injunction, "The defendant must not deposit any item or material on any part of the claimant's property at 40 Winder Avenue, Halfway, Sheffield, S20 4AA".

35. The evidence in support of these allegations are photographs taken of the items that were deposited. Allegation one relates to a soft toy pig found in the garden on 11 September 2021.

Allegation two relates to a plastic table leg, red in colour, seen in the garden on 12 September 2021. In addition, allegation three concerns a cutlery knife seen in the garden on 18 September 2021. All of the allegations are supported by photographs of those items.

36. In cross examination, the claimant agreed she did not see who threw the items. She did not hear the defendant encourage anyone to throw the items.
37. The defendant showed video footage of one of her children picking up a rock from the defendant's garden and climbing the steps of a children's slide. The male child is seen then to throw the rock into the claimant's garden. A photograph of the rock appears at page 192 in the bundle. Its presence is not the subject of an alleged breach of the injunction.
38. There is also evidence that a child called Corbyn, the same child, threw a pair of child's sandals over the fence. These are shown at page 188 in the bundle. This incident is also not the subject of any alleged breach of the injunction.
39. The video footage with sound shows the defendant telling the child off. My note reads, "That's naughty. It's not funny at all. Stop throwing things over the fence". The claimant submits that the incident shown in the video footage was staged. I reject that submission. The footage has the impression of being spontaneous and it shows that there have been some instances where a child has thrown items over the fence.
40. I return to allegations one, two and three.
41. The standard of proof is high. I must be sure it was the defendant who threw the items or that she encouraged somebody else to do so. I simply cannot be sure. The defendant may have done. Perhaps even probably did, but I cannot be sure to the very high standard of proof required in committal applications. Allegations one, two and three are not made out.
42. Allegation four. This relates to clumps of grass and muck which were undoubtedly deposited in the claimant's garden on 18 September 2021. The evidence of the claimant is at paragraph eight of her first affidavit. It is at page64 in the bundle. Paragraph eight reads:

> "On Saturday 18 September 2021 (breach four), I was shocked to see what appeared to be fresh, hand pulled out clumps of grass with soil covering my garden. Please see exhibit four A-G.
>
> I went out to inspect this further to find soil covering my washing which was near the patio, on my patio and behind my wheelie bins in my back garden and all over the grass. I had to rewash all my washing because of this. I returned inside my property.
>
> I sat down to reflect on what Mrs Swift's latest stunt was. I then witnessed Mrs Swift throwing further clumps of grass in my garden. At this point, I went to photograph the grass to evidence the situation. My garden looked a complete mess. I had to tidy all the grass up which inconvenienced me.
>
> This incident follows a morning of Mrs Swift shouting at her own household and going what I would describe as, ballistic.
>
> I note it must take some physical strength to pull up grass and soil from the ground as it was a dry day. I could hear Mrs Swift in her garden, what I would describe as grunting and huffing and puffing. This caused me high inconvenience as I had to rewash all my washing as mentioned and pick up all the grass, which was all over, sweeping everywhere up.
>
> I was also worried about items being thrown at me whilst I was tiding up, as shown in breaches 1-3 inclusive".

43. The claimant was asked questions by Mr Holsgrove. The claimant's evidence in response to those questions may be summarised. The claimant said she saw the defendant launching the

clumps over the fence. She said, "I could see her moving at the side of the fence. I could see the full length of her arms reaching up".

44. Following that cross examination, I asked her some questions relevant to the issue of identification in accordance with the criminal case referred to at committal application one, namely *R v Turnbull*.
45. The claimant described seeing the arm of the person throwing the clumps from the hand to about halfway between the elbow and the shoulder. She described it as a white, female arm. She said that the defendant is the only female in the house. In fact, that is not strictly accurate. The defendant has a teenage daughter. However, the claimant later said that she was referring to adult females.
46. She described the defendant's partner, Dean, as being thin and that his arms were thin. In contrast, she said that the defendant's arm was more thick set.
47. Of the voice recognition, she described the defendant's voice as being loud and distinctive. The claimant and defendant had been neighbours since about 2019. The claimant said she had heard various noises from the defendant over that time. She again used the description, loud and distinctive, in relation to what she described as grunts. She said she had observed the arm over a period of about half an hour.
48. The defendant denies the incident. There is a letter from the defendant's then solicitor to the claimant dated 24 November 2021. At page 154 in the bundle, the last paragraph of the letter, reads thus,

> "In relation to the allegation that you, along with other witnesses saw our client throwing mud and grass onto your patio for over four hours on 19 September 2021, our client denies this allegation. Our client instructs that on that day, she visited her sister-in-law, and her family can provide witness statements to support our client's position in relation to this allegation should this matter be raised in Court".

49. The reference to 19 September 2021 seems to be an obvious mistake on the part of the defendant's solicitor. The allegation being said to have occurred on 18 September.
50. Dealing first with the reference to four hours, the claimant was asked about this by Mr Holsgrove. I am satisfied that that reference related to the duration of all of the incidents described in allegations three, four and five, which all took place on 18 September.
51. The significance of the statement that the defendant was visiting her sister-in-law became apparent during the evidence of Mr Dean Wilkinson in relation to this allegation. He said that on the day before, his brother had been involved in a serious car crash. The day after, namely, 18 September he said that he was in hospital with his brother and that the defendant was with her father that day. He was asked two or three questions to establish with certainty that he was referring to the defendant's natural father and not, for example, her father-in-law.
52. Mr Dean Wilkinson said he got home in the late afternoon and that the defendant arrived home after him. He was asked whether he had seen the defendant pulling grass up and throwing it over the fence and he said, "No. It was fresh turf I had just laid myself about a week before. I'd spent a lot of money on the garden".
53. In answer to questions from the claimant, he said that the old turf had not been taken up. He said the grass was not very good and so, he laid fresh turf straight over it. He was asked about the final paragraph in the letter from the defendant's then solicitor, referring to the defendant visiting her sister-in-law.
54. As I have observed, this followed Mr Dean Wilkinson confirming very specifically that the defendant had been visiting her natural father. Mr Wilkinson replied, "I'm confused. I

thought we were talking about the day after the accident". That does not make much sense because the answers given by Mr Dean Wilkinson did relate to the day after the accident.

55. I have considered carefully the guidance in *Turnbull.* I do not accept the evidence on the part of the defendant that she was elsewhere during the time when the clumps of grass and mud were being thrown. I am entirely satisfied that these clumps of mud and grass must have come from the defendant's garden. Whether they were from newly laid turf or whether they represented pieces of old turf over which the new turf had been laid, does not seem to me to be material. I am satisfied so that I am sure that the claimant correctly identified the arm doing the throwing was that of the defendant, together with her evidence of voice recognition. I am satisfied that allegation four is proved to the criminal standard.
56. Allegations five and six. These relate to the presence in the claimant's garden of a battery and a red ball. The defendant's evidence is the battery did not come from her household. She said they use Duracell batteries. The battery shown in the photograph at page 116 is not a Duracell battery.
57. Of the photograph of the red ball, the defendant said that since the red ball incident, see my judgment relating to the committal application, she had not permitted red balls to be present in her household.
58. My decision in relation to allegations five and six is the same as my decisions in relation to allegations one, two and three. There is no direct evidence concerning how those items came to be deposited in the claimant's garden, much less by who. There is no credible material upon which I can determine to the criminal standard that the defendant was responsible for the deposit of either item. Allegations five and six are not proven.
59. Allegations seven, eight, nine, 10 and 11. These allegations relate to a close circuit television camera located on the back wall of the defendant's home. Between 5 November 2021 and 21 November 2021, it is alleged that the camera was positioned so that the claimant's garden or part of it was within the visual scope of the camera lens.
60. The defendant's version of events is largely contained within the letter from her then solicitors, dated 24 November 2021. Having said that he had taken instructions from the defendant, the letter continued. Page 154.

> "After our telephone conversation, our client had a look at the CCTV camera and accepts that the camera was unintentionally repositioned slightly to the right and has now moved the camera back to the left as far as it can go.
>
> The camera was always intended to be forward facing and not facing into your garden.
>
> In any event, our client has reviewed all of her CCTV footage and confirmed that the CCTV footage obtained contains no images of either yourself or your children. But if there were images of you or your children, then she would have deleted these straightaway as per paragraph five of the injunction.
>
> Our client apologises for any distress this may have caused. You called me again on 22 November and said although Mrs Swift's camera had been repositioned slightly, you believe it is still recording you and your family. You said you were in your back garden on the evening of 21 November 2021 and moved towards the boundary fence.
>
> You said a red light turned on and you believe this indicates that it is recording. You stated you knew the company that installed the CCTV and called them.
>
> You said this incident occurred on 19:38 hours on 21 November 2021 and you asked for the CCTV to be disclosed to you. You stated that she has

> CCTV on her property, and it pointed downwards and you asked whether our client's camera could be pointed downwards too.
> You also said you knew that the CCTV footage was linked to our client's mobile phone, and you were feeling distressed. You said you just wanted it to stop and if it didn't, you would report the issue to the ICO [Information Commissioner's Office].
> We are instructed that our client's CCTV camera is on 24/7 but only records when it detects movement. We have been provided with the screenshot of the videos on 21 November 2021. There is no video recording at 19:38 hours. This means that there is no recording at this time.
> Our client has since removed the CCTV footage from her wall. You will appreciate that she acted promptly after being advised of your concernsand has done so, even though not being in breach of the undertaking, to allay any concerns you had".

61. The evidence of the claimant and of Olivia is to the effect that the camera was fitted by a professional company on 7 October 2021. The camera is motion sensor activated. It takes photographs or videos when it detects movement.
62. Between 5 November 2021 and 21 November 2021, the claimant and Olivia noted that when they were in their garden, a red light on the defendant's camera came on and a click noise was heard. The inference is that the camera was recording them.
63. I accept that on 5 November 2021 there were other persons in the defendant's garden. However, it seems beyond coincidence that the camera appeared to be activated following movement only by the claimant or Olivia or both.
64. The defendant's oral evidence in relation to this was that the optical view of the camera is wide. Following professional installation, the camera was at some point removed from the bracket. The defendant said that this was in order to have the battery recharged. I accept that. When the camera was replaced on the bracket, the defendant said she did not deliberately locate the camera so that it showed the claimant's patio or garden.
65. She was asked how the camera was repositioned following receipt of information from her solicitor and she said, "The camera is on a bracket on the wall", and that she positioned it manually from her own bedroom window. The relevant term of the injunction relating to those breaches are clauses five and 14.
66. Clause five:

> "The defendant must not take, access, acquire, download or possess any still or moving image or images of the claimant or her children in any circumstances whatsoever. Any such images which may have been inadvertently taken, accessed, acquired, downloaded or otherwise come into the possession of the defendant, must be immediately destroyed or deleted from any device capable of storing such images".

67. In addition, 14, "The defendant must not harass or pester or intimidate the claimant or her children".
68. I am satisfied that the camera was professionally positioned in the first instance. I am satisfied that it was removed from the back wall bracket for the legitimate purpose of recharging it. I am satisfied that when it was replaced on the bracket there was no deliberate intention to position it so that the claimant's garden was deliberately within the visual scope of the claimant's garden or patio.

69. I note the proviso in clause five relating to the images which may have been inadvertently taken. I am satisfied that if the camera took photographs of the claimant or of Olivia, this was inadvertent. I am satisfied that any photographs which may have been captured were deleted. The fact of the inadvertent relocation of the camera on the bracket following recharging was very properly and sensibly reported to the defendant's solicitors.
70. I am satisfied that the defendant took immediate steps to reposition the camera in the manner she stated but it seems that she did not reposition it sufficiently far to the left. Hence, the second complaint to the defendant's solicitor following which she repositioned it again. In the circumstances those facts do not amount to a breach of either clause five of the injunction or of clause 14.
71. I turn next to committal application three. I start with allegations one and two. The substance of allegation one is that on 22 November 2021, the defendant sent communication via the medium of WhatsApp to Mrs Sandra Rhodes, an employee of Sheffield City Council. The communication was about the claimant. Furthermore, the communication was malicious and untruthful.
72. The substance of allegation two is that on 23 November 2021, the defendant communicated via the medium of a telephone call from Mrs Rhodes and that the communication was about the claimant. The claim made by the defendant regarding the claimant was malicious and untruthful.
73. The evidence in support of this, curiously enough, comes from the defendant herself in her witness statement dated 9 March 2022. Paragraph six of this witness statement reads thus, and it is page 77. The witness statement is dated 9 March 2022 and I have corrected two typographical errors in the witness statement which refer to dates in 2022 when they must have been dates in 2021. "My solicitors contacted me on 18 November 2021 by telephone. The claimant had called my solicitors and raised an allegation that I had thrown mud and grass over the fence onto her patio for over four hours on 19 September 2021".
74. Pausing there, that is the first of the typographical errors which I have corrected.
75. "My solicitors also contacted me on 22 November 2021 by telephone after they had received another call from the claimant. I was very upset. I do not recall the exact dates, but I believe I WhatsApped Sandra, my housing officer, on 22nd and asked if she had two minutes to give me a call". Therefore, that is allegation one.

> "Sandra, my housing officer, she phoned me back the next day. I explained what my solicitor told me, and that the claimant was making more lies up about me throwing mud over her fence for over four hours and I felt it was harassment. It had been going on for three years and the claimant was trying her best to get me either arrested or evicted.
>
> I also told her about the letter my solicitor had sent to the claimant. Sandra asked me for a copy of this letter, so I screenshot it and sent it to her by WhatsApp.
>
> Sandra said that she couldn't get involved and it wasn't a council matter, but she did understand, and she would open a case for my reference and close it again. These communications are neither false nor malicious and I was just reporting what my solicitor had told me and sent me".

76. Breaking that down, there is no evidence that the WhatsApp message on 21 November was anything other than a request that Sandra Rhodes telephone the defendant. That does not seem to me to be prohibited by the injunction. I accept the defendant's evidence that Sandra Rhodes was her housing officer. The defendant is entitled to communicate with her.

77. The real substance of the alleged breaches comes from the contents of the telephone call. The first significant statement is "The claimant was making more lies up about me throwing mud over her fence".
78. In my judgment, the defendant was entitled to deny the allegation. For the avoidance of doubt, it cannot amount to a breach of the injunction to inform the City Council that an allegation had been made by the claimant. That simply represents the truth of the situation.
79. Secondly, "The claimant was trying her best to get me either arrested or evicted". Assertion of belief that the claimant was trying to have the defendant evicted is, in my judgment, a reasonable inference from the events, which I am satisfied occurred.
80. In addition, in any event, this is not something that the Sheffield City Council would act upon of itself. In addition, the assertion of arrest is not necessarily untrue and represents a genuinely held belief on the part of the defendant.
81. Statements which are "not true" are statements made by a person who has no genuine or reasonable belief in their accuracy. The purpose behind clause four is to prevent the defendant making complaints to an official agency which are untrue, and which would or might result in action adverse to the claimant being initiated. The communication openly described by the defendant is not one which is prohibited by the injunction.
82. It follows that in my judgment, allegations one and two are not proven because the facts openly disclosed by the defendant do not amount to any breach.
83. Allegation three relates to events on 20 December 2021. It is alleged that the defendant communicated via WhatsApp message to Sandra Rhodes about the claimant. It is alleged that communication was untruthful and the allegation within the N600 application notice continues:

> "Furthermore, the defendant sought to not comply with the provision in paragraph four of the injunction dated 9 September 2021. This paragraph is regarding the identity of the defendant as informant being disclosed to the claimant, which the defendant withheld by making an untruthful and malicious complaint and communication about the claimant to Sheffield City Council. Then asking for the complaint log to be marked as evidence only. Meaning a record was logged against the complainant's name without her knowledge".

84. It is alleged that these matters amount to a breach of paragraph four and paragraph six.
85. Paragraph six of the injunction is in these terms.

> "The defendant must not post on or send by means of any medium, whether social or otherwise and whether it exists at present or is created in the future, any communication at all concerning or relating to the claimant or her children. This includes but is not limited to postings on Facebook, Tweets on Twitter, messages sent via Snapchat, WhatsApp and Instagram and also texts and letters sent to other persons. It is stressed that these are only a few examples and that all communications or postings are prohibited. Provisos".

86. In addition, I have already read provisos one and three, so I am going to read proviso two.
87. "The defendant is permitted to communicate matters concerning the claimant or her children to any official agency subject to the prohibition in paragraph four above" which deals with lies and disclosure.
88. Sheffield City Council has disclosed the note made my Sandra Rhodes. It is dated 20 December 2020. It is at page 161 and reads thus,

> "2021 [call reference given, note], process first task. Earlier this year Ms Gilert took a private Court case out against Natalie Swift. Natalie was subsequently signed an undertaking in Court. This had nothing to do with the Council.
> However, Natalie has now received another letter from the Court which she is going to send me a copy of, and she has had to speak to a solicitor about this. She doesn't know why she has this letter as she has not breached the undertaking.
> She thinks it may be because she has replaced her broken camera with a new one fitted by Verisure. This is a doorbell camera on the front door and a camera on the back which only shows footage of their own garden. She says that Ms Gilert may be upset by this as she has in the past alleged that they are recording her or her family which Natalie completely denies.
> She wanted me to open/close this call as advice only as she is feeling harassed by her neighbour again and it is really having a detrimental effect on her mental health. Call closed. As noted, Natalie reported this but wanted it logged at the moment as advice only. I will now close this call".

89. The defendant says she wanted to speak to her housing officer for advice. I do not understand how it can be said that this amounts to a breach of any provision of the injunction. There is nothing untruthful in the contents of the note made by Sandra Rhodes. It does mention the claimant, but I accept that the defendant was entitled to take the view she did, and she did not make any complaint about the claimant.
90. There is nothing in the injunction which prevents the defendant asking that any communication be not officially recorded. However, in the event, the conversation has been recorded. It has been disclosed. There is nothing in allegation three which amounts to a breach of any clause in the injunction.
91. Allegation four. This relates to an event which occurred on 28 March 2022. Pages 164 through to 167 comprise extracts from a police incident log. The extracts have been heavily redacted. The contents so far as is material, is that at 18:46 hours on 28 March 2022, a communication to the police was made by Mr Dean Wilkinson. His name does not appear, but we now know, and I am satisfied that it was Mr Wilkinson who made the call for reasons I will deal with in a moment.
92. At 18:55 the police record continues, "Suspect is Martina Gillot", spelt G-I-L-L-O-T "at number 40". The log continues, "Martina Gillot, neighbour at 40, ongoing neighbour dispute and states she has tried driving at their son due to ongoing issues between the victims and suspect. Passing for officers to attend".
93. The log ends with an entry under the heading, "Incident comment". As I said, we now know that it was Mr Dean Wilkinson who made the call to the police. Gender pronouns have been redacted but I will insert the word, he, in the redacted part. Thus, it reads, "Caller is reporting that he has ongoing issues with his neighbour. The neighbour has just been on the street and turned round and then sped up and drove towards his son who was playing in the street with his friends".
94. The particulars of allegation four in the N600 are these: The defendant shouted loudly, outside her property and the claimant's property at a volume the claimant and her family could hear. "You report it for me Dean. Get police rung. Get him rung, Dean. I'm going on my nail course Dean".

95. It is said that the allegation amounts to a breach of paragraph four and 14 of the injunction, as well as paragraph 15 which prohibits the defendant getting anyone else to do things which would amount to breach of the injunction.
96. The evidence in support of the allegation begins at paragraph 37 of the relevant affidavit of the claimant and it appears at page 132 in the bundle.
97. Paragraph 37:

> "I became aware of breach four of the injunction dated 9 September 2021, when I personally heard the defendant shouting on 28 March 2022 around approximately 5.45pm.
>
> 38. To understand breach four the facts require context. On Monday, 28 March 2021, at around approximately", I think that must be 2022. It does not matter, "at around approximately 5.30pm myself and children were travelling home, and I was driving the car along Winder Avenue in the direction of my house. As I drove down Winder Avenue, I noticed children playing outside my property, playing football on the roads and pavements. I passed these children who had moved onto the pavement and as I approached the turn in the road, every time I turned round here so that I can park forward facing in the direction of the traffic, as I had just turned in the road, my car had been stationary.
>
> As I set off therefore, I was driving extremely slowly in first gear to travel a short distance to park outside my house as I do every day in the same space.
>
> The same children were still outside my property. The children who play on the road know where I park my car as it is there every day in the same space.
>
> As I was driving, I saw the defendant's son outside my front door standing on the pavement. He saw me driving and deliberately, in the motion of a "star jump" jumped from the pavement into the road and he put his chin into his chest and looked directly at me. He pulled a strange, fixated face.
>
> The other children were shouting to Kye, asking him why he was in the road and telling him to move as there was a car. These other children were standing on the pavement.
>
> At this time, I was a far distance away from where Kye was standing in the road. So, I stopped my car and proceeded to beep the car horn to get him to move out of the road, which after a few moments he did and he went into his house. As he had moved, I now parked outside my home.
>
> When I got out of my car with my children, I noticed Dean Wilkinson stood outside his house with his arm round Kye Wilkinson, both pulling faces and staring. Myself and the children did not react to this and we went into our home and locked the door. This was a completely unpleasant and bizarre situation".

98. I do not read paragraph 39. I move on to paragraph 40.

> "On the same day, Monday 28 March 2021 at approximately 5.45pm, the defendant, Ms Natalie Brelshford[?] shouted loudly outside on the communal area between her property and my property at a volume that myself and my family could hear, "You report it for me Dean. Get police rung. Get them rung, Dean. I'm going on my nail course, Dean".

99. I move to paragraph 44:

> "On 7 April 2022, I missed a visit from a male police officer at my home. I made contact with South Yorkshire police, to establish what the latest allegation was.
> 45. Well, I spoke to PC Natalie 3557 on 7 April 2022. He informed me Dean Wilkinson and Natalie Wilkinson claimed I had mounted the pavement outside their home, 42 Winder Avenue, Sheffield, S20 4AA and drove at Kye Wilkinson who was on the pavement.
> PC Nulty[?] informed me he had written off the matter and that he advised Natalie Brelshford and Dean Wilkinson that it is important they comply with the injunction.
> 46, the other children and one adult witness when the investigating officer spoke to them, confirmed that Kye Wilkinson and his parents' version of events was not true. Witnesses confirmed the facts. That Kye Wilkinson was outside 40 Winder Avenue, Sheffield, S20 4AA and that he was on the road and Martina Gilert had not driven at Kye Wilkinson.
> 47. I would like to draw attention to the fact that I beeped my car horn to get Kye Wilkinson to move out of the road. Someone would not beep their horn if their intention was to drive at somebody. The defendant and her family's version of events simply do not make sense".

100. In cross-examination, the claimant and Olivia were challenged about their accounts, but each maintains their version of events.
101. The defendant's evidence is to this effect:

> "The report was made by Dean. I was in a salon, a nail salon, in Eppington with my sister-in-law Rachel when the report was made. I was in the living room. I heard a loud beep. My son came running into the house distressed and upset. He said the claimant had driven the car at him really fast and beeped her horn. I didn't go outside. Dean was outside. Dean didn't speak to his friends he said.
> Ten minutes later, me and Rachel went to the nail course. I was having a conversation with my neighbour, Hazel, and Rachel about nail courses we were doing because Hazel had been on a gel course. I was at Eppington from 6pm to 8pm".

102. Well, I accept that the defendant went to a nail course, and she was present there between 6pm and 8pm and that it was not her who made the call to the police.
103. In cross-examination she said that she was in the living room and did not see the incident. It follows that her reaction to what may have happened is not based on first hand knowledge. She said she thought it was definitely a police matter and she denied telling Dean to report anything to the police.
104. Dean's evidence was to this effect.

> "The defendant was in the living room, and I was in the kitchen looking into the road. I saw the claimant drive past, turn in a T junction, and zoom her car towards the children. She beeped her horn.
> Kye was on the kerb close to the road. There was no reason to be speeding or beeping a horn or mounting a piece of tarmac. She mounted the tarmac outside my house and beeped at Kye who was with the other children. I

went outside to Kye. Kye told me what had happened. I spoke to another child. I spoke to his parents, and they didn't want to get involved.
I saw the claimant and Olivia getting out of the car smirking and laughing. I reported the matter to the police. The defendant did not encourage me to do so. She was going to a nail course, she didn't come out, she stayed inside. The defendant did not tell me to contact the police. I rang the police from home".

105. In cross-examination he maintained his account. I do not accept that the claimant mounted the kerb. She is a fastidious person, and such behaviour would be so out of character, I do not believe it. I accept the version of events as related by the claimant and Olivia.
106. In particular, I accept that the defendant spoke the words as alleged in circumstances where she clearly intended that those words would be heard by the claimant. I accept that at the time, the complaint was made by Dean, the defendant was at her nail course in Eppington, and that takes matters no further.
107. The defendant has no first-hand knowledge of what happened. I have severe doubts whether Dean saw anything. I am satisfied that the defendant did instruct her partner, Dean, to make an official complaint to the police. The complaint that was made is untrue. The complaint was made at the instigation of the defendant. That the defendant intended to harass the claimant is demonstrated by the fact that she shouted the words so the claimant could hear. This was not a discreet, genuine complaint report to the police. It is a clear breach of clauses four, 14 and 15.
108. Allegation five. On 5 April 2022, it is alleged that the defendant pestered the claimant's window cleaner who was cleaning the claimant's windows on the front lawn of the claimant's home. It is alleged that this breach is a breach of clause four of the injunction prohibiting the defendant from pestering, harassing, or intimidating the claimant or her children.
109. The evidence in support is that Olivia was speaking with the window cleaner when the defendant approached the window cleaner and started speaking to him. The defendant says that this was with a view to engaging the window cleaner to clean her windows in the future. It does not seem to me that this one-off event amounts to a breach of clause 14 of the injunction.
110. Allegation seven concerns an event which occurred on 1 May 2022 when the defendant's teenage son, Taylor, used the word, Martina. Clause one of the injunction prohibits the uttering of the word, Martina. Taylor's use of the word, Martina, would amount to a breach of the injunction only if it could be proved that he did so, following incitement or encouragement from the defendant. There is no such evidence. The breach is not proved.
111. Allegation eight is admitted.
112. I turn finally to allegation nine. It is alleged that on 7 July 2022 the defendant threw a large dog toy into the claimant's garden. The evidence in support of this allegation comes from Olivia who says she witnessed it. She says this, in her affidavit and it is page 223. At paragraph 37:

"On 7 July 2022 around 7pm, I was at our home address. I was going downstairs to our kitchen. At the top of our stairs on the first floor there's a window which overlooks our drive, a communal area, and the defendant's drive.
As I proceeded, I saw the defendant standing on her drive near her rubbish bins. The defendant had what appeared at the time to be a soft toy looking item in her right hand and I saw her throw this over our drive fence into the garden of our home address.

> The defendant was wearing a pink, multi coloured play suit (like a dress but with shorts), black/dark coloured old trainers and her hair was in a bun. I noticed prominent, dark tattoos on her wrist. On closer inspection, it was a used dog toy that the defendant had thrown into our garden. Images of this are shown in exhibit OG1 and there are photographs of the dog toy in the garden".

113. In cross-examination Olivia said this. She was questioned about the view from the first-floor window, and she could see the whole of the communal area and the defendant's drive and the majority of her drive. It was a sunny day with natural daylight. There was nothing blocking her view and put to her. "So, she was stood near her bins, and you could see the soft toy in her right hand. Yes. Was her back to you? No, her right side was to me. Full length. The play suit did not have any sleeves. It was the right wrist".
114. Olivia could not recall which hand she was holding the dog toy in when she first saw it and then she described this: "Her hand was low and then she raised her arm above the shoulder and served it".
115. She was asked about the tattoos, and she said, "I believe the inside of her wrist, but it was a very long time ago". She said she saw the tattoo when the defendant raised her arm to throw the toy.
116. She said that the window was closed when she saw the defendant throw the toy. She saw the full flight of the item thrown and that she was sure that the item shown in the photograph was the item that was thrown.

> Q: What happened after you saw the defendant throw the item?
> A: I think she remained loitering for a while, but I left to go to the bedroom, so I don't know. I stayed where I was for about a minute or so because there may have been more things thrown and then I went to the bedroom to see what had been thrown.
> Q: How long elapsed between the time you first saw the defendant to moving into the bedroom?
> A: Maybe a minute or so.
> Q: Are you sure it was the defendant you saw?
> A: Yes, I know her very well. She was my neighbour".

117. The defendant said it was not her who had thrown the dog toy. She demonstrated the presence of tattoos on her right wrist. On the outer wrist there is a dark tattoo and on the inner wrist is a lighter tattoo. She said that in order to have thrown the dog toy with sufficient force for it to land where it did in the claimant's garden, it would have been necessary to throw the toy using an over arm movement and not an under-arm movement.
118. She produced evidence to show that she did not acquire the dark tattoo on her outer wrist until after the date of the alleged event. She did not believe that Olivia could have seen the tattoo on the inside of her wrist. The defendant's evidence is that, in cross examination she believed the dog toy showed in the photograph of it lying in the garden belonged to her. She had earlier said she had three dogs living with her at all relevant times and she did not throw the item into the garden.
119. Therefore, using the words she used, "I have a dark tattoo on my outer wrist, a light tattoo on my inner wrist and if I threw the toy over arm, Olivia would only have seen my outer wrist" although I accept that the outer wrist tattoo was not acquired until after the relevant event.
120. I again remind myself of the guidance in *Turnbull.* This was recognition for an adequate period in good conditions. I am satisfied that Olivia is correct when she said that the tattoo

was on the inner aspect of the wrist. There is no reason why this could not have been visible when the defendant threw the dog toy using an over arm movement as described by Olivia.

121. Furthermore, there is no conceivable possibility that another random, adult female bearing a resemblance to the defendant and with access to the defendant's dog toy could have committed this act. I am sure I can discount that possibility. I am sure it was the defendant who threw the dog toy into the garden.

122. Therefore, it follows that I found some of the breaches proven in committal applications two and three.

End of Judgment on Liability.
See separate Judgment on Sentence

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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.