

Case Name: *Maidstone Borough Council v Beck & Ors* [2023] EWHC 787 (Admin) (03 April 2023)

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Commentary: This was an application by the Claimant to commit the Defendant to prison for breach of an injunction by court order dated 1 April 2021 (“the Injunction”). The Injunction dealt with unlawful planning activity at Cotton Tree, Boxley (“the Site”). The Site is designated as Ancient Woodland and is subject to a Tree Preservation Order. An enforcement notice was previously issued by the Claimant against the Defendant to stop various activities on the Site. Failing compliance with this enforcement notice, the Claimant had proceeded to seek the Injunction.

The Injunction required the Defendant to stop carrying out various activities on the Site including ([8]):

- a) Residential occupation of a caravan on the Site;
- b) Bringing mobile homes, motor vehicles and parts, and storage containers, amongst other materials, on to the Site;
- c) Processing any waste; and
- d) Laying and expanding any area of hardstanding.

The Defendant in his witness statement, in response to the committal application, outlined the various tasks he had undertaken to comply with the terms of the Injunction and why he was not able to comply with all the terms.

The Defendant argued that the reason for the breach of the terms of the Injunction was due to his psychiatric conditions, which limited his capacity to comply with all the terms of the Injunction.

Sweeting J referred to the legal principles for committal proceedings outlined in the case of *Melanie Olu-Williams v Oscar Olu-Williams* [2018] EWHC 2464 (Fam) ([20]). The key paragraph which Sweeting J emphasised is as follows:

“33. e)It is for the applicant to establish that it was within the power of the defendant to do what the order required. It is not for the defendant to establish that it was not within his power to do it. That burden remains on the applicant throughout but it does not require the applicant to adduce evidence of a particular means of compliance which was available to the accused provided the applicant can satisfy the judge so that he is sure that compliance was possible.”

Further, discussing the mental element required for committal proceedings, Sweeting J referred to the following paragraphs in the case of *Sectorguard v Dienne* [2009] EWHC 2693 (Ch):

“32. [...] The mental element required of a contemnor is not that he either intends to breach or knows that he is breaching the court order or undertaking, but only that he intended the act or omission in question, and knew the facts which made it a breach of the order: see *Adam Phones v. Goldschmidt* [1999] 4 All ER 486 at 492j to 494j.

33. Nonetheless, even a mental element of that modest quality assumes that the alleged contemnor had some choice whether to commit the relevant act or omission. An omission to do that which is in truth impossible involves no choice at all. Failure to comply with an order to do something, where the doing of it is impossible, may therefore be a breach of the order, but not, in my judgment, a contempt of court.”

Therefore, the issue to be determined in this case was whether the psychiatric conditions of the Defendant were such that it made compliance with the terms of the Injunction impossible ([23]).

Psychiatric evidence from two experts was submitted to the Court. The expert evidence put forward by the Defendant argued that he suffered from various psychiatric conditions, including hoarding disorder and schizotypal disorder, to such a degree that compliance with the terms of the Injunction would have been “near impossible” without assistance ([24]-[27]). The expert evidence put forward by the Claimant argued that, although the Defendant did suffer from the above disorders, it was not to such a severe degree that compliance with the Injunction would have been impossible ([28]-[32]).

Sweeting J concluded that he preferred the expert evidence from the Claimant based on the information before him for the following reasons ([37]):

- a) The Defendant, in his own witness statement, admitted that he was able to comply with some of the terms of the Injunction, suggesting that the Defendant’s conditions were not so severe that compliance with the Injunction would have been “near impossible”;
- b) The Defendant’s witness statement further suggests that his reason for storing various objects on the Site was due to the economic activities he carried out on the Site and not because of some other psychological attachment;
- c) Moreover, his conditions do not explain why he was not able to comply with the terms of the Injunction that did not involve hoarding; and
- d) The evidence overall did not suggest that the Defendant was “powerless to comply” with the Injunction.

For the above reasons, the Court concluded that the Defendant was in breach of the Injunction but deferred imposing a sanction to give him a chance to take steps to rectify his contempt of court and to provide further clarity on his financial assets.

Case summary prepared by Chatura Saravanan