Neutral Citation Number: [2022] EWCA Civ 1658

Case No: CA-2022-001905

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE WINCHESTER COUNTY COURT
HHJ BERKLEY
G00PO754

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/12/2022

Before :

LORD JUSTICE STUART-SMITH
LORD JUSTICE BIRSS
and
LORD JUSTICE EDIS

- -

Between :

JANICE WRIGHT	**Claimant/Respondent**
- and -	
YVONNE ROGERS	**Defendant/Appellant**

- -
- -

John King (instructed by **CLK Legal**) for the **Appellant**
Luke Trim (instructed by **Setfords**) for the **Respondent**

Hearing dates : 8 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Edis :

1. This is an appeal against an order for immediate committal to prison for breach of an injunction. The injunction was granted by Deputy District Judge Dack in the Portsmouth County Court on 8 September 2021 and contained a penal notice in the appropriate form. At that time the appellant's mother was the first defendant to the proceedings but she has since died. In this judgment the appellant will be treated as the sole defendant to the proceedings and quotations from documents will be slightly amended to reflect that fact. The terms of the order were, so far as relevant, as follows:-

    i) By 30 September 2021 the defendant must remove the obstructing plants, wheelie bins, rubbish and foliage obstructing the claimant's right of way over the joint drive between 19 and 21 Allenby Grove, Fareham, Hampshire PO16 9RP.

    ii) By 30 September 2021 the defendant must remove those parts of the overhanging trees that trespass on the claimant's property. The defendant must also ensure that the said trees are maintained so as to avoid further trespass on to the claimant's property.

    iii) The defendant must not by herself or by her servants or agents or howsoever otherwise place plants, foliage of wheelie bins or conduct similar acts so as to obstruct the claimant's right of way.

    iv) The defendant shall pay the claimant's costs summarily assessed in the sum of £5,713.20 to be paid within 14 days of service of the order.

2. On 27 November 2021 the respondent issued a contempt application using the appropriate form. Paragraphs 5-7 of section 12 of the form set out the facts alleged to constitute the contempt as follows:-

> 5. In breach of section 1 of the court order referred to above, the defendant has failed to remove the obstructing plants, wheelie bins, rubbish and foliage which obstructs the claimant's right of way over the joint drive between 19 and 21 Allenby Grove, Fareham, Hampshire PO16 9RP. No effort has been made to move any of the obstructions and thus the defendant has been in breach of the order since 1 October 2021 and continues to be in breach at the writing of this application.
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> 6. In breach of section2 of the court order referred to above, the defendant has failed to remove those parts of the overhanging trees that trespass on the claimant's property. No effort has been made to remove or pair back [sic] the tree and thus the defendant has been in breach of the order since 1 October 2021 and continues to be in breach at the writing of this application.
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> 7. In breach of section 4 of the court order referred to above, the defendant has failed to pay the claimant's costs of £5,713.20 within 14 days of service of the order. This sum remains unpaid as at the writing of this application. As the order was served on

> 13 September 2021 this breach began on 28 September 2021 and is ongoing.

3. On 9 June 2022 His Honour Judge Berkley ("the judge") made a directions order prior to the first hearing of the committal application which was listed on 16 June 2022. His order explained that only those with rights of audience could represent parties, and reminded the appellant that she was entitled to Legal Aid without a means test because her liberty was at risk. He directed that any application to adjourn on medical grounds should be made by written application on form N244 and should be supported by medical evidence. The order contains a clear warning that sentencing for contempt if the application were found proved could take place in the absence of the appellant.

4. Before and after that directions order, the claimant filed evidence by witness statements which exhibited photographs of the breaches relied on. The claimant also relied on two affidavits of Mr. Rae, her solicitor. He exhibits a bundle of correspondence from the appellant. The last paragraph of the first statement, dated 8 March 2021 summarises his evidence as follows:-

> "The defendant's conduct has been disgraceful and shows a clear contempt of court."

5. It is enough to quote two earlier paragraphs of that affidavit to show what Mr. Rae means:-

> "5. In her correspondence, the defendant has denied the jurisdiction of this court which she refers to as a "private corporate enterprise"…..that has been "conspiring with the claimant" …and rather than comply with the Order and clear the driveway she has instead at various times sought to rely on Magna Carta, the Committee of the Barons, Islamic Law, the jurisdiction of the United States and the Court of International law.
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> "6. During her various tirades she has accused myself and the claimant of:-
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> Abetting treason;
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> Sedition;
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> Harassment;
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> Discrimination;
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> Abuse;
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> Intimidation;
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> Loss of joy and pleasure;
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> Trespass;

> Land encroachment;
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> Undignified and hostile treatment;
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> Terrorism;
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> Hate crimes;
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> Religious prejudice;
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> Property crime;
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> Human Rights violations;
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> Tampering with mail;
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> Property damage;
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> Contempt of court."

6. Mr. Rae also alleges that the appellant had falsely pretended to have given the property in which she lives to a man in the United States under Islamic law. This was communicated in a document which rejects the jurisdiction of the court and relies on a "Barons' petition" presented to Queen Elizabeth II on 7 February 2001. The man's name is said to be Jackey Ray Sollars and some documents which purport to be written by him asserting his ownership of the property and making various threats are included in the correspondence bundle.

7. A second affidavit from Mr. Rae dated 13 June 2022 produced further correspondence in the same vein, which had continued after his first affidavit and despite what he there said. He said that the correspondence was clearly intended to intimidate and threaten the claimant. In it the appellant claims to be ill and unable to participate in the forthcoming hearing. It is unnecessary to set out the documents she has submitted to both Mr. Rae and to the court in full. They are very long, repetitive and misguided. She frequently claims to be discriminated against on religious grounds, because she has converted to Islam. Some of the material which purports to come from Mr. Sollars is extremely offensive to Mr. Rae and threatens him with a campaign of vilification on social media. One of these documents claims that Mr. Sollars is about to marry the appellant and concludes:-

> "Now you swell up like road kill on the side of the road. Get mad. I don't give a FLYING G@$$. My sole and complete focus is to EXPOSE YOU and YOUR BUSINESS ASSOCIATES for the VERMIN YOU ARE."

8. Mr. Rae replied:-

> "Dear Ms. Rogers
>
> Thank you for this. I will include it in the addendum bundle.
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> I look forward to seeing you on Thursday."

9. On 16 June 2022 the hearing took place as planned. The appellant did not attend. There was no formal medical evidence, but the appellant had supplied some letters from doctors. The judge said that the content made him a "little bit concerned", but he was not able to disclose it without the consent of the appellant. He decided that he would proceed to hear the application for committal to decide whether the allegations of breach of the injunction were proved and, if so, would adjourn sentencing in view of the concerns he had about the appellant's health. He heard evidence and submissions and gave a judgment on the same day. He found that he was satisfied to the criminal standard that the appellant was in contempt of court by failing to comply with the order and remove the obstructions. There is no appeal before us against that decision.

10. Despite submissions to the contrary from Mr. Trim, who appeared for the claimant then and appears now, the judge decided not to sentence the appellant then, but to adjourn sentencing. A date was fixed but vacated because of representations by the appellant about her state of health and her inability to find a lawyer to act for her. A direction was made as part of the order that:-

> "[The appellant] shall, by 4pm on 27 July 2022, provide the court and the claimant's solicitors with up to date medical evidence supporting her contention that she is unable to attend a hearing, either in person or a remotely held hearing (ie by telephone or video link) and/or that she lacks capacity to litigate."

11. The hearing at which the order now under appeal was made took place on 2 September 2022. Before that date, the claimant served a further witness statement on 26 July 2022 with photographs. This showed that the appellant had removed her plant pots on 23 July 2022, but that there was a continuing obstruction and trespass by overhanging branches. It also showed that the appellant was capable of leaving her home on foot and by taxi, and produced photographs to show this. This was relevant to whether the appellant was, as she contended, unable to attend court hearings. There was a further collection of communications from the appellant and, so it appeared, Jacky Sollars. These were similar to those already described, except that now they contain allegations of criminal conspiracy against Mr. Rae, DDJ Dack and HHJ Berkeley. These allegations were published on Facebook and had come to the attention of the claimant. They are presumably available to be read widely. They are damaging to Mr. Rae and to the justice system and distressing to all concerned. Some of these were copied to the then Prime Minister and Attorney General. The evidence also included evidence in her own communications of the appellant's ability to travel to medical appointments. The communications continued to arrive, and Mr. Rae made a further statement on 25 August 2022 exhibiting a further 95 pages of them. The communications purportedly from Mr. Sollars to Mr. Rae continue to be extremely offensive. There are also some foolish and threatening emails to the court, addressed to the judge, apparently sent by Mr. Sollars. It is not clear whether Mr. Sollars exists, or whether he is a device invented by the appellant.

12. On 2 September 2022, as has become usual in these proceedings, the appellant did not attend. There had been a message that she had retained counsel who could attend in the afternoon and asked for the case to be put back until 2pm for that purpose. That was refused by the judge who appears to have accepted Mr. Trim's submission that counsel had not yet been properly instructed and that an adjournment for his attendance in the afternoon would be a waste of time because all counsel would be able to do would

be to apply for an adjournment. The judge was then referred to some medical evidence which was in the bundle prepared for that hearing. This sets out some physical and psychiatric symptoms from which the appellant was said to suffer, but was based only on a telephone consultation and did not deal with the issue of fitness to attend court. The judge therefore dismissed an application she had made to set aside the finding that she was guilty of contempt of court, made in her absence in June. There is no appeal against that decision. The judge was then assisted by Mr. Trim in going through the evidence to establish the extent to which the breaches were continuing after the removal of the flower pots in July 2022.

13. Mr. Trim then cited the decision of the High Court in *Oliver v. Shaikh* [2020] EWHC 2658 (QB), saying that it contained a useful summary of the law on sentencing for civil contempt, but also that "it has some factual similarity to the current matter". That was a case where the claimant (a Circuit Judge) had obtained an injunction restraining the defendant from harassing him by online lies and other abuse. Mr. Shaikh carried on with that behaviour and was found in breach of that injunction. It was not a case about a right of way, and the present case is not a case involving a breach of an injunction restraining a person from harassing a judge. These differences between the two cases were not as prominent as they might have been in what followed.

14. In his judgment, the judge observed that the appellant had completely ignored the order of DDJ Dack at all times until the contempt hearing in June and had subsequently removed the plant pots but failed to remove the foliage which was still obstructing the right of way. She was therefore in continuing breach of the order. He then explained why he had decided to proceed in the absence of the appellant and why he had decided not to wait until 2pm on that day for counsel to appear. At paragraph 21 of the judgment, the judge began his analysis of the abusive communications which the appellant has persisted in sending, including those of "her agent, Mr. Sollars". Later in the judgment Mr. Sollars is referred to as the appellant's "alter ego". He prefaced this section of the judgment as follows:-

> "21. I therefore proceed with sentencing. Mr. Trim has helpfully identified the authority of *Simon Oliver v. Javid Shaikh* [2020] EWHC 2658, a decision of Nicklin J. It is an admirably, if I may say so, concise and helpful template for dealing with matters of contempt of this nature."

15. At paragraphs 48-53 of the judgment, the judge cites extracts from the judgment of Nicklin J in *Oliver v. Shaikh.* In doing so, in my judgment, the judge correctly identified the legal principles which he was required to apply.

16. He then explained why he was going to impose an immediate committal to prison of 6 months. He assessed the harm caused by the breach as serious, because of the making of allegations against the claimant and her solicitor. The claimant had been caused "severe distress, worry, fear and expense" and the allegations against Mr. Rae "must have been extremely distressing". On culpability again the allegations made by the appellant took centre stage. The judge said:-

> "In terms of the degree of culpability of the contemnor there is little that needs to be said than simply to review the emails she has written and posts that she has made."

17. After further analysis of the conduct of the appellant, the judge concluded:-

> "71. This is considerable culpability and harm, and there is nothing to speak of in mitigation. As per paragraph 40 of *The Financial Conduct Authority v McKendrick* case, do I consider that this case has reached the custody threshold? I conclude that it has.
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> 72. I gave myself pause for thought to consider this point carefully. But on reflection and looking at the authorities and looking at the extremely serious nature of how the Defendant and Mr Sollars have conducted themselves in resisting this order and compliance with it brings that conduct into sharp focus, and then I have to consider the harm that has been caused, which I have already covered.
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> 73. For those reasons, I consider that a period of imprisonment is appropriate. I go on to consider whether that period should be suspended. Given the seriousness of the railing against the court order and everything and everyone connected to it, I am afraid I do not consider that a period of suspension is appropriate. This is a flagrant, persistent and serious ignoring of the court order and very bad treatment of someone who is entitled to rely on it.
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> 74. The allegations are horrible and they must have caused Mrs Wright an extreme amount of distress. I reiterate, it is not about what the seriousness of what Miss Rogers was being asked to do, it is the seriousness with which she took the court order and the fact that she still has not complied with it. I am going to order an immediate custodial sentence.
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> 75. Taking all those matters into account, I take into account, however, that Miss Rogers is 72 years old, she clearly is somewhat obsessed with the Magna Carta and other matters that are going on in her life and this, of course, is her first, so far as I am aware, finding of contempt against her, so taking all those factors into account I am going to commit Miss Rogers to a period of imprisonment for 6 months.
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> 76. There will be a power of arrest attached to this order and a warrant for her arrest will be issued."

The Grounds of Appeal

18. Counsel was instructed to settle grounds of appeal and did so. They raise these points, in these terms:-

> 8. The appellant contends that having regard to the fact that:-

> 9. Her liberty was at stake (as a possible outcome) and not disregarding the fact that she might not have produced medical letter/certificate that says that she was unfit to attend and participate, the learned Judge, fell into error by failing to accede to her request to have the matter start later on the same time.
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> 10. In advancing this ground of appeal the Appellant submits that the learned Judge had the discretionary power at CPR 3.1 to put the case back in his list without causing any prejudice to the Respondent having regard to the overriding objective. The Appellant had sent several emails informing the court of the predicament that she had found herself in on account of the deception of Firman. Therefore, it is submitted that as this was a genuine reason, it was unreasonable, having regard to the fact that her liberty was to be determined, that the Court did not exercise its discretion in her favour.
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> 11. Secondly, the appellant contends that in refusing her request to put the matter back to enable her to have Counsel at court, the learned Judge's decision was insufficiently reasoned and fails to demonstrate a clear engagement with the obligation pursuant to section 6 of the Human Rights Act that it was ceased of the fact that the Appellant's right to liberty was engaged. Such a failure the Appellant contends vitiates the decision.

19. Prior to this hearing, the appellant instructed Mr. John King as counsel to appear before us on her behalf. We are extremely grateful to him for the sensible and balanced way in which he presented her case. He prepared and submitted a short skeleton argument which sets out the medical evidence on which he relies.

20. He contends that the personal mitigation and circumstances of the appellant were not properly considered, and that result was therefore disproportionate. Principally he relies on her age, her state of health, and the fact that this is the first committal application. He summarises the medical documents which have been placed before us as follows:-

> **"Letter from Dr A. Hadi dated 3 August 2018** attesting to the appellant's diagnosis of "*anxiety, stress and paranoia*".
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> In the same letter, Dr Hadi specifically comments that the appellant "*also has a history of traumatic life events which left her, in a way, a damaged person. Apart from her anxiety and stress, her mental health issues have significantly impacted on her ability to function on a daily basis. She has been displaying symptoms of agoraphobia and she finds it difficult to leave her house due to her anxiety and stress"*
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> **Letter from Dr A. Hadi dated 11 October 2018** contains the following: "[the appellant] continues to have her paranoid ideas about the neighbours and the authorities. She continues to believe that the neighbours next door are colluding with the

> police and the Council in order to cause problems for her because they do not want a Muslim woman living in this area. She also continues to believe that the Cannabis from her next door neighbour is seeping through the walls and chimney and this makes her have sinusitis. She has contacted the police but believes that the police also wants her out. She recently has been seeking legal help and she would not accept that her ideas could not be true."
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> **Letter from Community Mental Health Nurse R. Dalgetty dated 4 August 2022** contains the following assessment: "You were able to complete the 'Hospital Anxiety and Depression Score' and when compared against the previous you completed, you continue to score for depression and anxiety, in the areas that we call 'abnormal' and we subsequently recommended to you that psychological input would be beneficial and with your agreement we will make a referral."
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> **Letter from Community Mental Health Nurse R. Dalgetty dated 15 September 2021** says this: "Yvonne discussed recent events including the Police arresting her earlier this year and the trauma that she experienced as a result of this which is evident. Yvonne discussed the situation and in doing so, it was noted that she is evidently anxious. She also described herself as feeling "jumpy" and in terms of sleep, that she wakes frequently, feels that she is on edge, "startled easily" and can be "terrified". She provided an example that given recent events that if she sees a white car park outside this creates a trauma inside of her."
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> **Letter from Dr Vera-Cruz, who is a consultant in old age psychiatry, dated 12 November 2021** says this: "Ideally she would benefit from an antipsychotic….When I mentioned my concerns that she was delusional today, Mrs Rogers was upset and felt that I was somehow in cahoots with her neighbours."

21. Although the documents dated 3 August 2018, 12 November 2021 and 4 August 2022 had been placed before the judge on 2 September 2022 the documents dated 11 October 2018 and 15 September 2021 were only disclosed later. He knew that she had been referred to the Community Mental Health Team by a doctor on the 22 June 2022 and that had resulted in a very badly copied letter of 6 August 2022 with a diagnosis of stress, anxiety and ?Post Traumatic Stress Disorder. The judge was also dealing with someone who had failed to engage with the process of the court, and was claiming, probably falsely, to be unable to attend court by reason of physical ill-health. He did know that the appellant was 72 years old, and he had read the extensive correspondence from her which, to a lay person, would raise a doubt about her mental health.

22. Mr. King informed us that the appellant says she is not paranoid. He suggests that she has severe underlying issues. There is no psychiatric report and he accepts that there should be one. Although Legal Aid funding may be available for this purpose, it would require the appellant's co-operation unless the power to remand her to a hospital for a medical report conferred by section 14(4A) of the Contempt of Court Act 1981 were

exercised, which has never been considered. Mr. King submits that the appellant appears rational and articulate and that mental health issues may have been missed. He accepts that she has not helped herself. She has inflamed situation rather than reducing it. This is the first time any blame for the situation has been accepted by or on behalf of the appellant. He reminds us that after the committal finding the flower pots that were ordered to be removed were removed. She wants to move to a new home, but the property market is in disarray and it may be difficult for her to do so.

23. Mr. Trim responds that there is no evidence of any improper behaviour by the respondent. He says that the appellant's acceptance of blame is too late. She could and should have employed someone to sort out the obstruction long ago, but has been dragging her feet. The judge had carefully made a series of orders requiring medical evidence to be properly served if relied upon, and cannot be criticised for acting as he did given the appellant's non-compliance with all of them. He says that the communications sent by the appellant were relevant, even if this is not a case involving breach of an anti-harassment injunction. Harm caused is a relevant factor. It should be taken into account and given at least some weight.

24. After a pause to take instructions from the appellant who attended this hearing remotely, Mr. King repeated her instructions that she is not paranoid. He said that she would have someone in to do the remaining work.

Discussion and Decision

25. I have sympathy with the judge's desire to deal with this case at the hearing on 2 September which had been fixed for that purpose. The conduct of the appellant in relation to the proceedings was appalling, and her continuous stream of abusive communications had the effect of gravely inflaming the situation. However, I have come to the conclusion that his approach to the sanction hearing was flawed and that his order cannot stand.

26. The committal application identified the breaches of the order for which a sanction could be imposed. These were acts which obstructed the use of a right of way by the appellant by failing to remove obstructions. Undoubtedly, the appellant's attitude to the court and the proceedings is relevant to sanction. An apology and a genuine attempt to comply with an order will often be very relevant to sanction. Equally, abundant evidence that the contemnor actually does hold the court in contempt and is intent on causing as much disruption and distress as possible will be relevant and will weigh in the opposite direction. It should not, however, be forgotten that the principal aim of the imposition of sanctions in a case where the contempt is a civil contempt involving the failure to comply with a court order is to secure compliance with the order. The sanctions imposed should be the least onerous which will produce that result. I consider that the attitude of the appellant to the proceedings and the order of the court justified the court in concluding that a more severe sanction was required to secure compliance than might otherwise be the case. However, this was not a case where there had been an injunction to restrain harassment and where the appellant had been found to be in breach of it. It was important to give this aspect of the case its proper weight but not to allow it to change the whole nature of the exercise, which was about securing compliance with an order so that a right of way was no longer obstructed. I consider that the judge's remarks about the harm and culpability show that this is what happened.

27. The judge's conclusion that a committal to prison was required in order to secure compliance cannot be faulted. The question is whether he should have suspended it with a condition that the right of way is cleared within a fixed period of time and thereafter kept clear. In my judgment that would clearly have been the right answer. She had responded to the committal finding by removing some of the obstruction, and the imminent threat of imprisonment should have been tried first.

28. It was also necessary to take into account that this appellant was 72 years old and that on the material before the judge there was reason to think that she is suffering from significant mental illness. Immediate imprisonment is always a sentence of last resort in civil contempt cases, but in this case there was every reason to allow a further opportunity for compliance before making that order.

29. I consider that the flaws I have identified at [26]-[28] above should lead to the quashing of the judge's order and that this court should determine what order was required in its place.

The proper approach to determining the sanction

30. There is authority for the proposition that the court in dealing with contempt should adopt a structured approach which reflects as far as possible the approach of the criminal court in sentencing. This is not a mechanistic approach and begins with an assessment of culpability and harm. It is also necessary to reflect the different purposes of sentencing in the criminal jurisdiction established by section 57 of the Sentencing Act 2020. In civil contempt cases the need to punish for a breach and to secure rehabilitation have been identified as being among the purposes of sanctions, but as I have said the principal aim, in my judgment, is securing compliance with the order. There are two further factors which militate against a civil court attempting to replicate the process of criminal sentencing as set out in the guideline for sentencing for breaches of anti-social behaviour orders and criminal behaviour orders:-

    i) The maximum penalty available to the court in a contempt case is 2 years' imprisonment. In, for example, offences for breaching an anti-social behaviour injunction or a criminal behaviour order the maximum term is 5 years. The relevant guideline gives an offence range of a fine to 4 years, which cannot therefore be a reliable guide to sentence levels in civil contempt.

    ii) Equally, the same guideline prescribes community orders for some levels of offence of this kind. The civil court cannot impose such orders. There is a power to impose requirements under section 3 of the Anti-Social Behaviour and Policing Act 2014, but for reasons explained by Birss LJ in *Lovett, Smith and Hopkins* [2022] EWCA Civ 1631 at paragraph [22] these are rarely used.

31. In this case, the culpability of the appellant should be assessed having regard to the fact that she did make some attempt to remove the obstruction before the hearing when the sanction was decided. On the other hand, the breach was long-standing and deliberate. It, together with other behaviour directed at the claimant, was very distressing to her, and she had done nothing to deserve it. The harm caused by the breach itself was perhaps relatively modest, but very substantially increased by the appellant's conduct in directing a torrent of vitriolic abuse at the clamant and her solicitor, and to the court. It is this factor in this case which clearly means that a significant prison term is required.

However, given that this is the first time that this type of sanction has been applied and having regard to the appellant's age and state of health this term should, clearly, have been suspended.

32. I would therefore allow this appeal and quash the judge's order for committal to prison (paragraph 3 of his Order) and impose in its place a suspended order of imprisonment for 3 months, which will be suspended for 12 months on the following conditions:-

    i) The order of DDJ Dack is complied with by the removal of all obstructions from the driveway by 20 January 2023.

    ii) The order of DDJ Dack is thereafter complied with in every respect during the term of the suspended order.

    iii) In the event of non-compliance with either (i) or (ii) above the committal order will take effect, and a warrant shall issue for the arrest of the appellant and imprisonment.

33. For the avoidance of doubt, the order for costs remains unaffected by this appeal. The order for a suspended committal on the above terms should be drawn up and served personally on the appellant forthwith by a Bailiff of the Portsmouth County Court. We trust that counsel, having seen this judgment in draft for the usual purposes, will be able to draw an order by agreement for sealing on the day of the hand down. We will receive written submissions on any contentious matters which cannot be agreed.

34. The appellant's communications with and about the judiciary in this case may amount to harassment of the kind which resulted in the committal order in *Oliver v. Shaikh*. I would direct that the three bundles which were placed before the court in this case should be sent to the Government Legal Department so that a decision may be made about whether to seek an injunction restraining any further such conduct. If this behaviour were repeated after such an injunction, it would be a further serious form of contempt. This will be handled through the Office of the Senior Presiding Judge.

Birss LJ

35. I agree.

Stuart-Smith LJ

36. I also agree.