

LEGAL SYSTEM

Contempt of court imprisonment: what are the human rights issues?

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Introduction

On 22 February 2021 – in full lockdown because of the Covid-19 pandemic – Clerkenwell and Shoreditch County Court committed Mr Tack to six weeks' immediate imprisonment, for breaking an injunction not to make a noise in the early hours.¹ On 16 February 2021, Leicester County Court committed Mr Batty, a drug addict, to one year's immediate imprisonment for two breaches of an injunction against begging. Mr Batty was not in court and was not represented. On 12 April 2021, Milton Keynes County Court sentenced Keith Connett to three months immediate imprisonment for making a noise in a prohibited area.² Immediate imprisonment, at a time when, according to the recent Prison Reform report,³ Covid-19 restrictions meant that prisoners were held in conditions that amount to solitary confinement, being deprived of all activity and social contact, with, unsurprisingly, a devastating impact on their mental health and wellbeing. This is also arguably inhuman and degrading treatment, and thus in breach of Article 3 of the European Convention on Human Rights.

The relevant law

Criminal Behaviour Orders were introduced in the Anti-Social Behaviour, Crime and Policing Act 2014 to replace the Anti-Social Behaviour Order regime, together with a civil injunction to Prevent Nuisance and Annoyance (IPNA).⁴ Local councils, the police or any social landlord can apply for an IPNA to stop anti-social behaviour.

On 23 March 2015, Part 1 of the Anti-Social Behaviour Crime and Policing Act 2014 came into force, introducing new powers for the police and the courts, including the imposition of a civil injunction, an ASBI – Anti-Social Behaviour Injunction. Breaching an injunction is not a criminal offence, but can carry significant penalties imposed in civil proceedings. The breach comes before a County Court and is heard as contempt of court, under civil, not criminal law. Breaching an ASBI is, thus, not a crime. The court may issue a fine or impose a suspended or immediate term of imprisonment of up to two years, with the contemnor generally serving half the sentence. None of the usual protections available under the criminal law – a Pre-Sentence Report, for example – are available in these civil court hearings.

Analysis of contempt of court cases 2019 - 2021

We have analysed 122 contempt of court decisions in 38 different county courts from 2019-2021: 91 men and 31 women.⁵ Many of these concerned people who appeared to be particularly vulnerable. Sixty-four immediate imprisonments were ordered and 52 suspended. Three fines were imposed, ranging from £120 to £250. The reports do not indicate whether or how a means enquiry was made before these fines were imposed. The largest group of 32 cases concerned nuisance to neighbours, including noise, bad language, threats, and shouting. Twenty-five cases involved individuals found to

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¹ Case G01EC872 *Poplar Housing v Tack*

² Case F00MK072 *Vale of Aylesbury Housing Trust v Ken Connett*.

³ www.prisonreformtrust.org.uk/Portals/0/Documents/CAPPTIVE3_Healthcare_FINAL.pdf

⁴ <https://www.legislation.gov.uk/ukpga/2014/12/part/1/enacted>

⁵ <https://www.judiciary.uk/judgment-jurisdiction/committal-for-contempt/>

be in prohibited areas. There were seven cases related to drug dealing or possession, and five of begging and sleeping rough.

For example, James Maguire was sentenced to 26 weeks' immediate imprisonment for breaching an injunction by begging. The same punishment was imposed on Martin G. for sleeping rough and possession of a crack pipe. Reading the reports, there are an array of mental health issues. Sentencing Evelyn C. to four weeks' suspended imprisonment, the court noted that 'there are underlying mental health issues' and that there has been involvement with mental health professionals. She was 76 years-old, was threatened with eviction; her offence was making a noise outside her flat, banging doors, shouting and swearing. On 12 August 2021, Kingston-Upon-Thames County Court imposed a 12 week suspended sentence on Kate Mehmet, stating that the court has taken account of her 'mental health conditions.' Karen P., recently in a rehabilitation centre for substance abuse, was committed to prison for 12 weeks, suspended, for shouting, swearing and being abusive.

The court may also make an order of a fine or costs. Michael R, a man who was homeless and an alcoholic, was found to be in a prohibited place (his father's home) and was ordered to pay costs of £2,093 BY Kingston-Upon-Thames County Court on 17 March 2020. Brentford County Court imposed a fine of £120 on two contemnors.

Prison in times of pandemic

There has been a dreadful effect of Covid-19 precautions on prison conditions. That is the background to the 46 cases of immediate committal ordered between March 2020 and March 2021, when one would have expected that the courts would be making every effort to avoid sending people to prison. Nicholas M. fed pigeons on his balcony, which caused mess from birds: he was committed to 15 weeks' immediate custody on 12 June 2020.⁶ Joyce N. was committed to 8 weeks' immediate imprisonment on 19 June 2020 by Manchester County Court for breaking an injunction not to be in a prohibited place.⁷ As noted above, on 21 February 2021, Mr Batty was sent to prison for one year for two incidents of begging. In July 2021 Truro County Court sentenced Lisa Jones to four months immediate imprisonment for swearing.⁸

The limited powers of the court

Judges in the County Courts hearing these cases are, of course, aware of the limits of their powers. HHJ Ralton, hearing the case of Natalie Walker who breached an injunction against making noise in her flat, stated:

The sentencing powers of the County Court are very limited in comparison to the powers of the magistrates or the Crown Court. I can sentence to a term of imprisonment of up to 2 years and can suspend any term of imprisonment. I can make financial penalties (such as in the form of fines) or can make no order at all. But that represents the limit of my powers.

In that case the judge observed that Ms Walker was highly stressed, stating:

I can see that Ms Walker has a number of vulnerabilities herself. I am told that these emanate from the very tragic loss of her baby some time ago, which has no doubt left a marked impact on her mental health, which continues. I further understand that the COVID-19 pandemic has limited the amount of assistance that Ms Walker has been able to receive to help her with her mental health issues. I am very sorry to hear that she also has no support

⁶ *Bristol City Council v Nicholas Momber*, 16 Jun 2020 — 12 June 2020). Committal for Contempt | Jurisdictions | Courts and Tribunals <https://www.judiciary.uk> › judgment-jurisdiction

⁷ *One Manchester Ltd v Joyce Nyathi*, Claim No G00MA281, County Court in Manchester 19 June 2020.

⁸ *Cornwall Council v Lisa Jones*, Case No: G00PL326, County Court in Truro 19 July 2021:

network. She has also lost her home and is going to be excluded from the road for another four months by agreed variation to the injunction order.

He sentenced her to 4 weeks imprisonment, suspended, and concluded:

I very much hope that Ms Walker secures the help that she very obviously needs and I am sorry to see her in such a state of distress.⁹

From psychiatric hospital to prison

On 19 October 2021, Milton Keynes County Court made the decision that Charlotte Nudd was to be taken from a psychiatric hospital to serve a prison sentence of 6 months.¹⁰ (The judge stated:

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.

The judge described her life in these terms:

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

She breached the injunction by making a noise with a wheelie bin which disturbed and annoyed her neighbours, let the property become dilapidated and directed a flow of vile, obscene, racist abuse at an employee of the housing trust as he was doing his job by trying to enter her flat. She had been told by the court to engage with mental health services, but declined to do so.

Appeals are rare, but a Court of Appeal case heard in 2000, prior to the Anti-Social Behaviour Crime and Policing Act 2014, is instructive. In the case of *Hale v Tanner*,¹¹ a case of harassment, Lady Justice Hale (as she then was) stated:

The full range of sentencing options is not available for contempt of court. Nevertheless, there is a range of things that the court can consider. It may do nothing, make no order. It may adjourn... There is a power to fine. There is a power of requisition of assets and there are mental health orders.

Mental health orders appear to be used very rarely. In the 122 cases studied, only in the case of Charlotte Gadd, is there mention of a court ordering a defendant to engage with mental health services.

The Civil Justice Council report

Amid some concern at the way the system was working, the Civil Justice Council report was published in July 2020.¹² It noted that ". It made 15 recommendations, among them the following:

1. Urgently requesting the Home Office and Her Majesty's Courts and Tribunals Service to collect data on these cases to allow for full analysis of their use and efficacy;
2. Widening the scope and provision of the NHS Liaison & Diversion service to ensure a joined-up approach by local agencies to tackle the underlying causes of anti-social behaviour;
3. Widening the scope and provision of legal aid to ensure that no individual faces the prospect of being sent to jail without access to legal advice; and

⁹ <https://www.judiciary.uk/judgments/committal-for-contempt-of-court-in-open-court-at-bristol-walker/>

¹⁰ Case No. G70MK058.

¹¹ [2000] EWCA Civ 5570.

¹² Anti-Social Behaviour and the Civil Courts, Civil Justice Council, July 2020.

4. Adopting a new sentencing guideline to be used by the judiciary when hearing cases of anti-social behaviour.

The report stated, 'Given the seriousness of imposing a custodial penalty, attendance at a module which covers committals should be a compulsory part of judicial training.' *Nudd* highlights that imprisonment is not an effective way of managing breach of Anti-Social Behaviour Injunctions (ASBIs) and that it is arguably not compliant with Articles 3 and 5 of the European Convention on Human Rights. *Nudd* also underlines the importance of alternatives to imprisonment.

Conclusions

The guidance given in contempt of court cases by the Civil Justice Council should have led to improved training for judges in handling and sentencing contempt of court cases. Given the continuing imposition of suspended and immediate imprisonment on vulnerable people suffering from addiction and other mental health issues, it has to be questioned whether the system has actually been reformed, as the Civil Justice Council hoped it would be. Seen through the lens of human rights and social justice, contempt of court law and practice appears to be a prime example of the justice system being misused as a rod with which to punish the poor, the disadvantaged, the most damaged and despised, and the least supported people in our society. We would argue that imprisonment should be restricted to those who have broken the criminal law. The current anti-social behaviour legislation is unjust and should be repealed. In our society, as in others, there is, of course, anti-social behaviour but there should be welfare provisions to deal with and support those individuals who, for various reasons, are unable to behave in socially acceptable ways.