

IN THE COURT OF PROTECTION

13455313

IN THE MATTER OF THE MENTAL CAPACITY ACT 2005

BETWEEN

DERBYSHIRE COUNTY COUNCIL



Claimant

–and–

JAMES GRUNDY

Defendant

–and–

P (by SB her litigation friend)

Interested Party

1. I am today once again dealing with an application by Derbyshire County Council for the committal to prison of James Grundy for contempt of court. On 20 January 2025 I found four breaches of an injunction by Mr. Grundy proven. That judgment has been published. I do not propose to recite the breaches.
2. The matter comes before me for sentence. Mr. Grundy has hardly engaged with these committal proceedings. He did not attend the previous hearing, and efforts to have him attend that hearing on 20 January 2025 attend failed.
3. Mr. Grundy attended today, brought here by the police under a bench warrant that was issued to secure his attendance today. I am told that he attended voluntarily at the police station in respect of an unrelated matter at 10am and has been brought here to Derby for a 2pm hearing.
4. Representation today was by Ms McKinlay on behalf of the claimant and Mr. Markus on behalf of Mr. Grundy. Mr Borrett at the previous hearing acted on

behalf of P and his attendance today was excused on the basis that he would make written submissions on the appropriate sentence to be imposed in the light of the proven breaches, which he duly did.

5. As was the case in my previous judgment dated 20 January 2025, I record that notice of the hearing today was duly given to the Press Association and confirmed to me by the hub. Today's hearing has taken place in public and has been properly listed on Courtserve for both the Court of Protection and Derby Family Court. In addition, a door notice has been displayed to indicate that this is an application by Derbyshire County Council to commit James Grundy to prison for contempt of court.
6. I have seen an affidavit of service of Susan Ward establishing service of my judgment of 20 January 2025 and consequential documentation.
7. I heard submissions from all counsel, just written in the case of Mr. Borrett, written and oral from Ms. McKinlay and Ms. Markus. I thank them for setting out the law so succinctly and for their helpful submissions.
8. Ms. McKinlay on behalf of the claimant relied on previous position statements both for the hearing on 20 January 2025 and the sentencing hearing in respect of the previous breach by Mr. Grundy as a result of which a suspended sentence was imposed.
9. The overall position of the local authority is that matters have now sadly come to such a head that nothing less than a prison sentence will result in any hope of compliance or deterrence. Mr. Grundy breached when he was already in contempt proceedings in respect of the previous contempt application. The court was urged to consider the impact on P and the welfare proceedings. It was submitted that Mr. Grundy now needs to feel the authority of the court via a term of imprisonment as a suspended sentence has proved to be no deterrent. As to the Lovett matrix, Ms. McKinlay placed this as category A2 and

sought immediate implementation of the 28-day suspended sentence and a concurrent 28-day sentence for the breaches established at the hearing on 20 January.

10. Mr. Markus on behalf of Mr. Grundy and by way of personal mitigation submitted that Mr. Grundy does not attend at P's home to do harm, but just to help P out. He regards her as a friend of 40 years standing and that there is some sort of relationship between them. It is unclear what Mr. Grundy's previous experience of prison was, there is no information. Whilst the court found at the previous hearing that Mr. Grundy was capacitous, there are still concerns as to his cognitive faculties, and this may impact on or influence how he reacts in prison. Mr. Grundy has previously had care in the community though as I understand it, he is no longer engaging. Whilst Mr. Markus made clear that Mr. Grundy had made no admissions, he could not in reality seek to argue for a further suspension. In terms of Lovett, he categorised the matter as not A2 but B2 or B3 but arriving at the same determination and alignment in terms of sentence as the local authority.

11. Mr. Borrett on behalf of P took a neutral position as regards the appropriate sentence but wished to highlight the following. Firstly, that the court determined as long ago as December 2020 that contact between Mr. Grundy and P should be supervised. That was a best interests decision, Secondly, that by December 2021 Mr. Grundy was visiting P daily. Thirdly that the terms of the injunction were, again on a best interests basis, tightened up such that contact should be weekly and supervised. Fourthly, that for most of the time since December 2021, so over 3 years now, Mr. Grundy has persisted in visiting P on a very regular basis unsupervised. Finally, whereas the custody threshold was determined to have been reached at the last sentencing hearing, the court

opted to suspend imprisonment on compliance by Mr. Grundy with the terms of the underlying injunction.

12. Mr. Borrett also highlighted the significant negative impact which this regular unsupervised contact is having on P as evidenced amongst other things by the police video footage which was produced by the claimant as evidence of the four proven breaches. There is also evidence in the papers as to the effect on P in her own words; she speaks of Mr. Grundy's anger and his temper, that she feels frightened in his presence, that historically he has thrown things around (though not of late). P is often stated or seen to be scared when discussing Mr. Grundy with professionals. She expresses no pleasure from Mr. Grundy's visits. Conversely, when there was a period when Mr. Grundy was not visiting (I think this was either because he was hospitalised or without his driving licence, or possibly a combination of both), P engaged more with local authority support, allowing access to and maintenance of her property. Mr. Borrett pointed out that the local authority's position was that Mr. Grundy's visits may mean it is in P's best interests to move to residential care, something the local authority has been anxious to avoid, and something P is opposed to. In summary, Mr. Borrett on behalf of P submitted that Mr. Grundy's visits cause P distress, which prevents the court and the parties from assessing what is in P's best interests, may well be impacting on P's health and wellbeing, and could lead to a change in her domestic circumstances contrary to her stated wishes.

13. I come now to my decision. In terms of sentencing, firstly I have to deal with whether to activate the suspended sentence. It is not automatic. Then as to the four new breaches, just as I did on the previous occasion, I have to remind myself that I am sentencing just for the proven breaches which were established to the criminal standard. I am not sentencing for what appear to

me on the civil standard to have been probably several hundred further breaches since around December 2021.

14. Again, I refer to the Court of Appeal decision in *Wigan Borough Council v Lovett*. This is of course a civil case, not Court of Protection and cannot be slavishly or formulaically followed, but it is a clear starting point.

15. In my previous sentencing judgment, in terms of the Lovett matrix, I looked at sentencing through the respective lenses of a narrow and also a wider view of the breaches in terms of the harm to P. As to culpability, notwithstanding what Mr. Markus has said today (and as a benchmark for any future breaches, albeit I hope this will not occur) today, as previously, this is in my judgment category A as to culpability. As previously, on balance, perhaps more markedly so, I take the wider view of harm, so the relevant guidelines are a starting point of 3 months with a range of adjourned consideration to 6 months. Both the local authority and Mr. Markus urge me below the starting point, and they are right to do so given the circumstances.

16. Having considered all the relevant matters, to include the mitigation put forward on behalf of Mr. Grundy, the sad reality is that only a sentence of immediate imprisonment is appropriate in this case now.

17. Firstly, I will activate the existing suspended sentence. Moving on to the recently proven breaches again I am of the view that, the custody threshold having been passed, the appropriate sentence is one of 28 days' immediate imprisonment. That is to run concurrently with the activation of the suspended sentence.

18. As Mr. Markus points out and given that Mr. Grundy has been in custody from around 10am this morning and it is now past 3pm, that should count as a period of a part of one day during which Mr. Grundy was detained today in

order to bring him here to court under the bench warrant. As such, it should be counted as two days served towards the custodial penalty I have imposed.

19. Mr. Grundy, you have been sentenced to 28 days in prison. I have activated the suspended sentence and sentenced you for the more recent breaches, but the two sentences will run concurrently.

20. This sentence will be reduced, and you will be entitled to an automatic release earlier than that, in most circumstances– Mr. Markus will be able to advise you how that works. You have got the right to appeal the court's decisions to a Tier 2 judge– you do not need permission. The time for appealing is 21 days from today 29 January 2025 so that is until 19 February 2025. Remember also that your time for appealing my decision made on 20 January 2025 is still running. I would urge you to comply with the terms of the injunction. If you do not, the local authority may bring further committal proceedings and you may again be at risk of a term of imprisonment. The injunction is in force to help and protect P. The court is concerned about P's welfare, and if you are concerned as well, and I bear in mind Mr. Markus has told the court that she has been a friend of your for 40 years, then you must realise why the court has put in place the injunction, and why you have to abide by the terms of the injunction.

21. That is my judgment, and I will be publishing it on the Judiciary website. A copy shall be served upon Mr. Grundy with the relevant order on determination of proceedings for contempt of court. As with the bench warrant, I think Family Court forms FC603 and FC604 will need to be adapted.

District Judge Davies

29 January 2025