CDAFalvey
District Judge Falvey
15/v/2025

Ref. K00PE220

IN THE COUNTY COURT AT PETERBOROUGH

Rivergate
Peterborough

Before DISTRICT JUDGE FALVEY

IN THE MATTER OF

YMCA (Claimant)

-v-

REILLY (Defendant)

MR FULLER, appeared on behalf of the Claimant
THE DEFENDANT did not attend and was not represented

JUDGMENT
18th DECEMBER 2024
(AS APPROVED)

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JUDGE FALVEY:

1. I have to deal with the question of penalty in relation to findings of contempt which I made on 6 December against Miss Jacqueline Reilly. I do not need to repeat in detail what I said on that occasion but in summary the breach is, whether one sees it as a long series of breaches or in reality as a single continuous breach may be academic but the latter is probably the better analysis, as Miss Reilly accepted that on or shortly after her release from prison in relation to a previous sentence of committal imposed by His Honour Judge Spinks, she had returned and taken up residence in the common parts of the claimants' premises at Bretton Centre.

2. Indeed the only factual disagreement between Miss Reilly and the claimants' witnesses was to the exact date in June when she had returned; in fact she appeared to suggest that she had been present for a few days longer than those witnesses say.

3. Mr Fuller of counsel who appears for the claimant has provided me with a very helpful skeleton and has referred me to two recent authorities in relation to sentencing for contempt of court. Indeed the more recent of those two is a decision of Mr Justice Henshaw given on the same date on which I made the findings of breach in this case. I in fact find that decision, which is the decision of Mr Justice Henshaw *In the matter of Gerald Martin Smith* relates to an application by the Serious Fraud Office for committal, with the neutral citation [2024] EWHC 3161 (Comm), of more direct assistance than the Supreme Court decision in the case of *Her Majesty's Attorney General v Crosland* [2021] UKSC 58 . The difference simply being that the *Smith* case relates, and it is the most recent authority certainly which I am aware and it is very recent, on the approach to breach of court order. The *Crosland* case referred to a different type of contempt.

4. The order referred to in the case before Mr Justice Henshaw was a restraining order made under the Criminal Justice Act 1988 in support of Proceeds of Crime Proceedings. But there was no difference of substance that I can see between that and breaching the injunction. I note also that in that case in fact the restraining order was reinforced by undertakings which have always been treated for purpose of committal proceedings in the same way as an injunction. In fact Mr Justice Henshaw does refer to the *Crosland* case which I note is now reported as I had only gave the neutral citation before- it is [2021] 4 WLR 103, and sets out the key points that were approved in that case.

> "Firstly, that the court should adopt an approach analogous to that in criminal cases namely assessing the seriousness of conduct by reference to culpability and harm caused. Then consider in the light of that whether a fine would a sufficient penalty. If the contempt is so serious that only a custodial penalty will suffice must be the shortest period of imprisonment which properly reflects the seriousness of the contempt. Take into account any matters of mitigation such as genuine remorse, previous positive character and similar matters. Give due weight to the impact of committal on persons other than the defendant with a reduction for any early admission of the contempt and at that stage but only at that stage consider whether the sentence of imprisonment should be suspended."

I paraphrase slightly, I think, in quoting that.

5. It is also established on authority, for example, and I do not think this is the only relevant authority, the Court of Appeal decision in *The Financial Conduct Authority v McKcndrick* [2019] 4 WLR 65, at paragraph 40 of that decision. The Court of Appeal noted in distinguishing contempt sentencing proceedings from the general approach in the criminal courts that because there is a relatively short maximum term for contempt of court the maximum is not reserved for the very worst sort of contempt. There is a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and is justifying a sentence at or near the maximum.

6. There is no Sentencing Council guidance for this type of case. There is guidance in relation to breach of anti-social behaviour injunctions which although not directly applicable is perhaps helpful by way of analogy. In his skeleton, entirely properly and helpfully, Mr Fuller, although clearly he is not here to mitigate on behalf of Miss Reilly, has directed his mind to what possibly she might wish to put forward. I do no disservice I hope to him in suggesting that he has not actually been able to find very much in that but I will turn to that in a moment.

7. In terms of culpability and seriousness the first point clearly is this, that Miss Reilly cannot conceivably be thought to be in any doubt as to her obligation to comply with court orders. She has already been committed to prison on several occasions. There can also be no suggestion that the breach was unintentional or careless. She has clearly deliberately gone into occupation on each occasion. She has not acted under any pressure from a third party. The contempt is not capable of remedy as to what has happened in the past, of course it would be capable of remedy in the future simply by her ceasing to breach the order.

8. In terms of culpability therefore, it seems to me that this case comes close to the top of the range. In terms of harm the same is not the case. It clear that the difficulties caused to the claimant go well beyond the trivial but it is not of the most serious. As Mr Fuller fairly pointed out, the matter does not proceed on the basis that there has been anti-social behaviour. There is a suggestion in the evidence, but it is not one of the things which was found proven or indeed which I was invited to find proven, that her behaviour towards members of staff has been, to put as neutrally as possible, less than always entirely courteous but that is not the basis on which I sentence. It seems to me that of the three categories as to harm this would fall in the middle one.

9. Those factors before considering mitigation taken together clearly points to something falling short of the maximum of two years but certainly in the upper half of the range. I also have to bear in mind in considering that what the reaction has been to previous sentences and clearly there has been no compliance following each of those sentences. Each previous sentence has relieved the claimant and its staff and residence and lawful residence of the building from Miss Reilly's presence to this extent and only this extent that she has not been there when she has been in custody.

10. I am sorry I should say I have taken these matters slightly out of order, it is perhaps implicit in what I have just said but I have not set it out that I am entirely satisfied that a fine would not be an appropriate course. This is a serious contempt, it has in fact identical or near identical breaches have attracted custodial sentences previously and of course I have no information as to Miss Reilly's means to pay any fine.

11. I then turn to what factors of mitigation there might be, although Mr Fuller is right, that it would be for Miss Reilly to put them forward. It is appropriate to consider any matters which the court is able to take into account. There was no early admission. The first

indication of anything approaching an admission from Miss Reilly was at court on 6 December after the claimant had prepared and served the evidence. There is thus no saving of costs or indeed of court time. There was an admission of the facts albeit not in terms of the breach at that hearing but it was after the claimants' evidence had been advanced.

12. There is no admission of contempt or any attempt now to comply with the order, certainly no expression of remorse or apology. Indeed, Miss Reilly continues to assert with no apparent factual or legal basis that she has an entitlement to live in the building. If of course at the belated stage of contempt application Miss Reilly had produced such evidence it would not have meant she was not in breach but in the circumstances if that had, even so late, been produced it would have been unlikely to be appropriate to impose any substantial penalty.

13. So far as I am aware , Miss Reilly is of past good character with the glaring omission (which is of course an important qualification) that in relation to this particular matter she has already been committed to prison on seven previous occasions.

14. I confess I had before I read through the papers in detail assumed that the length of the sentence had gradually increased but I see that in October 2015 His Honour Judge Yelton, as he then was, imposed an immediate custodial sentence of 12 months. In April of the following year District Judge Matthews, as he then was, a sentence of 12 months. In November of the same year 2016, His Honour Judge Green, as he then was, 12 months' imprisonment. In May 2017 and again in November of the same year, District Judge Matthews in each case, 12 months. In July 2022 His Honour Judge Tolson KC imposed a sentence of only six months' imprisonment. I do not know what particular factor His Honour took into account on that occasion. And in December last year His Honour Judge Spinks imposed a sentence of 12 months' imprisonment.

15. That is a substantial lack of previous good character particularly given that the breach is in substantially identical actions breaching identical or substantially identical injunctions. It is also relevant, in my judgment, as Mr Fuller points out, that the only hearings which Miss Reilly has attended in these proceedings has been as a result of warrants issued. Although it is not strictly proven by evidence, Mr Fuller, on instructions informs me that following the court hearing on 6 December Miss Reilly again returned to the claimants' premises. In the circumstances it would be little short of absurd to suggest that there is any sort of acceptance of the Court's authority.

16. Ido not think we are quite yet at the point where I should impose the maximum sentence of two years but it is appropriate, it seems to me, that the sentence goes somewhat above the 12 months sentence previously imposed. I will therefore impose a sentence of imprisonment for a period of 18 months. This will at least give the claimant and the lawful residence in the property a breathing space for at least nine months given the provision for early release.

17. If there were any prospect that suspending the sentence would lead to future compliance then there would at least a strong argument for doing so. in reality however is it seems to me that the chances of that are vanishingly small. I have, I should say, considered whether it might be appropriate to suspend the sentence conditional on compliance with the injunction and in addition conditional on engagement with the City Council as both local housing authority and social services authority. But I note that they have previously offered assistance which has been fairly robustly rejected by Miss Reilly. So I think there is nothing in practice to be gained by that.

This transcript has been approved by the Judge

Approved.
fafwy
District Judge Falvey
15/V/2025

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PROCEEDINGS (EXCLUDING JUDGMENT)
18th DECEMBER 2024, 14.45-15.10

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JUDGE FALVEY: Good afternoon, gentlemen, take a seat please. I'm sorry you've been kept hanging around although it has given Miss Reilly slightly more than the usual margin of error. Unfortunately an advocate in a matter this - listed before me at 12 had not noted that it in fact overlapped with the hearing he'd accepted instructions for in front of one of my colleagues. I'm not quite sure how he thought a two and a half hour final hearing listed at 10.30 would be finished by 12 but in any event.

Mr Fuller, I've read your helpful skeleton and two authorities referred to so you don't need to go through everything in great detail. I suppose the first matter I have to consider is whether to proceed or whether to list a new date and issue a bench warrant for Miss Reilly's production on that date. Do you have any comments on that particular issue?

MR FULLER: Just a couple of comments, Judge. Of course it was right that Miss Reilly was in attendance on the last occasion. At the end of that hearing quite rightly the court adjourned for the purpose of, of course, affording Miss Reilly time to either obtain representations or to consider the substance of any representations she ought to make in mitigation raising those at today's hearing. As part of that adjournment there were clear warnings given from the bench in terms of her non-attendance today and the risk that if she did not attend she - the hearing my proceed in her absence and of course as a result of that she may be imprisoned in her absence.

Likewise, Judge, you'll note that there's previously been two bench warrants issued for her attendance. Those have been the only times (inaudible) she has previously attended this court. Given the number of hearings previously, the clear indications given to Miss Rielly on the last occasion, I would submit that it's appropriate in all the circumstances that the matter proceed in her absence today rather than to further adjourn of this matter and cause further delay.

JUDGE FALVEY: Thank you. I think it is appropriate to proceed. The order made on 6 December has not yet been sealed, indeed I have yet to receive a draft for approval but it was made clear to Miss Reilly on that occasion that while she was not on bail, if the - if she did not attend it was likely that the hearing would proceed. If there were any reason to think that she had good reason or might have good reason for not being here then the position might be different. If she had communicated (inaudible) court giving any reason even if there might be reasons for being sceptical as to that reason, it would be a different matter. But I shall proceed in accordance with the warning I gave.

So I turn to deal with the substance of the matter. I gave judgment making findings of breaches on 6 December. I adjourned the matter to today to give Miss Reilly the opportunity

to take legal advice which I strongly encouraged her to do and also to consider her own position. Mr Fuller, I've read your skeleton and I'm not going to ask you to repeat it all but are there points you particularly want to emphasise or anything you want to add to that?
MR FULLER: Judge, only, only two points that I think in fairness I ought to raise. The first is of course in terms of the substance and the nature of the breach. This is a matter that is a social matter and it would a be a disservice to Miss Reilly to assert it in any other way. There's been no complaints in terms of damage or nuisance caused beyond the bar at the mere presence of her within the building, so I think that's right to set out from the outset.

The only other thing I'd point in addition to, obviously, the list of factors that I've set out in the skeleton is of course the table that's set out at paragraph 3 of my skeleton. You'll note particularly prior to 2017 the frequency and regularity in which the defendant has committed breaches in relation to the injunction, almost at a six month interval. We can see 21 October 2015, 12 months' imprisonment and then by 26 April the following year, almost just over six months thereafter, again, a further sentence of 12 months. Again seven months thereafter or just over six months thereafter the following, a matter was issued and then again six months thereafter and there again six months thereafter.

It is my submission in the circumstances that these repeated breaches across no less than seven occasions on six of those there being 12 months' imprisonment. Clearly this is, in the circumstances, a significant aggravating factor that the court ought to take into account when trying to one, achieve good compliance with the order but also when considering its tools for the punishment of the offence in and of itself. Those are the two main points that I would draw to the court's attention. Of course, the court has the benefit of the other matters that I have set out. In relation to mitigation, paragraphs 24 of the skeleton and then in terms of the culpability and harm assessment at —
JUDGE FALVEY: Yes.
MR FULLER: — paragraphs 19 through to 22.
JUDGE FALVEY: Thank you.

(There followed a judgment - please see separate transcript)

JUDGE FALVEY: In the circumstances that is the order and the court will issue a warrant of committal and of the rest. But I will include on the face of the order the following provisions both the notification to Miss Reilly that she is entitled to apply to peijure contempt and also an order that she has a right of appeal and I extend the time for appealing until 21 days after the date when this order is served upon her since personal search of course will be required. I suspect in reality any arrest is unlikely to take place until after Christmas simply given the

constraints on police resources at this time of the year but that is not a direction, it's simply an observation on my part. Mr Fuller is an order as to costs sought?

MR FULLER: No Judge.

JUDGE FALVEY: Then I say specifically no order as to costs nor means. Mr Fuller what I'll ask you to do if I may is to prepare drafts both the order of 6 December and this order and email them direct to me for approval. Given that Miss Reilly is not present there's not quite the same crushing urgency as there —

MR FULLER: Of course.

JUDGE FALVEY: — would be on the committal if she was here. But obviously as soon as possible.

MR FULLER: I'm grateful.

JUDGE FALVEY: Okay, thank you gentlemen, good afternoon.

MR FULLER: Thank you.

JUDGE FALVEY: I don't for a moment imagine this the last instalment of the saga but probably the last instalment of this round.

MR FULLER: One can hope, Judge, thank you.

JUDGE FALVEY: Thank you.

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