

IN THE COUNTY COURT SITTING IN MILTON KEYNES

AND IN THE MATTER OF AN APPLICATION FOR COMMITTAL

BETWEEN:

THE VALE OF AYLESBURY HOUSING TRUST

Claimant

- and -

CHARLOTTE NUDD

Defendant

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Mr Peacock counsel, appeared for the Claimant.

Ms Powel, solicitor, appeared for the Defendant.

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PENALTY REMARKS  
OF DISTRICT JUDGE LYNCH

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Penalty Hearing 19<sup>th</sup> October 2021

1. Charlotte Nudd you are attending this penalty hearing remotely this morning from Arbury Court PICU, Townfield Lane Winwick, Warrington. Miss Powell your solicitor and Mr Peacock, counsel for the Claimant, also attend the hearing remotely. I am sitting in the County Court at Milton Keynes in open court. You remain an inpatient on a ward at the hospital in Warrington where several patients have tested COVID +ve. I am concerned about your vulnerability and safety. You were notified in advance that the penalty hearing today would be conducted remotely in the interests of health and safety. I was informed that you were well enough to attend and I am very grateful to your solicitor and to the staff at Warrington to enable you to fully participate in this hearing today.
2. Miss Nudd you are subject to an anti-social behaviour injunction, made under Part I of the Anti-social Behaviour Crime and Policing Act 2014 by Deputy

District Judge Simpson on 23<sup>rd</sup> December 2020, on an application by the Claimant Vale of Aylesbury Housing Trust. You did not attend that hearing and provided no explanation for your non-attendance. The court determined to proceed in your absence.

3. The court was satisfied that an injunction should be granted. You were ordered not to cause harassment, alarm, or distress, nuisance or annoyance to any person residing in or visiting Nene Close, Aylesbury, and any person in relation to that person's occupation of residential premises in Nene Close, Aylesbury and you were not to speak to or communicate with a number of named individuals (Madge Dauris, Stacey Carrington and Roberta Roth).
4. You were ordered to allow the Claimant, access to your home at 9 Nene Close, Aylesbury, HP21 9NS, for the purpose of repairing and/or replacing the front door and inspecting the property in order for the claimant to carry out formal safety assessments and to monitor the condition of the property and note any necessary repairs and/or associated works required.
5. You were also required by the order to engage with local Adult Mental Health services at the Whiteleaf Centre, Bierton Road, Aylesbury, HP20 1EG, and attend any appointments as required in accordance with their advice and recommendation. The person responsible for supervising compliance with para.5 of that order is Samantha Rowlett.
6. A Power of Arrest was made under s.4 of the Antisocial Behaviour Crime and Policing Act 2014 which attached to paragraphs.1, 2, 3 and 4 of the order. The Order and Power of Arrest both last until 23 December 2022 or further order of the court. You were also ordered to pay the Claimant's costs of £308 within 14 days of the date of the order.
7. The injunction was served on you by Mark Frayne-Johnson on 24 December 2020 at 11:05 hours. A certificate of service dated 24 December 2020 was filed with the court.
8. On 4th March 2021, the Claimant, Vale of Aylesbury Housing Trust, made an application for your committal to prison alleging that you had breached

paragraphs 1, 2, 3, 4 and 5 of the antisocial behaviour injunction made against you on 23 December 2020.

9. You were personally served with notice of the contempt hearing at 09:40 hours on 11 May 2021. A certificate of service to that effect has been filed with the court by Andrea Loomes.
10. The contempt hearing took place on 28<sup>th</sup> May 2021. You failed to attend the hearing or be represented. I put the matter back in my list in case you were delayed. You did not attend or contact the court or the Claimant to explain your non-attendance. Having considered all the circumstances at that time, the court proceeded to hear evidence in your absence.
11. Having read the statements filed in support of the application for contempt, the oral evidence called by the Claimant and the court having viewed the content of a video recording dated 16 February 2021 the court found on the criminal standard of proof that you had breached the terms of the Anti- Social Behaviour injunction that had been imposed upon you on 23<sup>rd</sup> December 2020. The Transcript of the Judgment handed down at the end of the hearing on 28<sup>th</sup> May 2021 was served upon you. It is not necessary to rehearse its content here. Paragraph 18 of the Judgment set out the findings made against you which in summary are:
  - a) **Breach 1.** In breach of para.5 of the injunction you were discharged from the community health team on 6 January 2021 due to your non-engagement.
  - b) **Breach 2.** In breach of paras.1, 2(b) and 4 of the injunction you refused to allow the Claimant access to the property on 15 January 2021, despite having 24 hours' written notice that such access was required. Further, you impeded access to the property which had to be gained by removing wooden boarding and that on inspection the property was found to be in extremely poor condition.
  - c) **Breach 3:** In a further breach of para 5 of the injunction, you were discharged from the complex needs service on 1 February 2021 as you did not respond to their final opt-in letter and by implication the court found you failed to engage with complex needs.

- d) **Breach 4:** In breach of paras.1, 2(b), 2(c) and 4 of the injunction, the property was found to be in an extremely poor condition on 4 February 2021 when it was inspected by the Claimant, pursuant to carrying out their inspection under a warrant under the Animal Welfare Act 2006. You prevented the Claimant's entry to the property. Entry was only gained due to police involvement. You were verbally abusive throughout the inspection towards the Claimant's representative, the police and RSPCA officers. The RSPCA took possession of one dog and three cats which the court found you had allowed to suffer unnecessarily. You allowed animals to urinate and defecate within the property causing significant damage to fabric of the property.
- e) **Breach 5:** On 5 February 2021 and in breach of para 1 of the injunction, you caused harassment, distress, nuisance and annoyance by making excessive noise in your garden by throwing your wheelie bins around, screaming and swearing and were verbally abusive to a resident of No.7 Nene Close, who asked you to keep the noise down.
- f) **Breach 6:** On 9 February 2021 in breach of paras.1, 2(b), and 4 of the injunction, you failed to answer the door when the Claimant was trying to gain access to the property having given you prior notice. Further in order to prevent the Claimant gaining access, you deliberately left a key in the other side of the door to prevent the Claimant gaining access to the property and blocked the gateway to prevent the Claimant accessing the property from the rear.
- g) **Breach 7:** On 16 February 2021 in breach of para 1 and 4 the injunction, you failed to answer the door to grant the Claimant access to the property, despite written notice having been provided of the inspection. You left the key on the other side of the door to prevent the Claimant gaining access. You shouted deeply offensive and racist abuse at the Claimant's representative to cause harassment, alarm and distress. The video recording made by the Claimant on that day lasts 1 minute 38 seconds and shows you screaming and shouting in a very loud and angry voice. You targeted racist abuse towards a black employee of the Claimant shouting :“you black bastard”, “you cock sucking twat”, “you cock sucking black bastard” [4 times] “fuck off black bastard” [twice] “fuck off nasty black bastard”

12. The Court adjourned the penalty hearing listing it to take place at 2pm on 5<sup>th</sup> August 2021 to give you an opportunity to attend. A transcript of the Judgment

handed down on 28<sup>th</sup> May 2021 was served on you. On 5<sup>th</sup> August 2021 your solicitor attended but you failed to do so despite having had notice of that hearing. An order was made for your arrest.

13. On your arrest by Thames Valley Police you were produced to this court on 6<sup>th</sup> April 2021 upon a bench warrant issued pursuant to part 81.7 Civil Procedure Rules 1998 for your failure to attend the penalty hearing on 5<sup>th</sup> August at 2pm. At the hearing on 6<sup>th</sup> August 2021 you had free access to an experienced solicitor, Harriett Mather of CDMK Solicitors, Milton Keynes. She tried to assist you, but you refused her assistance.
14. Your behaviour at court on 6<sup>th</sup> August in shouting and interrupting the proceedings was such that the court had reason to think that a Mental Health Assessment was required, and a report would be needed before the hearing could continue. The court had full regard to your vulnerability. You were remanded custody at HMP Bronzfield to enable a medical examination to take place and a report to be made. I adjourned the penalty hearing until 2pm on 26<sup>th</sup> August 2021.
15. On 26<sup>th</sup> August 2021 you were brought before the court. The medical report previously ordered had not been produced. Your mental health deteriorated whilst within the court building and the court was informed that you refused to leave the cell. It was not possible to proceed with a hearing that day. I adjourned the hearing and remanded you in custody for further medical examination. At the return hearing on 17<sup>th</sup> September 2021, you attended by video and were represented by your solicitor Miss Mather. The court had read the medical report from Dr Thirumalai dated 16<sup>th</sup> September 2021, who at para 8.16 states “*I believe that the defendant is fit to plead and fit to stand trial based on the Standard Pritchard Criteria*” and an email dated 16<sup>th</sup> September 2021 from Dr Sarah Hewitt who stated “*I am of the opinion that she [Mrs Nudd] requires transfer to hospital for assessment and treatment*”. At that hearing you made it clear to the court and to your solicitor that you did not believe that you were suffering any mental health condition and were not prepared to be assessed any further and having heard representations, the case proceeded to a penalty hearing. The hearing was adjourned, and you were remanded to HMP

Bronzfield until the penalty hearing listed to take place at 12 noon on Thursday 23rd September 2021.

16. The court was subsequently informed by your solicitor that you had been transferred from HMP Bronzfield to a hospital at Arbury Court PICU, Townfield Lane Winwick, Winwick, Warrington, WA2 8TR. [Warrington] under sections 48 and 49 of the Mental Health Act 1983. At the hearing on 23<sup>rd</sup> September 2021 the court was informed that you remained in Warrington and since being admitted tested COVID +ve. I directed your treating consultant to prepare a brief letter or short report by 12th October 2021, setting out the current state of your mental health, general wellbeing and long term prognosis, so far as it could be ascertained, together with details of current medication/treatment and any plan for future treatment. I adjourned the penalty hearing to 10am on 13th October 2021 for directions only and continued the remand.
17. At the hearing on 13<sup>th</sup> October 2021, which you did not attend but were represented by your solicitor Miss Mather, the court was told that you were isolating due to having tested COVID +ve and that staff have been wearing level 3 PPE on interactions with you. The court was informed that the staff noted your presentation had improved whilst on your current medication although a formal mental state examination had not been completed by that date. The court was told that your isolation would last until 14<sup>th</sup> October 2021 following which, if symptom free a mental health assessment would be conducted.
18. I adjourned the hearing and listed the case for a penalty hearing at 10.30am on Tuesday 19<sup>th</sup> October 2021 with an order that you be produced to the court. The court was notified by your solicitor on 14<sup>th</sup> October 2021 that an email had been received from the hospital in Warrington stating that the Consultant Psychiatrist had advised that as you were coming from a ward where there are COVID +ve patients, you should attend the hearing today by video link in the interests of health and safety, to which I readily agreed.
19. The Psychiatric report of Dr S Thirumalai has been filed with the court. I have already referred to it. I have also read the letter of Dr Andrew Porter, Consultant Forensic Psychiatrist dated 11<sup>th</sup> October 2021. You have stated previously that

you are not prepared to undergo any further medical assessment and it is not now suggested that you should do so for this hearing. You remain at Warrington and I am told that you are ready for discharge. I have been told that a multi-agency meeting is planned to take place imminently, and steps are being taken to have in place a support plan on your discharge. You have participate in the hearing today and as at the date of this hearing I am satisfied that you have litigation capacity and that you understand the purpose of the injunction, have knowledge of it; understand its terms and fully appreciate the effect of a breach of the injunction.

20. Miss Nudd the court has found you to be in breach of the injunction in your absence and the penalties available to me are an unconditional discharge, a fine of such amount as is appropriate and which you are able to pay, or committal to prison for a fixed term of up to 2 years under Section 14 Contempt of Court Act 1981.
21. If I determine that the breach crosses the custody threshold so that only a sentence of imprisonment will do: **[s230(2) Sentencing Act 2020]** then I will sentence you to the shortest term commensurate with the seriousness of the contempt: **[s231 Sentencing Act 2020]** I will then consider whether to suspend this, for up to two years.
22. I remind myself that there are three main objectives in sentencing (a) to punish for the breach of a court order; (b) Securing future compliance with it (c) Rehabilitation of the defendant
23. There are no specific sentencing guidelines in respect of contempt of court. I have determined that I should consider the parts of the Sentencing Council guidelines for breach of a criminal behaviour order, which also apply to breach of an anti-social behaviour order. I have found it useful to consider the guidance when considering culpability and harm. The category ranges cannot, however, simply be adopted. The criminal offence has a maximum sentence of five years, whereas the maximum for contempt is two years. The guidelines also provide for community orders, which cannot be made in these contempt proceedings. I

note also that this court does not have the power to make the hospital order advocated by Dr S Thirumalai.

24. In applying the guidelines, I must first assess the level of seriousness of the case. There are three levels dealt with in the guidance and they are described as (i) serious, (ii) where there is a lesser degree of harm and (iii) those where there is no harm.

25. I consider this case to fall within the upper end of the middle bracket and, i.e. those described as a lesser degree of harm cases. That suggests a starting point for sentences of 12 weeks immediate custody rising to 1 year.

26. I have to consider whether there are aggravating or mitigating factors that apply to you. There are a number of aggravating features in relation to your case.

27. The aggravating factors are

- a) There have been longstanding problems at your property dating back to 2017.
- b) During the possession proceedings, the court ordered you amongst other things, to permit the Claimant access to the property on notice. This was something you agreed to when taking the tenancy [cl.2.10 of the tenancy agreement] and you agreed to keep the property clean and in good condition. You failed to do so.
- c) You have verbally abused those who sought to help you and you have used deeply offensive and racist language against the Claimant's employee which I am quite satisfied exemplifies the way you view those from the black community.
- d) You have no regard to the victims of your actions who are those whom the anti-social behaviour injunction was intended to protect: namely those who reside at Nene Close, Aylesbury, or lawfully visit it.



28. The mitigating factors advanced by your solicitor Miss Powell are that you have had longstanding mental health issues and now recognise that you do need support. You have never experienced custody before and you want help to improve your life. You are concerned about returning to your home, both as to its present condition but also into an environment where you are concerned about the reaction from your neighbours. This will no doubt be a significant feature of the multi-agency meeting shortly to take place where I would expect a full support place to be put in place. I specifically note that:

- a) You did not have a happy childhood. You reported to Dr S Thirumalai, that you were raped by an older half sibling. You were a looked after child from aged 4 due to your mother's own mental health difficulties and you were placed in various care homes and foster care placements between aged 4-14yrs. Whilst in a children's home you were the subject of sexual assault, including gang rape by older males. As an adult you had a short marriage during which you suffered sexual and domestic abuse. You have a history of overdosing and self-harming behaviours.
- b) I acknowledge that some of your behaviour may be attributable to you being unmedicated at the time and that your mental health presentation has improved in recent weeks.
- c) You have been a tenant of 9 Nene Close, Aylesbury since 5 April 2010, although you have been an assured tenant with the Claimant since 18 March 2002. On 9<sup>th</sup> March 2021 the court granted a suspended possession order and you may lose your home if you were to remain in prison. You have previously indicated that you do not wish to return to live in Aylesbury, this can also be fully explored at the multi-agency meeting.
- d) You have not breached the injunction since 6<sup>th</sup> August 2021

29. I remind myself that where a person is convicted of an offence which is punishable with a custodial sentence the threshold for custody imposed by **s 230(2) of the Sentencing Act 2020** mandates that the court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that

neither a fine alone nor a community sentence can be justified for the offence. As I have previously stated community orders cannot be made in these committal proceedings.

30. I am satisfied that the contempt which the court has found proved on the criminal standard of proof is so serious that it breaches the custody threshold. A fine alone cannot be justified for these breaches.

31. I sentence you as follows:

- a) Breach 1, 3 & 5, 1 months' imprisonment for each breach
- b) Breach 2, 4 & 6, 2 months imprisonment for each breach
- c) Breach 7, 4 months imprisonment.

32. Those are the shortest period of time I consider appropriate for the contempt of court.

33. Whilst I accept that imprisonment will cause you hardship, the breaches that the court has found proved against you are serious, and flagrant, whether you intended to cause a disturbance or not. I take an extremely serious view of your racist remarks. An immediate custodial sentence is merited.

34. I bear in mind that the national public health pandemic-Covid19 continues to affect all of our lives and you have recently tested positive. The Court of Appeal has said that the current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. I acknowledge that you have been in prison and hospital since you were remanded and come into contact with those who have and I take full account of the likely impact of a custodial sentence upon you and, where appropriate, upon others as well. Courts should keep in mind that the impact of a custodial sentence is likely to be heavier during the public health emergency than it would otherwise be. It is widely reported that those in custody are confined to their cells for much longer periods than would otherwise be the case and that there may remain restrictions on you being able to receive visits. There remains anxiety about the risk of the transmission of Covid-19, as per the Lord Chief

Justice, **R v Manning [2020] EWCA Crim 592**. These are important considerations which I have at the forefront of my mind.

35. I have considered whether I should suspend this sentence. I have listened very closely to what has been said on your behalf by Ms ...

36. I have decided not to suspend your sentence. I do not consider this would be appropriate given your history of poor compliance with court orders. I am not at all satisfied that suspending the sentence will secure your compliance with the Injunction in the future, as per **Hale v Tanner [2000] 1 WLR 2377**.

37. I need to consider whether my sentence for each breach should run concurrently or consecutively. I consider breaches 1,2,3,4,5 & 6 are sufficiently similar that it would offend the totality principle to impose a consecutive sentence so they will run concurrently making 2 months in total. I take a very serious view of the racist and offence comments made by you on 16<sup>th</sup> February 2021 for which I impose a 4-month consecutive sentence making a total of 6 months imprisonment. I consider this to be a just and proportionate sentence given the overall offending behaviour of which you will serve up to half in custody before being released on licence.

38. The injunction and the power of arrest that attaches to it, will continue and will last until 10am on 23<sup>rd</sup> December 2024 or further order of the court. I have absolutely no doubt that if on your release you breach this injunction again you will go to prison for a long time.

39. Finally, I thank Mr Peacock and Miss Powell for their assistance today. I also wish to express the court's grateful thanks to Harriett Mather who provided significant legal and practical support to Charlotte Nudd from the outset of these proceedings which she did with conspicuous ability.

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