

IN THE COUNTY COURT AT PLYMOUTH

The Law Courts
Armada Way
Plymouth PL1 2ER

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Before:

HIS HONOUR JUDGE MITCHELL

Between:

SANCTUARY HOUSING ASSOCIATION
- and -
MR JOHN PAUL KIRBY

Claimant

Defendant

MR SINGH, Counsel, appeared for the Claimant
THE DEFENDANT did not appear and was not represented

Approved Judgment

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[Transcriber's note: transcript prepared without access to case papers.]

HIS HONOUR JUDGE MITCHELL:

INTRODUCTION

1. I am dealing with a Committal Application, brought by Sanctuary Housing Association, represented by Counsel, Mr Singh.
2. The Defendant is John Paul Kirby. He has not appeared. I will come back and comment on that, in a moment.
3. He has not appeared, and he is not represented. He also did not attend, I think I am right in saying, on the previous occasion, when this matter came before the Court.
4. The Contempt Proceedings are brought in respect of alleged breaches of an Anti-Social Behaviour Injunction, initially granted on an interim basis, and then made on a final basis. I will, again, come back to the details of that, in a moment.

ABSENCE OF THE DEFENDANT

5. The first thing the Court needs to contemplate, on an occasion such as this – where the Defendant to a committal application is not present – is whether to proceed at all, whether to adjourn, or to proceed in this case in Mr Kirby's absence.
6. Clearly, the Court is engaged in understanding whether Mr Kirby is aware of today and is aware of the Proceedings.
7. I am satisfied that he has been served with the Committal Papers. There is a statement from a process server in the papers dated 1 May of this year, confirming service was affected on Mr Kirby, on 25 April.
8. So I am satisfied that he has been served with the Committal Papers.
9. He did not attend the first return date, on 21 May, before Leech DJ. The Order that the Judge made on that occasion was a comprehensive one, setting out Mr Kirby's rights and provided for the hearing today, and that Order made clear that the Court would, if necessary, proceed in Mr Kirby's absence. That order has been served personally – as I understand it – by the Housing Officer, Ms Johns, on 7 June.
10. So I am satisfied that Mr Kirby has been served with the papers and knows about today.
11. There has been no reason put forward, on his behalf, as to why he is not present, as there was no reason put forward as to why he was not present previously.
12. The only conclusion the Court can draw in the circumstances, is that Mr Kirby has decided not to attend or engage with the process. He has not responded to the Committal Application, in any way.

13. Of course, it could be prejudicial to proceed in Mr Kirby's absence. The Court understands that.
14. On the other hand, the Housing Association, and the Housing Association's tenants in the vicinity, need finality, and the Court has devoted a significant resource today, in making time available to have this case heard.
15. So there are a number of competing considerations.
16. I am satisfied, overall, that it is in the interests of parties, taken as a whole, and the administration of justice for this case to proceed, and I proceed accordingly.

THE BACKGROUND

17. I then need to say something about the background to the case, before dealing with the facts.
18. As I understand it, Sanctuary Housing owns and manages Flat 1, 46 Charlotte Street, Plymouth. That property is let to Mr Kirby, under an assured shorthold tenancy, that began on 26 May 2021.
19. There is a significant history of complaints from residents, as to Mr Kirby's behaviour.
20. That extends to repeated slamming of doors, and the like, loud music, screaming, shouting, partying, and more direct abuse of the neighbours.
21. All of that resulted in an interim Anti-Social Behaviour Injunction, that was made by James DDJ, as he then was, on 31 May 23, and that Injunction was made final, on 20 September of 23.
22. In its original form, it continued until 31 May of this year. It has, in fact, been extended further, by order of Leech DJ, to 21 November of this year.
23. The relevant terms of Anti-Social Behaviour Injunction contain a number of prohibitions.
24. They extend to: (1) engaging in conduct, causing a nuisance or annoyance to persons residing in or lawfully visiting Charlotte Street; (2) engaging in conduct, causing nuisance or annoyance to employees or contractors of Sanctuary; (3) using threatening or abusive language to the persons encapsulated in (1) and (2); (4) using or threatening violence against such persons; (5) using or being in possession of illegal substance at the flat.
25. The interim Injunction was served – there is an affidavit of service from one Neil Trick. That service, as I understand it, was in accordance with a substituted regime that was permitted retrospectively. That was an Order, I think, of 22 June 23, and the final Injunction was served in the same way and was identified, I think, in Ms Fendyke's affidavit – she was the previous Housing Officer – at paragraph 3.3.
26. So I am satisfied that the Injunctions have been served and have come to Mr Kirby's attention. Indeed, the interim Injunction was made in his presence, back on 31 May 23. So he was well aware of the terms when it was made.

27. Helpfully, the Order of Leech DJ, on 21 of May of this year, when the Contempt Proceedings first came before the Court, included provision for a Scott Schedule to be prepared of sample allegations, and I find the Scott Schedule, beginning at page 244 of the bundle.
28. That Order also made provision for Mr Kirby to provide a statement in reply, if he wished to do so, by 2 July. It was carefully couched because, of course, Mr Kirby has the right to silence. In the event, nothing has been filed by Mr Kirby.

BURDEN AND STANDARD OF PROOF

29. In terms of the burden and standard of proof, I remind myself, the burden is squarely on Sanctuary Housing to prove its case, and the standard is the criminal standard: beyond all reasonable doubt. That is necessarily so, because Mr Kirby's liberty is potentially at stake.

THE EVIDENCE

30. I am going to come on to the particular allegations in the Scott Schedule, in a moment. Before doing so I should identify that they are largely supported, by the affidavits of the Housing Officers, Ms Fendyke and Ms Johns.
31. I have heard briefly, orally, from Ms Johns. The affidavits largely, or the affidavit of Ms Fendyke – I think there might be a statement of Ms Johns, but that has been permitted – largely rely on email reports from other residents.
32. As I understand it from Ms Johns, complaints have been received from more than one neighbour; although, they are predominantly from one.
33. Ms Johns was alive to the possibility that this might be a case where neighbours had fallen out, particularly where there is either solely or predominantly reporting by one neighbour, and she has been on the scene to check with other neighbours what the position is, and her evidence is that the others have corroborated the reports that have been made. Those persons simply do not want to be involved in Court Proceedings.
34. Indeed, Ms Johns told me that one of the complainants had since been moved by Sanctuary Housing, because of the impact on that person of the Defendant's behaviour.
35. It is often a fact in these cases, that the Court does not have first-hand evidence. That is because – as again, Ms Johns touched on – others simply do not want to be involved, are frightened and concerned about the impact of being seen to have come forward, certainly to Court and identify themselves. So it is often a feature of these cases, that what the Court is left with is the evidence of the Housing Officer, who in turn is largely reliant on reports from others.
36. Having said that, in this case, Mr Kirby has certainly been well aware of the nature of the reports and the emails – albeit with the names of the senders redacted – they have clearly been displayed and exhibited to the Housing Officer's evidence, which he has had for some time. He has taken no steps to challenge anything that has been said in those affidavits or statements, or indeed, exhibited emails.

THE ALLEGATIONS

37. So far as the Scott Schedule is concerned, it seems to me that, broadly, the allegations (the sample allegations) – and I should stress they are samples, because if one goes through the tables of allegations in the Housing Officer’s evidence, there are clearly many more instances of alleged behaviour that are sampled in the Scott Schedule – the Scott Schedule seems to divide the allegations into largely three parts:
- i) There is repeated slamming of doors and banging sounds. It is often commented that the noise resulting is so loud, that it causes neighbours’ flats to shake.
 - ii) There is then the playing of loud music.
 - iii) Then there is what I might call more direct abusive behaviour, directed towards neighbours.
38. It may be easier if I deal with the allegations in those three constituent parts.
39. What I do find – and I accept Mr Singh’s submission, on behalf of the Housing Association – is that the complaints that have been made have an internal consistency about them, which leads me to the view that they are likely (and indeed are) broadly speaking reliable.
40. So in terms of repeated slamming of doors and loud banging sounds, there are allegations of a very broadly similar nature, made on: 21 September 23 – that is Allegation 1; 21 October 23 – that is Allegation 4; 14 November 23 – Allegation 8; 27 December 23 – that is Allegation 11; and 9 January 24, which is Allegation 12.
41. As I say, those are internally consistent. They are loud bangs, caused by slamming of doors, other banging sounds. Often the comment is that the flat, or the neighbouring flats, have been shaken, as a result.
42. Having considered the evidence relating to those instances – and, as I say, the lack of challenge – I am satisfied, beyond reasonable doubt, that those allegations have been made out.
43. Similarly, playing of loud music, so as to constitute a nuisance, there are allegations on: 27 September 23 – that is Allegation 2; 21 October 23 – Allegation 5; 14 November 23 – Allegation 9; 7 April 24 is Allegation 14.
44. Again, these are of broadly similar allegations, of the playing of loud music, causing disturbance to the neighbours and a nuisance.
45. They are relatively constrained, or confined, allegations. They do not give the impression of being overegged or pedantic. They are simply people who are reporting, or are fed up with repeated behaviour, making complaints about the effect on their quality of life, albeit doing so in a relatively understated way.
46. Again, having weighed that evidence and the lack of challenge, and also noting that Ms Fendyke, at one point, records having listened to a recording of music, herself, in relation, I think, to Allegation 2, and found what she heard on the recording as being “loud and dramatic”, as she put it, and “intimidating”.
47. I find those allegations proved, beyond reasonable doubt.

48. There is then a more serious category, which is what I might call direct abusive behaviour to neighbours.
49. An allegation on 20 October 23, of the Defendant shouting abuse at a neighbour and their children, stating, “pick your fucking feet up”. That is Allegation 3.
50. There is then Allegation 7, 9 November 23, the Defendant shouting abuse, swearing in an aggressive manner towards the neighbours. It appears that Ms Fendyke may well have seen a video of that. It is unfortunate that it is not available to the Court. But she mentions it in her own evidence.
51. Then Allegation 10, 17 November 23, the Defendant shouting he wanted to, “slit the throats” of his neighbour and banged on the door of their property.
52. Those matters are plainly more serious in nature. They are relatively – I say relatively – unusual. They are not complaints that are made often. They are three isolated incidents, amongst a whole nature of what I might call lesser allegations of anti-social behaviour. In that sense, they are more compelling, it seems to me.
53. Again, having weighed that evidence, and lack of challenge, I find those allegations proved, beyond all reasonable doubt.
54. There are two allegations that I do not find proved. Those are at 13, there is a reference to 31 March 24, to the Defendant instructing, or encouraging, another person to make banging sounds.
55. I do not find actually there is any evidence the Defendant instructed any third party. It seems to me this was a third-party instance, and there is no indication the Defendant was directly involved, and I do not find that particular allegation to be made out.
56. Then Allegation 6 is an allegation, on 6 November 23: the Defendant stared and gave a neighbour’s daughter dirty looks. It is not quite clear to me what “dirty looks” actually means in this context, and I am not satisfied, beyond reasonable doubt, that that constituted a threat, or anything of that sort.
57. Aside from 6 and 13, the other allegations are proved.

SENTENCING

58. So that leads me on then to think about sentencing, and I am obliged to Mr Singh, for setting out the approach in this respect, although reasonably well-known to the Court.
59. In broad terms, the Court has to have in mind punishment for the breaches and the contempt. The Court has in mind securing future compliance, and also the possibility of rehabilitation, in terms of the behaviour.
60. The Court also has to ask itself, from a primary perspective, whether the custody threshold has been crossed, and needs to consider the guidance on sentencing that has more recently been forthcoming, in what has become now the well-known case of *Wigan v Lovett*.

61. That guidance involves predominantly considering the table – a very helpful table – that was exhibited to the Court of Appeal judgment in that case. It has been replicated, helpfully, by Mr Singh, in his skeleton argument. That table involves considering culpability, on the one hand, and harm, on the other.
62. I think, I would agree with Mr Singh, that in terms of culpability, of the three levels which are potentially engaged, that this falls between category A (which is the most serious culpability) and C (which is the lower range).
63. It seems to me, on the face of it, this is a deliberate series of breaches, with disregard to the Court's previous Orders. Not of the highest range, but Culpability B seems to fit this particular picture.
64. I also agree with Mr Singh, that in terms of harm, it is not the most serious harm, but it is not the least either. It is a Category 2 harm case.
65. So in looking at the sentencing grid, Culpability B, Category 2 harm, the starting point of a month, and a category range from an adjournment to three months in prison. That gives some broad perspective.
66. It is a case, in my view, where the custody threshold is passed. I say that because of the persistent nature of the breaches, the virtually wanton disregard for the terms of the Court's Orders, and for the impact that Mr Kirby's behaviour has on others, who are trying to get on with their lives around him.
67. In terms then of thinking about a starting point relating to sentence, to my mind, to make this more manageable, the best approach is to think on the one hand about the banging, slamming of doors and loud music allegations, on the one hand – of which there is a significant overlap – and then the more direct abusive behaviour, on the other.
68. In broad terms, the banging, slamming and loud music allegations, taking all of those together – as I have already identified – I impose a sentence of a starting point as a sentence of 14 days in respect of all of those allegations, taken concurrently.
69. The direct abusive behaviour is more serious. As I have already identified, there were three particular instances.
70. If I take those as a whole for a moment, there are three separate ones, but if I take them as a whole, they are more serious than the others that I have identified, and I would impose – in respect of those three instances – a combined sentence of six weeks.
71. So that makes a starting point total of eight weeks' custody.
72. In terms of aggravation, plainly there has been a lack of remorse and the conduct, as I have described, as wanton.
73. I do not think that means that I would increase the overall eight weeks already provided. However, I do not reduce it either, when taking it all together. Sometimes, one stands back, does not add together the relevant components, but comes back from that. I think the lack of remorse, and the wanton nature of the behaviour, means that I do not take that step back.

74. In terms of mitigation, there is really very little to say, because Mr Kirby is not here to present anything, on his behalf. He has not, as I say, shown any remorse.
75. The only thing one could say – and I will come back to it in a moment, because it is relevant in another context – is this is the first series of breaches that have come before the Court.
76. Again, that does not really lead me to adjust the overall sentence that I have come to.
77. So that remains at eight weeks.
78. What I am then left with is, whether to impose an immediate custodial sentence, or to suspend the sentence?
79. I did ask Ms Johns; whether this Defendant was still actually resident at the Premises, and I am told that he had not been recently, but he is now thought to be back again, and I think there is some – suggestion that complaints of the what I might call more low level anti-social behaviour have begun again, in consequence.
80. So I cannot assume the behaviour has stopped, in any sense. Nonetheless, it is the first series of breaches, and whilst there is no norm as such, I think it is not an unusual approach for the Court to take on a first series of breaches, that it will suspend and see if that has an impact on behaviour.
81. I think I am just about persuaded, that that is the right approach in this case. I am not underestimating the impact of Mr Kirby's behaviour on others around him and very much expressing the view that if this behaviour does not stop, then matters, no doubt, will come back before the Court, and they need then to be heard quickly. All too often, these cases take far too long to come before the Court, to be determined.
82. In the event of further breaches, then the suspended sentence is, of course, likely to be triggered.
83. So the Court's determination, having found the breaches that it has, is a total custodial sentence of eight weeks. It will be suspended for the period of the Injunction.
84. I have not yet heard from Mr Singh about this but I bear in mind that the Injunction currently is due to run out, I think, in November, and it may be Mr Singh, you want to say something about that?

MR SINGH: I have no instructions to seek to alter that, in any way. But it may well be that from a pragmatic point of view, that you would be minded to allow an application, in the face of the Court, to extend it further.

JUDGE MITCHELL: Yes. Well, I certainly would think that might – given it appears Mr Kirby is back again, and we are now in July, so that Injunction is not going to provide a great deal of protection for a long time, and you might want to take

instructions. But we might be thinking, I suppose, of something about extending that for a further year, perhaps.

MR SINGH: Would you allow me to turn my back?

JUDGE MITCHELL: Yes.

MR SINGH: *(Pause)*. I have done that, fairly swiftly, and the answer is yes.

JUDGE MITCHELL: Yes.

MR SINGH: If you are willing to do so, then we would seek an extension until 21 November 2025.

JUDGE MITCHELL: Yes, okay, and I will suspend sentence then until that date, post-date to midnight on that day.

So Mr Singh, I think there will need to be two orders. I can probably take care of one of them, which is the Committal Order, because that is made on a particular form. I am pretty sure, this is the one I have got here, and I will deal with that.

I would be obliged if you could then file a separate order, which deals with the Injunction and Power of Arrest extension, in the usual format.

(This Judgment has been approved by the Judge.)