

IN THE COUNTY COURT AT LIVERPOOL

Case. No. J70LV229

Courtroom No. 26

35 Vernon Street
Liverpool
L2 2BX

Tuesday, 2nd April 2024

before

HER HONOUR JUDGE HOWELLS

PLUS DANE HOUSING

- v -

KIMMINCE & ANOR

MS SHORT (Solicitor) appeared on behalf of the APPLICANT
MR MASSEY appeared on behalf of the RESONDENTS

SENTENCING REMARKS

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1 **Case resumes.**

2 SENTENCE

3 JUDGE HOWELLS: Mr Molloy, you can stay seating. This is the sentencing hearing in
4 relation to various contempts of Court that have been found against you upon a
5 hearing in June of last year. You were found to have breached, in many ways, two
6 Court injunctions that had previously been made. It falls to me this afternoon to
7 consider what is the appropriate penalty that should be imposed against you in
8 relation to that.

9 By way of history, the position is that an injunction order was made on an interim
10 basis on 22 July of last year when it was ordered that you should not use your property
11 for any business purposes without the written consent of the claimant, including but
12 not limited to breeding of dogs. You were also ordered not to engage, or threaten, or
13 engage in conduct which could cause a nuisance or annoyance to your neighbours at
14 your property. The matter was then relisted for a final hearing before Recorder Wells
15 on 9 January of last year. All of this now seems a long time ago that this matter has
16 been before the Court, but on 9 January 2023, a further final injunction was made,
17 and on that occasion, you attended at Court and you consented to the terms. Those
18 terms included that within 28 days of the date of that order, so by a date at the
19 beginning of February last year, you would ensure that any dogs currently living
20 within your property of 10 Waterloo Road were permanently removed, and then
21 ensure that no dogs were residing or remaining at the property either on a permanent
22 or interim, which means short term, basis. That included any form of breeding for
23 business or hobby or recreation. Further orders were made that you would not carry
24 out conduct which was capable of causing nuisance or annoyance to your neighbours,
25 nor should you use abusive or insulting or threatening behaviour against them. That
26 order remained in force until 8 January 2024, and I will come to the terms of that
27 afterwards.

28 The position is that the matter was brought back before the Court for alleged breaches
29 of that injunction, or those injunctions. Now, you did not attend in June, but for the
30 reasons I have given in an earlier judgment today, I am not setting aside the judgment
31 that was made on that occasion. In any event, you only sought to set aside those
32 related to dog barking, you did not seek to set aside those breaches which related to
33 a noise nuisance, of karaoke, nor the breeding of dogs or the keeping of dogs within
34 the property. Effectively, there are 25 breaches of the injunction which run in time
35 from 25 September 2022, which was after the interim but before the final injunction,

1 through to 20 April 2023, and it is those breaches which I am sentencing you for
2 now. It is right to say, however, that there is a continuing breach because you, on
3 your own admission, still have four dogs at the property contrary to the injunction
4 order.

5 I am going to deal with the breaches as has been suggested by your barrister by
6 dividing them into categories; firstly, the dog related categories and, secondly, the
7 other noise nuisance category which was music and karaoke issues. The dog related
8 categories relate to not only keeping dogs at the property, but breeding dogs at the
9 property and your dogs causing a noise nuisance to neighbours by barking, often for
10 extensive periods and over antisocial hours. Those things have been proved against
11 you and it is those things which I am considering today for sentence.

12 In terms of sentence, I remind myself of the guidance that was given by the Court of
13 Appeal in the case of *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631.
14 The objectives for sentencing for breach of an order made in a Civil Court are
15 different from criminal ones, but they are, first of all, to ensure future compliance
16 with the order; secondly, punishment; and, third, rehabilitation. My main concern is
17 to make sure that this Court order is complied with; it is not something that can
18 simply be ignored and you can pretend it is not there whatever pressure you may
19 have from external sources, and I understand there might be some family pressure on
20 you, but you, as an adult man, have your own decision making process and I need to
21 know that you are going to comply with this order in the future.

22 In relation to the guidance that was given in the case in the Court of Appeal,
23 *Lovett v Wigan Borough Council*, my powers fall under five options; either an
24 immediate order for committal to prison, or a suspended order with conditions, or
25 adjourning the consideration of the penalty, a fine, or no order. The maximum term
26 that I can impose upon you for a custodial sentence is two years' imprisonment, so I
27 do have significant powers if I felt that these were ongoing persistent breaches which
28 would not be stopped in the future. Therefore, you need to know that I do have the
29 power to impose an up to two years prison sentence if you do not comply with these
30 orders; this is not something you can simply ignore, whatever pressure you may have
31 put upon you from family members.

32 In terms of custody, it has been accepted by your barrister that these breaches cross
33 the custody threshold. I recognise that sending somebody to prison is reserved for
34 the most serious breaches and for less serious cases where other methods of securing
35 compliance have failed. I need to look at the totality of the penalties imposed, and I

1 need to look at cases where there no alternative but to send someone to prison. That
2 does happen; people do get sent to prison for breaking orders of this Court. However,
3 a custodial sentence should never be imposed if an alternative course is sufficient and
4 appropriate. I have considered the approach to sentencing, as I have indicated, set
5 out in the case of *Lovett v Wigan Borough Council*.

6 In relation to the dog related offences, these have been, in my judgment, persistent
7 offences. A Court order was made, as I said, initially in the summer of 2022, saying
8 you should not breed dogs, yet in the November of 2022 you were breeding dogs.
9 There was a final Court order in January 2023 saying that you should remove the
10 dogs by February; you did not do so. Further, breaches occurred not long after that
11 Court order, so in, well, the end of January, the 28th, you allowed your dog to bark at
12 antisocial hours, you allowed your dogs to bark over a sustained period on 19
13 February from about 5am and 10pm, causing nuisance and annoyance and upset,
14 (there was an interruption in ccourt)..and if people are going to interrupt me, they
15 will be asked to leave the Court. They will be asked to leave. This indicates, in my
16 judgment, that there has been a persistent failure to comply not long after the Court
17 orders were made. It indicates to me that this was deliberate and there has been no
18 real attempt to comply with the Court orders.

19 Looking at the culpability and harm, as is set out in *Lovett v Wigan Borough Council*,
20 I agree with your counsel that the appropriate category is 2b on the table. It is in
21 between the most serious and the less serious in terms of culpability but, as has been
22 accepted by your barrister, there have been deliberate flouting of the injunction. It
23 may be that it is has not been intending to cause annoyance to your neighbours, or
24 upset to your neighbours, but there has been no real attempt to comply and this has
25 been ongoing in the light of not only the interim injunction but the final one. In
26 relation to harm, again, I accept that this is the second category; I recognise that you
27 have through your actions caused upset and annoyance and disturbance to your
28 neighbours. It may be argued that they may well be at fault as well, but I do not have
29 any information before me to show that that is right; they are not before the Court,
30 you are. You are the adult here before the Court who has responsibility to comply
31 with your Court orders, and I find that there has been upset and harm, albeit in the
32 mid-range, not the higher range as was suggested. That is not to diminish the upset
33 that there has been to your neighbours; the loss of sleep, the fact that they felt at the
34 end of their tether, particularly with a young child and a teenager whose sleep has
35 also been upset. This is something which I take seriously. Nevertheless, I reach the

1 conclusion that it is the mid category of harm and therefore, on the table, the category
2 of culpability and harm on the grid is B2.

3 I look at whether there have been any aggravating and mitigating factors, including
4 any personal mitigation that will move me from the starting point of one month up
5 or down. I recognise that, in terms of aggravation, these have been persistent,
6 ongoing breaches, and there has been no credit I can give you for accepting those
7 breaches. I make it clear that that is not an aggravating feature, but rather lack of
8 mitigation because you have not accepted the breaches or admitted them. I also note
9 that today you have indicated through your counsel that you are inclined to comply
10 with the removal of the dogs. That, I am afraid to say, does not fill me with
11 confidence that you will do so, but it is your decision, it is up to you; if you do not
12 comply, there will be serious consequences. As I have said, you are an adult. I
13 understand you have family pressures, but it is your decision, not that of those around
14 you. Those around you might want to hear and make a decision as to priorities;
15 whether it is the dogs or the family. I give you some credit recognising that you do
16 have those family pressures, and I also recognise in mitigation that you have some
17 personal health issues and your son, too, has personal health issues. I take that into
18 consideration.

19 Looking at matters in the round, I am satisfied that this is a case where the custodial
20 threshold has been met in relation to the dog breaches and that we are at category 2b,
21 as I have indicated, which would normally mean a starting point of one month, but
22 up to three months' imprisonment.

23 However, the Court has the power to consider, effectively, adjourning sentencing.
24 I am going to take that opportunity; I am going to adjourn sentencing today to a date
25 in June, which I will come back to in a moment.

26 If I were to have imposed a sentence today, I would have given you, in relation to
27 each of the dog related breaches, so that is, I think, 21 different breaches,
28 28 days' imprisonment. Each of those breaches, and each of those sentences, to have
29 run concurrently. However, I am going to give you an opportunity to prove that you
30 can comply with this order by bringing the matter back in June for you to show that.
31 If, when the matter comes back in June, (1) the dogs have been removed as soon as
32 possible; that does not mean wait until June, that means as soon as possible. (2), there
33 has not been in the meantime any nuisance with the neighbours in terms of dog
34 barking. (3), there has not been any dog breeding, and (4), there has not been any
35 nuisance, or annoyance, or upset to the neighbours by noise or any other breaches, it

1 is likely that I will consider a lower sentence. It may be that that would be a
2 suspended order, or it may be something else, but at the moment the position is, if
3 you were to come back in June and the position had not changed, you are likely to
4 face a 28-day sentence of imprisonment.

5 I will deal then with the question of the noise related nuisances, of which there are
6 four breaches. Again, it is accepted that the custody threshold has been crossed. I
7 accept that in terms of the harm, this is category two in terms of nuisance and
8 annoyance for your neighbours, and in terms of, again, it is not the most serious harm,
9 but I accept that it has caused them upset, lack of sleep, etc. In relation to culpability,
10 again, I would accept that this is category B in terms of nuisance and annoyance.
11 They are, fortunately, few in number in relation to the breach; that does not excuse
12 them in any way. If I were to have imposed a sentence today, I would have imposed
13 a sentence of seven days in custody, and that would have been concurrent, running
14 alongside, the other 28 days. However, again, I am persuaded that you should be
15 given an opportunity to prove that you will comply with this order and bring the
16 matter back in June. I repeat, if there has been ongoing problems, it is likely that you
17 will then go to prison, and the total period will be, probably, 28 days. I will look at
18 it again on the facts as are presented at that time, but I am giving you that indication
19 so you know the serious consequences that you face.

20 I am going to therefore adjourn sentencing until that date in June which I will come
21 to. It is on the basis, as I have said, that those dogs, which I know you care for, have
22 to be rehomed. You have had those dogs for 14 months now longer than you ought
23 to have; you have bred from those dogs; you have caused annoyance to your
24 neighbours with those dogs. They have to be rehomed urgently. No excuses. I
25 appreciate you will say that will cause upset at home; I remind you that this is your
26 decision and you know what will happen, or what may happen, if you do not. Further,
27 as I said to everyone in Court, there is, in reality, something of a stark choice between
28 the dogs and the pressures of family life, and that needs to be considered very
29 carefully indeed.

30 As I am not today sentencing you, I do not need to direct that this, these sentencing
31 remarks, be uploaded to the Government website; that only comes into effect when I
32 am actually giving you a sentence. In terms of appeals, the position is you do not
33 have the automatic right to appeal that you would have had, had I made a sentence
34 of imprisonment or suspended order; it is a matter for you to take legal advice as to

1 whether you wish to appeal the order that I am making, but I say that just so that you
2 are aware that there is no automatic right of appeal.

3 In terms then of the injunction, the injunction, I think, has come to, has it been
4 extended, did I extend it on previous occasions, Ms Short?

5 MS SHORT: Yes, until the conclusion of the proceedings.

6 JUDGE HOWELLS: Right, okay.

7 MS SHORT: So, it continues.

8 JUDGE HOWELLS: Well, I am going to extend the original terms of the injunction today
9 through to 24 hours after the hearing that I am going to list now for the adjournment
10 for consideration of your sentencing to ensure that there are no difficulties in relation
11 to that.

12 **End of sentence.**

13

14

15 NB Judge's note: the hearing for sentence was then listed on a date in May.

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This transcript has been approved by the judge.