

TRANSCRIPT OF PROCEEDINGS

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Neutral Citation No: [2022] EWHC 1975 (Admin)

IN THE BIRMINGHAM CIVIL JUSTICE CENTRE

Priory Courts
33 Bull Street
Birmingham

Before HER HONOUR JUDGE TRUMAN

IN THE MATTER OF

WALSALL HOUSING GROUP LIMITED (Claimant)

-v-

DARREN JONES (Defendant)

MR SINGLETON appeared on behalf of the Claimant
MR WOOD appeared on behalf of the Defendant

JUDGMENT

5th APRIL 2022, 10.49-11.10

(AS APPROVED)

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JUDGE TRUMAN:

1. Today's hearing concerns sentencing for breach of an injunction. The injunction and power of arrest was originally applied for in July 2020. It was granted on an interim basis on 11 August 2020 and served on 14 August 2020. The allegations which were made against Mr Jones were that on 3 September he threw monkey nuts onto the shed roof in the communal area whilst speaking with Rebecca Latimer, that on 8 September at around 7 o'clock in the morning he deposited corn seed or feed in the communal area, that he did that again on 17 September, and again on 29 September, and on that day he also threw a container of a large quantity of feed onto the pathway and grass within the same communal area. There is a further allegation that he did the same on 13 November.

2. An application was made on 26 November to commit him to prison. There was a further incident on 9 March when the defendant was said to have been verbally abusive and acting in an intimidating manner towards employees of the claimant and causing damage to the claimant's property. The application to commit for contempt was amended to add that particular allegation. Due to various problems, the matter was not determined until 26 November 2021. At that stage, I found that the defendant had indeed breached the injunction and I found all the allegations proven beyond reasonable doubt.

3. I was concerned about whether I had sufficient information regarding the defendant's health before I proceeded to sentence. We had some lengthy discussions on the defendant supplying some medical evidence regarding his health. He was concerned about confidentiality because he believed that employees of the claimant had breached private matters of his before. Due to that, the order made was specifically that any report obtained would only be disclosed to the legal representatives and not to employees of the claimant. Despite those discussions, the defendant elected not to provide a formal medical report to the court. He has had a considerable number of opportunities, of which the hearing in November 2021 was only the last. There had been previous occasions when he had been given the opportunity to supply medical evidence.

4. Today he has passed to his counsel a letter from his GP. That has been redacted to a certain extent. It does not cover all the matters that the court had hoped for. It does confirm that he has a number of physical and mental health issues and that he has a history of chronic pain due to spinal difficulties. He gave permission for his counsel to read out to the court, in open court, some of the medication which he is on, but when it became apparent that some of the medication was known to be prescribed for specific illnesses, he removed his consent and counsel therefore ceased to provide the court with the list of medications.

5. Counsel for the defendant has been in some difficulty in dealing with mitigation because of the fact that his client has refused to accept that he breached the injunction despite my findings. Counsel has however dealt with the matter as best he can, making it abundantly plain that the defendant breached, on my findings, the injunction in September to November 2020 (but not thereafter) in relation to the feeding of birds, and that, in relation to the incident on 9 March 2021, whilst I found that the defendant was verbally abusive and that the claimant's employees had felt intimidated, there had been no actual violence towards them. There had been some damage caused to the claimant's property when cabling was pulled out. The employees had been left concerned that damage to electrical items could have resulted in a dangerous situation, they had been concerned about the attitude of the defendant towards them, but they accepted that he had not been physically violent and that no direct threats of violence had been made to them.

6. I have been referred to some guidelines which are not yet in force. The courts have been considering the Crown Court sentencing guidelines to be of assistance in dealing with those matters. According to the version that I have, a stepped approach is normally taken. There are three objectives to a penalty to be considered when dealing with a breach of an order. The first is punishment for the breach, the second is to secure future compliance with the court's orders if possible, and the third is rehabilitation which is a natural companion to the second objective.

7. The court's options are an immediate order for committal to prison, a suspended order for committal to prison, adjourning the consideration of a penalty if appropriate with amendment to the injunction to include a positive requirement, a fine, or no order. Custody is intended to be reserved as punishment for the most serious offences. A suspended order is not to be viewed as a potential option unless the custody threshold has actually been passed.

8. The first step is to consider the seriousness of the breaches that have occurred. I will divide these into two categories because the incident with the employees is of a different nature from the incident of the bird feeding. The purpose of the injunction was, in primary terms, to stop the defendant feeding the birds which was felt to be attracting mice and rats to the property and was causing distress to a number of the occupants of the block of flats.

9. In relation to culpability there are three levels; A is high culpability which is a very serious breach or persistent serious breaches; B is deliberate breach falling between A and C, and C is lower culpability or minor breaches. Examples of category A include, but are not limited to, violence or threats of serious violence, a significant degree of premeditation, an intention to engage in more serious behaviour than actually achieved, such as when someone was arrested or disturbed before being able to complete the intended behaviour. Examples of category C may include but are not limited to, no intention to cause harm or distress, and no harm or distress reasonably foreseeable from the breach, breaches incidental to some other lawful activity such as entering a prohibited area due to a shortcut, lack of premeditation or inadvertent breach.

10. In this particular matter I consider that the level of culpability falls within category B. There have been persistent breaches. Those breaches occurred after a very short time from service of the injunction. They are breaches of exactly what the injunction was intended to stop, ie, the feeding of the birds. The defendant had been served just over two weeks before his first breach.

11. The second step is considering the level of harm. Category 1 is breaches which cause very serious harm or distress. Category 2 is cases falling between categories 1 and 3, and category 3 is a breach causing little or no harm or distress. Category 1 includes injury or threat of serious injury, significant damage to property, an elderly or vulnerable person affected by breaches, or which causes a resident to move home. Examples of category 3 may include, but are not limited to, no person being actually inconvenienced, and the breach comprising mere presence in an unauthorised location other than in circumstances comprising greater harm. I do not consider that the level of harm that has been occasioned by the defendant's actions falls within category 1. It is more serious than category 3. I therefore find that it falls within category 2.

12. Counsel for the claimant fairly said that whilst one of the witnesses had been seriously upset by the defendant's behaviour, that was because of concerns with regard to her son's health, and I have no evidence before me of a causative link between the defendant's

behaviour and her son's respiratory problems. I do note, however, that there were occasions when his behaviour might be thought to have been at the very least to be spiteful because she had brushed one area of the pavement outside the block of flats when the defendant promptly threw bird seed on the area that she had just swept.

13. The starting point for category B2 is one month's imprisonment. The category range is potential adjournment to three months. Examples of factors which might increase seriousness are a history of disobedience of court orders, a breach committed shortly after the order was made, the targeting of a person the order was made to protect, or where a victim or protected subject is particularly vulnerable due to age, disability, culture, et cetera. Examples of factors which might reduce seriousness or reflect personal mitigation are a breach committed after a long period of compliance, genuine remorse, the age or lack of maturity where it affects the responsibility of the respondent, ill health, mental disorder, or learning disability, and being a sole or primary carer for dependent relatives.

14. I cannot but consider that it does increase the seriousness that there were five incidents within a fairly short space of time after service of the injunction. I have some evidence of the defendant's ill health. He has not displayed genuine remorse because of the fact that he does not consider that he was in breach. I do, however, take into account the fact that after November 2020, there have been no more incidents reported to me of breaches of the injunction. That is an important factor in my view.

15. I turn at this stage to consider the level of harm and culpability in relation to the incident with the claimant's employees. I am concerned about the fact that the employees felt intimidated. I am concerned about the fact that damage to property was done by the pulling out of electrical cables which would concern most people with regard to potential fire risks if nothing else. The claimant's employees should be able to carry out their normal duties without feeling intimidated by the defendant's behaviour. However, I accept that there were no threats made directly to the employees and I accept that there was no actual violence to them either. I accept further that this was a one-off incident by the defendant, and by this process I end up with a further category of B2 in relation to this particular incident.

16. I consider that the two most serious incidents are actually those on 29 September 2020 and those on 9 March 2021. The claimant's witness in the first one had literally just swept that area clear when the defendant deliberately deposited corn seed or other feed in that area, and I am afraid that I do regard that as being an action meant to distress the other resident.

DEFENDANT: Your Honour, I was allowed to feed the birds then, there was not an injunction. It was – I was OK to feed the birds then.

JUDGE TRUMAN: Mr Jones, you were not at liberty to feed the birds then, there was an injunction against you. Please do not interrupt.

17. I also regard the incident on 9 March as being serious because of the fact that the claimant's employees undoubtedly felt intimidated and there was actual damage to the claimant's property. I consider that in respect of those two items, especially bearing in mind how shortly after the injunction being served the breaches occurred, that the appropriate starting point should actually be higher because of the defendant's culpability. I would impose a sentence of six weeks' imprisonment.

18. In relation to the other matters, I consider them to be less serious and I would impose a sentence of one month each. All these sentences will run concurrently, not consecutively. Taking into account the mitigation put forward by counsel for the defendant, I do however consider that this is a matter where I can appropriately suspend the order for committal. The defendant has not apparently breached the injunction since November 2020 and the main purpose of the injunction is to ensure that he does not feed the birds. I wish to encourage him in continuing to comply with the injunction and I am therefore prepared to show a level of mercy in not committing him immediately to prison but giving him one further opportunity to demonstrate that he can continue to abide by the injunction.

19. In relation to the March 2021 incident, whilst I do regard that as a serious matter, I am again of the view that this was a one-off incident and that it can be appropriately dealt with by suspension. In the circumstances, stepping back and looking at the total, I consider that six weeks is not disproportionate. I consider that it is appropriate to permit suspension, but the defendant must be in no doubt that if there are any further breaches, further suspensions are unlikely to be granted. In fact, this suspended term would come into play probably in addition to any other terms granted.

This transcript has been approved by the Judge