IN THE COUNTY COURT SITTING AT WANDSWORTH

Date: 26 April 2022

Before :

DISTRICT JUDGE DALEY

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Between :

London Borough of Hammersmith and Fulham **Claimant**

- and –

Matthew Barnard **Defendant**

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Patricia Rowe (of the **London Borough of Hammersmith & Fulham**) for the **Claimant**

Hearing date: 26 April 2022

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JUDGMENT

District Judge Daley :

1. This is an application to commit Matthew Barnard to prison for breach of an order made by District Judge Parker on 13 January 2021 under section 1 of the Anti-social Behaviour Crime and Policing Act 2014. The Order was made without notice to Mr Barnard and contained one prohibition. That was not to enter the Clem Attlee Estate, London, SW6 outlined in red on the map marked as "Map A". He was forbidden from doing so until 4pm on 13 January 2023, if not earlier changed by the Court. DJ Parker granted a power of arrest in support of that provision of the injunction, also expiring on 13 January 2023.

2. The Court file reveals that the staff were directed to list a further hearing by telephone on notice to Mr Barnard at which the injunction could be further considered. Regrettably, the file shows no sign that this happened. That does not change the fact that there is an order in place, and it remains in place until 13 January 2023. If the defendant wanted to challenge it, he had every opportunity to do so, having been served in June 2021.

3. Mr Barnard was arrested under the power of arrest attached to the order on 30 March 2022 and brought before the Court on 31 March 2022. It is alleged he was found at 6 Frank Soskice House and that this is within the Clem Attlee Estate. On that occasion he came before District Judge Jolly, who adjourned consideration of Mr Barnard's committal pursuant to that arrest to 22 April, last Friday, and released him as she had no power to remand him for more than 8 clear days. That was a hearing of which regrettably the claimant was given no notice.

4. Mr Barnard was further arrested under the power of arrest at 2249 on 19 April 2022. It is alleged he was again at 6 Frank Soskice House within the Clem Attlee Estate. He was brought before me on 20 April 2022, and I remanded him in custody until today, adjourning consideration of committal in respect of both matters for which he was arrested.

5. At the hearing last week, I reminded Mr Barnard of his rights. I firmly advised him to get legal advice. He has, as I told him, the right to remain silent, the right not to incriminate himself (that it is for the claimants to prove the breach and he does not have to help them do that), the right to legal representation and to criminal legal aid. I also ensured Mr Barnard was given a notice setting out his rights at that hearing.

6. As the notice explained, he has the right to see the evidence against him. I am satisfied he has had that opportunity, the court staff confirming to me that they provided him at the last hearing with copies of 3 witness statements relating to 19 April. I do not know whether Mr Barnard has a copy of the witness statement that relates to his arrest on 30 March and with Ms Rowe's agreement I intend to proceed today only in relation to the arrest on 19 April.

7. Mr Barnard has decided not to attend today. The prison transport was ready to bring him, but I am told he refused to board that transport. I decided to hear the contempt allegation in Mr Barnard's absence as I was satisfied he was well aware of what was alleged against him, as it was recited in my Order of 20 April and in District Judge Jolly's Order of 31 March, and Mr Barnard chose to absent himself, despite having notice of his rights. I could see no likely prospect of him changing his mind and attending an adjourned hearing.

8. I am satisfied that Mr Barnard was served with the injunction. I have been provided with a copy of a certificate of service dated 8 June 2021, signed by PC Harding which states that the injunction and letter were served by handing them to him personally at 1539 that day while Mr Barnard was in police custody.

9. If I am to commit Mr Barnard, I have to be satisfied by the claimant to the criminal standard that Mr Barnard has breached the order. The claimant must prove the breach beyond all reasonable doubt. In other words, it has to satisfy me on the evidence, so that I am sure, that Mr Barnard breached the order. The usual civil standard of proof—the balance of probabilities—is not enough.

10. The only evidence before me is from the claimant. That takes the form of 3 witness statements, one from PC Bicknell, one from PC Bibb and one from PC Harding-Roots. All three are dated 19 April and are in the Magistrates' Court format. Although evidence on a committal application has to be given by affidavit (CPR r 81.4), it is not clear to me that this applies equally in the case of the proceedings which follow an arrest under the Act, where no freestanding committal application is made. But in any event, I am entitled to accept evidence in the form of these witness statements, which have statements of truth, and signed in each case, and the defendant having had them and having raised no objection to their format.

11. PC Bicknell describes attending at 6 Frank Soskice House, which is an address within the Clem Attlee Estate, and finding at that address, the defendant's mother, Karen, who seemed to be out of breath and in pain. He tells me that Karen Barnard had said on the phone to the police that the defendant had grabbed her and hurt her and that is why he arrested the defendant. He says that

Karen told him that the defendant had been waiting outside the flat, lying outside her door; during an argument he grabbed her arms and squeezed them hard, that he saw her arms and they were very red as a result of this. She also mentioned that a friend of hers, Mr Ryan, had been at the property and that the defendant had hurt him as well. That friend returned to the property and PC Bicknell observed that the friend, Paul Ryan, was in pain and apparently struggling to breathe, and told PC Bicknell that the defendant had tried to throw him down the stairs before strangling him, cutting off his breathing. PC Bibb, in her statement, says that she attended after PC Bicknell, that she observed Paul Ryan was in pain, had a "scrunched up" face and was clearly struggling to breathe and that she took the defendant's mother, Karen, to one side to interview her; that Karen Barnard had been out and that she had come back to find the defendant lying on the floor outside the flat, that she told him he was not supposed to be there, and that he should leave; that she was not going to let him in, at which point he grabbed her keys and let himself into the property; that she tried to fight him off but he overpowered her; that Paul Ryan tried to intervene; that this led to a physical altercation between Paul Ryan and the defendant during which Mrs Barnard tried to stop the defendant from attacking Paul Ryan, leading to the defendant pinning her to the bed by both of her forearms so that she was unable to move; that thereafter the defendant let go of her, moved around her, grabbed Paul Ryan by the throat with both hands and started to choke him and then hit him several times including while he was on the floor. I am also told that Mr Ryan suffers from a lung condition and had trouble breathing after the incident which led to the ambulance service being called. The statement of PC Harding-Roots is essentially consistent with all of that. It

provides a little more detail in relation to the altercation between the defendant and Mr Ryan. It says that Mr Ryan intervened and said to Mr Barnard "leave her alone, leave your mother alone", the defendant then turned to Mr Ryan, punched him and grabbed him by the throat, throwing him to the floor then "stomped" on his back several times. That is a detail that was not in the other witness statement. I take into account that the precise order of events in a heated moment like that may not be entirely consistent in all accounts but I am, having read all of this, and none of it having been challenged, satisfied so that I am sure, that the defendant was within the estate at 2249 on 19 April, that he lay in wait for his mother at 6 Frank Soskice House, that she made it clear to him that he was not welcome there, and that he was not supposed to be there. I am satisfied so that I am sure that he forced his way into the property and that he restrained his mother in such a way as to leave her with red marks on her arms and that he placed his hands around the neck of Paul Ryan and attempted to choke him, and that during the course of this he hit Paul Ryan by punching him. I am satisfied that the effect of this attack on Paul Ryan was to leave him struggling for breath and in pain. I am also satisfied that the defendant did attempt to stamp on Paul Ryan's back. Insofar as that is not mentioned in PC Bibb's witness statement, it appears that the statement of PC Bibb was taken by obtaining the account of Karen Barnard, who may not have seen the stamping on Mr Ryan's back. Mr Ryan is the person who would have felt that.

12. I am therefore satisfied to the criminal standard that the breach occurred and to the criminal standard of the surrounding circumstances in the way that I have described. Accordingly, the defendant is in breach and I need to move to consider what penalty to impose.

[Short adjournment and submissions as to gravity of the breach]

13. Having found Mr Barnard to be in contempt, I now have to consider sentence. I have considered anxiously whether to adjourn sentence to allow Mr Barnard to come to court and to offer mitigation but have decided not to do so. Mr Barnard has consciously chosen not to attend today, having been provided with transport from custody. He has elected not to engage with the Court process. I have been given no reason for thinking he would be any more likely to attend an adjourned hearing. I have a substantial record of Mr Barnard's previous convictions and ample evidence upon which to base my sentence.

14. I have to decide whether the breach I have found proven is so serious that no lesser penalty than custody can be justified. I take my guidance on this and on sentence generally from the Crown Court Sentencing Guidelines, which offer guidance on sentencing for breach of an anti-social behaviour order. The Court of Appeal in *Amicus Horizon Limited v Thorley* [2012] EWCA Civ 817, at para 5, says these guidelines are relevant. There are of course differences. I am sentencing for breach of a court order rather than just the offending conduct, the maximum sentence for contempt is 2 years (whereas the guidelines contemplate 5) and I have no power to impose a community order.

15. I start by assessing culpability and harm.

16. The breach which I have found proven to the criminal standard is of being within the area defined in the Order. But it would be wholly unreal to ignore the context. In *Hale v Tanner* [2000] 1 WLR 2377, Hale LJ, as she then was, gave guidance on sentence in family or domestic cases. In *Prosser v Prosser* [2011] EWHC 2172, Vos J suggested the guidance may be applicable by analogy to

cases of civil contempt. It seems to me that breach of an anti-social behaviour injunction is a paradigm example of the sort of case in which Hale LJ's guidance should be followed. Length of sentence depends on the court's objectives which will always include disapproval of the disobedience of the order (in other words, punishment for it) and securing compliance in the future. The length has to bear a relationship to the maximum statutory sentence. The court has to bear in mind the context.

17. In this case the context is one in which the defendant awaited his mother's return to her property, forced his way in, assaulted her and seriously assaulted her friend leaving him struggling for breath.

18. This was, in my view a serious breach. The defendant was not just within the estate. He forced his way into his mother's home within the block. He did so despite being reminded he was not supposed to be there. Although there is no evidence the defendant set out that day deliberately to disobey the order, at the time he forced his way into his mother's home, it was undoubtedly deliberate. The defendant was before the Court on 31 March for being within the area he was prohibited from by the Order. He can hardly have forgotten that in the 3 short weeks that passed before this arrest. Given that, the breach is, it seems to me, properly described as falling in category A for culpability, that is a very serious or persistent breach.

19. As to harm, in my view it caused serious distress as it left Mr Ryan struggling to breathe. It also demonstrated a continuing risk of serious anti-social behaviour, in that Mr Barnard persisted despite being reminded by his mother that he shouldn't be there and when someone sought to intervene, he attacked

them. There is no evidence of any permanent harm to Mr Ryan or Mr Barnard's mother, for which everyone—including Mr Barnard—ought to be thankful. In the absence of any lasting damage, I would categorise this as a Category 2 case of harm.

20. The starting point given in the guidance for a breach categorised as I have categorised it is 1 year's custody. That of course is predicated on 5 years being the maximum. Scaled strictly according to my sentencing power of 2 years rather than 5 gives around 4.5 months. There is an air of artificiality about a mathematical scaling. Guidance is awaited from the appellate courts as to how the courts at first instance are to approach this exercise. But given my limited powers, I take my starting point to be 10 weeks' custody.

21. I must consider aggravating and mitigating factors. Aggravating factors as set out in the guidelines, include previous convictions, having regard to the nature of the offence or offences and their relevance to the current offence. The defendant has a string. The defendant has a string of previous convictions. The defendant is a "prolific offender" says Ms Rowe. He has a history of disobedience of court orders – failing to answer bail, and in 2010 breaching a non-molestation order on 7 counts, and he was before the Court on 31 March of this year, which suggests a flagrant disregard for Court orders. In particular, in relation to the previous convictions, I single out the breach of a non-molestation order already referred to on 30 April 2010 at Isleworth Crown Court, for which the defendant was imprisoned for 4 months. The breaches of the non-molestation orders were 12 years ago and I do take into account that a substantial period has passed since then. There were also a string of failures to attend and

surrender to custody stretching from 2009, including 2010, 2011, 2012 and 2019 most recently. The other offence that seems to me particularly relevant are those for which the defendant was sentenced 31 January 2020 and 30 November 2020. I do not have details of those offences save that they were, contrary to the Public Order Act 1986, using threatening abusive or insulting words or behaviour with intent to cause fear or provocation of violence. On the first occasion he received a sentence of imprisonment for 6 weeks and on the second occasion, imprisonment for 7 weeks. Those are relatively recent offences and involve the use or threat of violence or intent to cause fear. I have not had the benefit of the defendant attending to give me his personal mitigation.

22. I note that the original basis for the injunction in the witness statement of Mairead Masterson mentions Karen Barnard calling the police to report the defendant for trying to force is way into the flat (at paragraph 13 of that statement) and that she was certainly one of the people intended to be protected by the Order. The breach I have found proven amounts to targeting of a person the order was made to protect, another aggravating factor according to the sentencing guidelines.

23. By way of mitigation, even in the defendant's absence, what might be said is that there is no evidence of the defendant having breached the order in the period of over a year since it was first granted. On the other hand, he was only served with it in June of last year. Nevertheless, a good 7 or 8 months passed without there being any evidence of breach. I did note from original witness statements before the Court on granting the injunction that the suggestion was that the defendant has a diagnosis of unspecified non-organic psychosis, possibly

caused by substance misuse. But he has not advanced that as being relevant to his behaviour on 19 April.

24. There has been no admission of breach, though, and no credit therefore to be given for a "guilty" plea.

25. The custody threshold is clearly passed. Given the defendant's non-engagement with the Court, previous convictions and non-compliance with court orders, I see no reason to suspend the sentence. It seems unlikely to serve to secure compliance with the Court order, often a reason for suspending sentence.

26. Standing back and looking at the totality, even though in this case I am only sentencing for one breach, and taking into account the aggravating and mitigating factors, the preponderance of them being aggravating, it seems to me that the lowest sentence I can impose commensurate with the breach is one of 12 weeks' immediate imprisonment. The defendant will be entitled to credit for the days served and the sentence will be 12 weeks less twice the time served because of the automatic release after serving half of the sentence. Accordingly, the sentence will be 12 weeks less 14 days which is therefore 10 weeks.