IN THE COUNTY COURT AT WANDSWORTH

CLAIM NUMBER E01WT241

BETWEEN

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH

And

MR FARIBORZ ALLHYARI

JUDGMENT UPON COMMITAL OF THE DEFENDANT

This matter comes before the court on an application to commit the defendant for breach of an injunction that was imposed on 31 August 2018.

By way of brief background, the defendant is a local authority and the freehold owner of a block of flats, of which the defendant is one of the secure tenants.

A wealth of evidence has been presented to the court showing that the defendant has repeatedly kept belongings in communal areas of the flats, notably, the balcony outside his property. These are shown in the photographs attached to the witness statements put before the court today, most recently the witness statement of Matthew Bolster dated 1 June 2021.

The claimant has given the defendant repeated warnings and requests to remove these belongings but they have not been heeded.

At the hearing of the injunction on 31 August 2018 the defendant admitted the allegations against him.

The application to commit is made under CPR 81 and is dated 16 October 2019.

The matter appeared before D J Jarzabkowksi on 29 January 2020 when the defendant was advised as to the availability of Legal Aid. Once again he admitted that he had not cleared the balcony but repeated his intention to do so.

The matter appeared again before District Judge Davis on 9 April 2021. The defendant appeared again and was advised of his various rights. He said that he wished to obtain legal representation.

This morning's hearing was listed for 10.00am. The defendant did not appear in person at that time but he had filed a witness statement which is dated 24 January 2020 in which he alluded to various medical conditions, including a mental health illness manifesting as obsessive compulsive behaviour. He says that he has never been a danger to anyone, that

his health is fragile and that it is deeply distressing and traumatic to have his belongings removed. In that witness statement he said that he was not a hoarder.

The defendant telephoned the court at 11.05 this morning. On reviewing the file there was genuine ambiguity as to whether today's hearing was to be a hearing in person or a telephone hearing, and so I heard his evidence at that point. In his oral evidence he amplified his witness statement but importantly he agreed, as his statement said, that he is not a hoarder and that was not an excuse for his behaviour. He told me that his failure to clear his balcony was entirely due to his state of mind. I explained that without expert evidence of his state of mind being causally linked to the storage of belongings on the balcony, it would be wrong or me make such a finding and he courteously agreed with me.

I am satisfied that all due process has been completed and that he has been given notice of his rights, so it is my task today to consider sentencing options.

I am grateful in this regard for the clear and helpful skeleton provided by counsel for the claimant.

To begin with there can be no doubt that the breach has been commissioned and is continuing as the defendant has admitted it himself at several hearings and it is clearly evidenced by the witness statement.

Is the breach and its continuance wilful or deliberate ? I bear in mind the defendant's evidence as to his mental and physical health but I also accept counsel's submission that there is no medical evidence to back this up, and no causal connection between what is said by the defendant and the behaviour of keeping belongings on the balcony. He admitted in his witness statement that he is not a hoarder. I also bear in mind that his promise to DJ Jarzabkowski to clear the balcony on 29 January 2020 came after he had filed his witness statement saying that he was challenged in doing so because of his mental health condition. I am satisfied, therefore that the behaviour is deliberate.

The purpose of sentencing is to record the court's disapproval and to secure compliance with the order. The court clearly disapproves of the continuing behaviour; the defendant has appeared a number of times before, admitted the breach and promised to remedy it. His failure to do so must be a cause of disapproval. And the order must be complied with if the ruling of this court is to have any purpose or significance.

I turn now to consider the categories of breach in terms of the Sentencing Council Guidelines. I agree that in terms of culpability this is Category B. I repeat my above remarks; the defendant has repeatedly come before the court, apologised and promised to mend his ways but has not done so, despite a long history of breaches going back many years. It is not a minor breach, but neither could it be put in the most serious category.

In terms of seriousness, what harm or distress is caused by his behaviour ? I am invited to conclude this from the evidence before the court and as a matter of common understanding. There are many flats in the block in close proximity and the nuisance has been continuing for more than 10 years; it may reasonably be concluded to be a fire and

public health hazard and is offensive to neighbours. Although I accept that the defendant is not deliberately setting out to cause harm to anyone, it is reasonable to conclude that his behaviour is harmful to his community in the wider context so I would place this case at the top end of category 3 or the lower end of category 2. Either allows for a custodial sentence, of up to 26 weeks for category 3 or starting at 12 weeks for category B.

There is, therefore, a degree of overlap, but having found the level of harm or distress to have overcome the category 2 threshold, I am satisfied that a 12 week sentence is appropriate. Although the defendant has been notably courteous in his bearing to the court, there are no particular factors of mitigation to be taken into account. In the same way, the totality principle does not fall to be considered as we are not dealing here with a number of minor breachers.

I am satisfied that a custodial sentence is required if the sentence is to have any meaning for the defendant. I am not satisfied that a fine would have any deterrent for him even if I had any evidence as to his financial circumstances.

I am also satisfied, however, that a suspended sentence should have the appropriate deterrent effect and serve as a serious final warning to the defendant whereas an immediate custodial sentence could be seen as unduly harsh. I accept counsel's submission that a fairly long term of suspension will be appropriate given the long history of this case pointing to the fact that it will probably be quite a lengthy period to work with the defendant, under the threat of the present sentence, to clear the obstruction.

For these reasons my decision is a custodial sentence of 12 weeks suspended for 18 months.

Deputy District Judge Mark Brafield
11 June 2021