

IN THE CENTRAL LONDON COUNTY COURT

Date: 10TH October 2024

Before :

HHJ BAUCHER

Between:

**The Lord Mayor and the Citizens of the City of
Westminster
- and -
Robert Ryan**

Claimant

Defendant

Mr Liberadzki (instructed by the The Lord Mayor and the Citizens of the City of Westminster
for the Claimant

The Defendant did not attend and was not represented

Hearing dates: 10th October 2024

SENTENCE

HHJ BAUCHER:

1. This sentence is to be considered in conjunction with the judgment I gave following the Committal hearing on the 11th September 2024. I heard oral evidence from the complainant Ms Todd and found that the defendant was in breach of an Injunction made by the court on 15th August 2024.
2. I was satisfied that on the 21st August 2024 the defendant threw papers at Ms Todd hitting her arm and that he threatened to rape her and therefore the defendant was in breach of Paragraph 1 of the Injunction order by using and threatening violence against Ms Todd, an employee of the Claimant, whilst she was visiting Princethorpe House London W2 5SX for lawful activity and in breach of Paragraph 2 by engaging in conduct causing or capable of causing Ms Todd harassment alarm or distress.
3. The defendant failed to appear on 11th September. I was satisfied that the defendant was on notice of the hearing and I heard the case in his absence. I found the allegations proved and in accordance with Oliver v Shaikh [2020] EWHC 2658 (QB) I adjourned the issue of penalty for contempt of court to a hearing today. The defendant has not attended, nor has he been represented today.
4. The order from the hearing on the 11th September identified the two breaches of the order dated 15th August 2024 which I found proved to the criminal standard. The Order dated 13th September 2024 contained a prominent notice in the following terms:

“To the Defendant Robert Ryan of 119 Princethorpe House London W2 5SX. You have been found guilty of contempt of court as set out below. The court will proceed to sentence you at a further hearing on the 10th October 2024 at 2pm when you must attend. The Court is considering whether to impose an immediate custodial sentence on you. If you do not attend the hearing, the court will sentence you in your absence. You are strongly

encouraged to seek legal representation and to apply for legal aid, which may be available without any means testing.”

5. The defendant has made no application to the Court to reconsider the Committal Application.
6. The defendant was served by Mr Pierre Williams Process Server on 17th September 2024 with a letter from the Claimant, the order of 13th September 2024 and the notice of hearing for today. Mr Williams handed the documents directly to the defendant and stressed the importance of attending the hearing. The defendant told him that his neighbours were “hassling him and that he had trouble reading.”
7. The defendant was also served with a letter from the claimant dated 4th October, the Claimant’s note for sentencing and the committal bundle for sentencing by Mr Howard on 4th October 2024. The defendant was reminded as to the date of the sentencing hearing and replied “is that when it is” and then stated he had “no money for the train fare to get to court.”

Concurrent legal proceedings

8. Following the defendant’s arrest on the 21st August criminal charges were laid against the defendant in the same incident. The defendant attended the Magistrates court on 30th August 2024 and pleaded guilty to common assault (throwing papers at Ms Todd) but not to the public order offence (the threat to rape Ms Todd). A trial has been listed on the 29th October 2024.
9. The White Book (WB) 2024 at paragraph 81.1.13 refers to the issue of collateral criminal proceedings. The WB states “where contempt proceedings have been taken and completed and subsequent criminal charge cannot be met with a plea of autrefois acquit or autrefois convict. Conversely the fact that criminal proceedings have been taken against a person is no bar to a committal application on the same facts.” The WB expands on that explanation at paragraph 2 on p2435.

10. Further guidance is given in *An Outline of the Law of Contempt of Court* (appended to Part 81) which provides detailed commentary at section 2 (*Principal Forms of contempt liability*), sub-section (g) (*Contempt liability and criminal liability arising from same facts*) at 81CC.25 at p2434. This sets out the principles elaborated in *Barnet LBC v Hurst (Practice Note)* [2002] EWCA Civ 1009: 1) The jurisdiction of the court when exercising its jurisdiction in contempt proceedings is quite separate from any criminal proceedings which may be brought in the criminal courts, notwithstanding that it may arise out of the same set of factual circumstances. 2) It is founded on an inherent power which derives from the jurisdiction of the court to enforce its orders. 3) It is important that contempt proceedings should be dealt with swiftly and decisively. 4) On the other hand a court has a discretion to adjourn contempt proceedings pending the outcome of other proceedings, but only where it is satisfied that there would otherwise be a real risk of prejudice which might lead to injustice.
11. I have also helpfully been referred to *Gill v Birmingham City Council* [2016] EWCA Civ 608 and in particular paragraphs 19- 20.
12. It is important that contempt proceedings are dealt with swiftly and decisively. I am satisfied that it is appropriate to proceed. My findings do not bind the Magistrates Court and there is therefore no risk of prejudice to the defendant.

Sentence

13. I am satisfied the defendant has been served with the papers for today and is aware the hearing is proceeding. That is evident from the Process Server statements from Mr Williams and Mr Howard. It is clear the defendant is aware of the hearing and has deliberately failed to attend because he says he does not have the bus fare.
14. The Court of Appeal set out the approach to sentencing for breaches of anti-social behaviour injunctions (ASBIs) under the Anti-Social Behaviour, Crime and Policing Act 2014, in its judgment on three related appeals in *Lovett & others v Wigan Borough Council & others* [2022] EWCA Civ 1631 where the Court of Appeal gave guidance on sentencing for contempt of court. The Court

of Appeal reviewed the law at paragraphs 31- 38 and from paragraphs 39 – 57 set out the approach to be adopted under Part 1 of the 2014 Act.

15. Mr Liberadzki who appears for the Claimant prepared a very helpful skeleton note for my consideration but quite rightly did not direct the court to any particular form or indeed length of sentence.
16. I gratefully adopt Mr Liberadzki’s summary of the decision as set out below at paragraphs 10 -17 of his note.

1. The objectives of sentencing for civil contempt (including breach of an ASBI) are somewhat different from criminal sentencing and are, in order [para 39]:
 - (1) Ensuring future compliance with the order.
 - (2) Punishment.
 - (3) Rehabilitation.
2. The court has five options available to it [para 40]:
 - (1) An immediate order for committal to prison.
 - (2) A suspended order for committal to prison, with conditions.
 - (3) Adjourning the consideration of a penalty.
 - (4) A fine.
 - (5) No order.
3. The maximum term is 2 years’ imprisonment: s.14 Contempt of Court Act 1981. One half of the custodial term will be served in prison before automatic release: s.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 [para 42].¹
4. The Court should first consider whether the custody threshold – for the most serious breaches, or less serious cases where other methods of securing compliance have failed – is met. Any custodial term should be the shortest term which will achieve its purpose, and the length is decided without reference to whether or not it is to be suspended. Terms for multiple breaches may be concurrent or consecutive, but the totality of the penalties must be proportionate [para 43].

¹ The recent legislative changes which provide for early release after 40% of the sentence has been served do not apply to sentence for contemnors. The Criminal Justice Act (Requisite and Minimum Custodial Periods) Order 2024 modifies the minimum periods for criminal sentences (ss. 243A, s.244 and 264) but not the period applicable to fine defaulters and contemnors (s.258).

5. Suspension of any custodial term should then be considered. It is usually the first way of attempting to secure compliance with the order. The Court may also adjourn consideration of the sentence and speak directly to the contemnor about their behaviour, indicating what sentence would have been imposed had the matter not been adjourned, and the consequences of good or bad conduct in the interim period [para 45].
6. In less serious cases the Court may conclude that a fine is sufficient, or even make no order (if the impact of the proceedings by itself has achieved the purpose of the contempt jurisdiction).
7. The Court of Appeal endorsed the scheme proposed by the Civil Justice Council in its July 2020 report *Anti-Social Behaviour and the Civil Courts* ('the CJC Report'), albeit noting that sentencing is highly fact-sensitive and the CJC Report does not have the same authority as Sentencing Council statutory guidelines [para 46].
17. I have also considered the report from the Civil Justice Council It is therefore necessary for me to first consider the level of culpability. There are three categories. A – High culpability; very serious breach or persistent serious breaches B- Deliberate breach falling between A and C and C- Lower culpability; Minor breach or breaches.
18. In this instance the defendant not only assaulted Ms Todd but he made a threat of serious violence. He said, "If I see you again, I will rape you fucking bitch." The use of violence was minimal as the defendant hit Ms Todd on the arm. I consider the threat was such that coupled with violence this places the case into Culpability category 2 which is B.
19. In relation to the level of harm again there are 3 categories. Category 1: Breach causes very serious harm/distress. Examples may include injury or threat of serious injury; significant damage to property; elderly or vulnerable resident affected; or causes a resident to move home. Category 2: Cases falling between categories 1 and 3. Category 3: Breach causes little or no harm/distress.
20. In her witness statement Ms Todd made a victim impact statement. She said: "*When RYAN threatened to rape me I felt very scared and terrified. While I was*

running down the stairs I did not stop thinking that he might follow me and physically assault me. I'm really concerned about the rest of the residents as they might experience the same or similar incident as I did. Also, the concierge employee have had previous negative encounter with RYAN where he assaulted him. Now has been over an hour of the incident and I'm still crying and constantly shaking." In her oral evidence she confirmed that she had been distressed by the incident and that it had made her scared.

21. I had the opportunity of observing Ms Todd in the witness box. She was clearly terrified by the incident. She described running down the stairs in the block of flats and panicking as she feared the defendant was pursuing her by the use of the internal lift. She clearly could not think straight as she was in such fear for her safety. That was clear by the fact that she was further stressed by the defendant walking backwards and forwards by the concierge's office and banging on the window and shouting "fucking bitch" when Ms Todd was safely inside. I am satisfied that the whole incident caused serious harm and distress to Ms Todd and that the matter is a Category 1 case.

22. Thus, having regard to the CJC table:

	Culpability A	Culpability B	Culpability C
Harm Category 1	<i>Starting point:</i> 6 months <i>Category range:</i> 8 weeks to 18 months	<i>Starting point:</i> 3 months <i>Category range:</i> Adjourned consideration to 6 months	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months
Harm Category 2	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> Adjourned consideration to 1 month

Harm Category 3	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> Adjourned consideration to 1 month	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> No order/fine to two weeks
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23. This places the sentence in Culpability B Harm 1 which is the middle table in the top row. However, there are number of aggravating factors which in my view increase the sentence. First the breach of the injunction occurred within days of its implementation. It was served on the 17th August 2024 and the breach occurred a mere four days later. Secondly, Ms Todd was a witness in the proceeding which resulted in the Injunction being made by the court. She is a council employee and was going about her lawful business when she was subjected to an assault and a serious threat. Thirdly the defendant has a history of failing to comply with court orders. He was sentenced to 6 weeks custody on 30th May 2023 and a restraining order was imposed. On 15th May 2024 he was found to have breached the restraining order and was ordered to wear an electronic tag for one year.
24. I now turn to mitigation. I am aware that the defendant suffers from bipolar disorder, has an allocated Community Psychiatric nurse and that he has an issue with drug use. It is believed it is the latter that causes his erratic behaviour rather than his mental health. No admissions have been made in relation to the matters before this court entitling the defendant to a credit in respect of his sentence. There has been no expression of remorse.
25. I am satisfied that the breaches are such that the custody threshold is crossed. I do not consider it is appropriate to suspend the sentence due to the seriousness of the breach, the risk the defendant presents and the defendant's previous poor compliance. I am satisfied that this case is so serious that only a period of immediate imprisonment is sufficient to reflect the culpability of the defendant and harm caused by his breaches of the Injunction order.

26. Taking all factors into consideration I am satisfied that the aggravating factors are such that this lifts the case into the high range within the defined table. Indeed, it is on the cusp of lifting it into the A culpability and Category 1 column. As such the defendant will be sentenced to 18 weeks in custody or 126 days concurrent for each breach. I consider that overall penalty is just and proportionate. The defendant was remanded in custody for 7 days. The sentence will therefore be reduced by 14 days. Thus, the total custodial term will be 112 days.
27. The defendant will serve half of the 112 days in custody. When he is released, he will remain subject to the terms of the Injunction.
28. The defendant has a right to apply to purge his contempt. He has a right of appeal against this order. The time limit for any appeal is 21 days and the route of appeal is the Court of Appeal.
29. The defendant has not attended today, a warrant for his arrest will be issued. When he is arrested, he will be subject to the terms of this sentence.