



VERA BAIRD^{QC}
POLICE & CRIME COMMISSIONER

Judicial Conduct and Investigations Office
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Royal Courts of Justice
Strand London
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Complaint against Judge George Moorhouse, Teesside Crown Court

Dear Sir/Madam

This letter is intended as additional and supplementary to our complaint of Friday 26th September 2014.

Although we have not had a reply from your office, we understand from press statements, that your position is that this complaint must be dismissed under Rule 21b of the Judicial Conduct Investigations Office. We invite you to reconsider that position. That rule says that a complaint must be dismissed if it:

'21b. it is about a judicial decision or judicial case management and raises no question of misconduct'

Our complaint raises an issue of misconduct through neglect of duty and nothing in Rule 21b says that a question of misconduct is to be dismissed simply because it relates to a judicial decision.

The judge has wholly disregarded sentencing guidelines on domestic abuse so has failed to deliver justice for the public, failed to have regard to the risk to the complainant from his actions in freeing the defendant (she has been forced to leave home and go into hiding) arguably breached the complainant's right, under Article 3, to be protected by the state from inhumane and degrading treatment of the kind inflicted on her by the defendant, has had a discriminatory impact in that he has undervalued a category of offence carried out overwhelmingly against women, has shown lack of awareness or disregard of the judge's duty to deter endemic domestic abuse for the protection of the community and has broken the provisions of the Victims Code which intend:

'To transform the criminal justice system by putting the victim first. Victims of crime should be treated in a respectful, sensitive and professional manner without discrimination of any kind'

It would be extraordinary if such significant breaches of law/guidance/practice/public duty are established yet a publicly funded official is immune from disciplinary action. That is no part of the constitutional independence of the judiciary which protects the sentence itself, being an order of the judge from being the subject of a complaint but cannot protect an errant judge who, in the course of his duty, even though it is a duty linked to sentencing, is in breach as set out. We would emphasise that while some of the provisions of which he is in breach are part and parcel of the sentencing process, albeit we assert that his disregard is so serious as to justify a complaint of neglect of duty about them, other breaches are not integral in the sentencing process but relate to neglect of his broader public duties. It clearly is not the position that a judge who sentences on any basis at all, however whimsical or mischievous, is immune from correction for such conduct. The duty to consider disciplinary action is all the sharper because the judge, being aware that there is no appeal to correct any sentence he imposed, had a particularly acute duty to adhere to law and

practice. This is not an appeal against this sentence, none being available from any forum. It is a complaint about this judge.

We attach a schedule of four further domestic violence suspended sentences imposed by Judge Moorhouse, which have been the subject of similar adverse public comment and which similarly show him in breach of the provisions set out above and guilty of judicial misconduct. We join those as further complaints insofar as they are not out of time:

The Facts

The offender carried out these violent assaults against the victim in her own home, which he was also entitled to occupy, so that she had nowhere to run. It was reported that the victim endured a catalogue of assaults and abuse from her husband, triggered when she said that she was considering leaving him, in which:

- He seized hold of her and bit her about the face
- He put his hands round her throat and throttled her
- He held a 20cm long knife to her throat said ' I am going to top you and then myself'
- He threatened to scald her with boiling water
- He went into another room to find a pellet gun and came back with it, threatening to shoot her, 'through your eye into your brain'
- He shot her in the foot with the pellet gun
- So far as weapons are concerned, he went away from the scene to bring the gun and he used both weapons on her
- The court also heard that he phoned her threatening to 'torch' her/her property to prevent her from testifying against him
- In her Victim Impact Statement she described this as a 'life changing' experience and has gone into hiding in fear of him

He was charged with one offence of assault occasioning actual bodily harm (maximum sentence 5 years) and witness intimidation. It is not clear if he was charged with perverting the course of justice (7 years) or under S51 Criminal Justice and Public Order Act 1994 (maximum sentence 5 years).

The sentencing disregarded virtually every precedent and guideline for sentencing domestic abuse cases, and allowed the specific mitigation of good character, not available for domestic abuse, to determine that he would suspend the sentence of one year's imprisonment, in total.

The background

The difficulties of reporting domestic abuse are well-known and the courage of this complainant in pursuing the case to trial was exemplary. She persevered notwithstanding her ex-partner's threat to 'torch' her home if she didn't withdraw. It seems likely that he contested the case, in the hope/expectation that his threats would have deterred her from testifying, since he pleaded guilty when she attended. The sentence was received with well-publicised triumphalism by the defendant. The complainant, on the other hand, fled from the court and we now understand has been forced into hiding from him, in fear of further threats, violence and revenge.

In the absence of any appeal this sentence represents the current definitive position of the judiciary to domestic abuse cases, in this region. It has been met with strong and widespread criticism. The three Police and Crime Commissioners who complain here are experienced people, respectively a former Deputy Chief Constable, a Police Authority member of twenty five years standing and an experienced criminal law QC. We are two men and one woman. The criticism has been made in every local and regional newspaper, on BBC and commercial radio and TV stations across the north east, as well as featuring in a range of politically diverse national newspapers, a national

magazine and several international publications. The police were approached by BBC Newsnight, who intended to ground a feature on judicial failings in domestic abuse cases, on the complainant's story. However, she was too afraid to speak to them, feeling completely unprotected from the defendant and, according to the police, still traumatised both by his conduct and the shock of her unexpected exposure to further threat, by his release. All of this resounds to the discredit of the judiciary, notwithstanding that the sentencing guidelines are clear and many judges do take this endemic offending seriously.

Domestic abuse is endemic in our communities, regionally and nationally. There are over 1000 cases per month in Cleveland where this case was heard and approximately 27000 cases per year reported in the north east. The Crime Survey for England and Wales and much evidence from refuge providers shows that perhaps only one in five people (89% of whom are women) who suffer from domestic abuse ever report it to police. This suggests that there are likely to be over 100000 cases of domestic violence per year in the 3 policing areas of Northumbria, Durham and Cleveland alone, an epidemic of offending.

It is undoubtedly well-known to the north east judiciary that all three Police forces, the Police and Crime Commissioners, the Crown Prosecution Service, local authorities, Community Safety Partnerships, National Health England and the Directors of Public Health, Church-related/ religious groups and many Voluntary and Community organisations, charities and trusts are all working to encourage reporting of domestic abuse in order to keep victims safe and obtain prosecutions.

Training is understood to have been given to the judiciary as to the basic dynamics of domestic abuse. Perhaps of particular relevance here that it recurs, getting ever more serious; that the complainant has usually suffered 30-35 incidents before she told anyone and that the most dangerous time is when a complainant tries to get away, as this complainant told the defendant she was going to do. A violent outburst at such a time is absolutely characteristic of someone who has pursued a course of coercive control and is attempting to retain his control and curb the autonomy she seeks to recover.

This judge has disregarded all of these matters; prevalence, the huge investment from other public authorities and the understanding of this criminality which he should have acquired from training

Misconduct through neglect of duty in disregarding/sentencing in conflict with SGC Guidelines on Domestic Violence, on discount for guilty pleas and on the offence of Assault occasioning Actual bodily harm.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

SGC Guidance on Assault Occasioning Actual Bodily Harm:

In our judgment this offence is in category 1 with sentencing starting point either 18 months (range 1 - 3 years) This is more serious injury and high culpability, The court should add the terror and trauma which she described in her Victim Impact Statement as 'life changing' to the physical injuries she sustained. If category 2 the starting point is 6 months (range community sentence to 51 weeks)

SGC Guideline on Overarching Principles:

Aggravating factors set out in the guideline which are present include:

1. The victim is particularly vulnerable because of personal circumstances - she was attacked in her home with nowhere to escape
2. Use of weapon or weapon equivalent - he had an 8 inch bladed knife and went away to fetch an airgun which he shot her with
3. Deliberate targeting of vulnerable victim - his partner on whom she was to some extent dependent
4. Offence motivated by, or demonstrating, hostility based on the victim's sex - this was domestic violence of which 89% of victims are women

Additional aggravating factors:

5. Location of the offence - in the complainant's own home where she is entitled to feel safe
6. Timing of the offence - to prevent her from leaving which she was entitled to do
7. Ongoing effect upon the victim - traumatised and terrified according to police and press reports
8. In domestic violence cases, that the victim forced to leave their home is an aggravating factor which happened in this case
9. Abuse of power and/or position of trust - this is present, see how SGC Guidelines on Domestic Violence sentencing.
10. This violence was part of a course of conduct and controlling attitude to the complainant as evidenced by the threat to torch her home and the triumphant social media message

Factors reducing seriousness or reflecting personal mitigation which were taken into account:

1. No previous convictions or no relevant/recent convictions. This should not be a factor according to SGC Guidelines on Domestic Violence sentencing about perpetrators often having '2 personae'
2. Sentence discount for guilty plea (according to the 'sliding scale' in the SGC Guidelines and section 144 of the Criminal Justice Act 2003) would be a maximum, for a plea after the trial has begun, of one tenth.

However, the Guideline says that if the not guilty plea was entered and maintained for tactical reasons (such as to retain privileges whilst on remand), a late guilty plea should attract very little, if any, credit. In this case the not guilty plea must be seen in the light of his attempt to threaten her not to attend court. It was persisted in from the offence in April to after the trial started in late September, undoubtedly dominating her life in the meantime and intended to do so. There should be no credit for his change of plea.

Sentencing Domestic Violence Guideline:

SGC 'Overarching Principles' makes clear that

'Offences committed in a domestic context should be regarded as being no less serious than offences committed in a non-domestic context.

'Indeed, because an offence has been committed in a domestic context, there are likely to be aggravating factors present that make it more serious.'

'2.2 Thus, the starting point for sentencing should be the same irrespective of whether the offender and the victim are known to each other (whether by virtue of being current or former intimate partners, family members, friends or acquaintances) or unknown to each other.

2.3 A number of aggravating factors may commonly arise by virtue of the offence being committed in a domestic context and these will increase the seriousness of such offences.

'Aggravating and Mitigating Factors

'3.2 The following aggravating and mitigating factors (which are not intended to be exhaustive) are of particular relevance to offences committed in a domestic context, and should be read alongside the general factors set out in the SGC Overarching Principles: Seriousness (above)

'3.3 The guideline Overarching Principles: Seriousness identifies abuse of a position of trust and abuse of power as factors that indicate higher culpability. Within the nature of relationship required to meet the definition of domestic violence set out above, trust implies a mutual expectation of conduct that shows consideration, honesty, care and responsibility. In some such relationships, one of the parties will have the power to exert considerable control over the other.

'In the context of domestic violence: an abuse of trust, whether through direct violence or emotional abuse, represents a violation of this understanding;

'an abuse of power in a relationship involves restricting another individual's autonomy which is sometimes a specific characteristic of domestic violence. This involves the exercise of control over an individual by means which may be psychological, physical, sexual, financial or emotional.

'Where an abuse of trust or abuse of power is present, it will aggravate the offence

'Victim is particularly vulnerable.

3.8 Where a perpetrator has exploited a victim's vulnerability (for instance, when the circumstances have been used by the perpetrator to prevent the victim from seeking and obtaining help), an offence will warrant a higher penalty.

3.10 Any steps taken to prevent the victim reporting an incident or obtaining assistance will usually aggravate the offence.

(v) A proven history of violence or threats by the offender in a domestic setting

3.14 It is important that an assessment of the seriousness of an offence recognises the cumulative effect of a series of violent incidents or threats over a prolonged period, where such conduct has been proved or accepted - relevant to how the witness intimidation offence was sentenced.

(vii) Victim forced to leave home

3.19 An offence will be aggravated if, as a consequence, the victim is forced to leave home.

22. The use of a weapon (which for the purposes of this guideline includes traditional items such as an iron bar, baseball bat or knife) or part of the body (such as the head or other body part which may be equipped to inflict harm or greater harm for example a shod foot) will usually increase the seriousness of an offence.'

(here two weapons were used - an 8inch bladed knife, held to her throat, and an air gun used to threaten and then to shoot her)

'In relation to culpability, where a weapon is carried by the offender to the scene with the intention of using it or having it available for use should the opportunity or need arise, high culpability is likely to be indicated'

(here the offender left the scene to fetch the gun from another room)

(ii) In relation to harm, the type of weapon or part of the body and the way it is used will influence the extent of the effect on the assessment of seriousness. For instance, use of a knife or broken glass raises a high risk of serious injury. Similarly where the offender kicks or stamps on a prone victim, particularly if to a vulnerable part of the body."

Prevalence

'The extent to which prevalence should influence sentence must be determined in accordance with the Council guideline¹¹ which states that "it is legitimate for the overall response to sentencing levels for particular offences to be guided by their cumulative effect" but adds that "enhanced sentences should be exceptional" and that "sentencers must sentence within the sentencing guidelines once the prevalence has been addressed."

Mitigating Factors

(i) Positive good character

3.20 As a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic violence to continue unnoticed for lengthy periods is the ability of the perpetrator to have two personae, a violent one and another so violence in a domestic context, an offender's good character in relation to conduct outside the home should generally be of no relevance where there is a proven pattern of behaviour.'

- as the two offences taken together establish here. Clearly the threat to 'torch' is not only an attempt to pervert the course of justice but a further criminal act attempting to control her

Sentence for Witness Intimidation/perverting the course of justice

It is unclear which offence was charged to deal with the defendant's threat to 'torch' the complainant's home. The offence of witness intimidation under Section 51(1) Criminal Justice and Public Order Act 1994 carries a maximum sentence of 5 years. Perverting the course of justice carries a sentence of 7 years.

In our experience it is almost unknown for an attempt to terrify the principal witness in the case to withdraw, by a deliberate, planned phone call threatening her with extreme violence, not to be met with an immediate sentence of imprisonment, under either provision following indictment. Indeed it is rare even in the magistrates' court.

Further, we reiterate that the defendant's conduct here is a continuation of the course of domestic abuse inflicted upon the complainant, as well as an attempt to pervert the course of justice by ensuring his wrongful acquittal. We repeat the evidence above of total disregard of the guidelines as to that kind of offending and the judge's undervaluing of the gravity of conduct which, if it were carried out in any other context would undoubtedly have been met with an appropriate approach leading to a proportionate sentence.

Breach of Article 3 of the European Convention on Human Rights in respect of the complainant/ analogous breach of public duty

Under section 6 HRA it is unlawful for a public authority to "act in a way which is incompatible with a Convention right". Judge Moorhouse, when sitting in court is a public authority. "Convention rights" include the rights and fundamental freedoms set out in inter alia, Article 3 of the European

Convention on Human Rights. It follows that it is unlawful for the Judge to act in a way that is incompatible with Article 3 of the Convention which provides:

"No-one shall be subjected to torture or to inhuman or degrading treatment or punishment".

The core of this allegation is that the Judge failed properly to act to protect her against breach of her Article 3 rights not to be subjected to inhuman and degrading treatment, such as she sustained on the facts in this case as set out above. As a result of the judge's disregard of this duty, the victim has been forced to go into hiding because he freed the perpetrator, leaving her vulnerable and in fear of further such treatment. There is authority from both the Strasbourg and English courts that where the state bears no culpability for actual violence perpetrated it can nonetheless still be liable for a failure of a duty to deal appropriately in the light of this right, with particularly severe violent acts perpetrated by private parties.

We accept that it is not the case that every act or omission by a public authority, every breach of the law or failure to adhere to guidelines, standards or procedures triggers liability but suggest that the failings in the present case were of sufficient seriousness to pass this test. We have identified, those above, and would characterise them as a series of systemic failings which went to the heart of this failure of the judge to protect her against the likelihood of further breaches of her rights by this defendant. We would invite you to take this seriously, through this analysis and/or as a breach of an analogous public duty to protect this complainant against further danger of such treatment

Sex Discrimination: Equality Act 2010/analogous breach of public duty

Section 13 provides that direct discrimination is where someone is treated less favourably because they have a protected characteristic

In this case the complainant is female, sex being a protected characteristic

Section 19 provides that Indirect discrimination is where a policy or practice that applies to everyone particularly disadvantages people who share a protected characteristic

We draw your attention to the directly discriminatory impact of sentencing weakly for domestic abuse which statistics show is sustained as to 89% by women. The statistics for domestic violence in the north east region broken down by sex for 2012-13 show that of 43,491 such incidents reported to police, 40,986 were against women.

We refer to indirect discrimination in order to make clear that should Judge Moorhouse sentence as a practice, over-leniently for all offences of violence, that his conduct would not be saved from being discriminatory by that practice since such a practice nonetheless disadvantages women, the majority of victims of domestic violence which makes up currently a significant proportion of all violent crime. (upto date statistic for north east England to follow)

We refer to the discriminatory impact of the judge's conduct in order to draw out the implications of of under-valuing violent domestic crime for women as a community, one in four of whom, according to current Home Office statistics will suffer from domestic violence in course of her lifetime. We reiterate the need for protection of a community vulnerable to this criminality and would refer you to our comments in earlier paragraphs as to the difficulties of bringing culture change to the perpetrator community whilst it appears to be being favoured against the victim community.

The Victims Code

We attach the victims code in order to bring to your attention the focus it is intended to apply to the centrality and wellbeing of victims of crime in all criminal justice processes, no less to the courts

and to reiterate our concerns as to the vulnerable and frightened condition in which this victim has been left by the judge's actions, in contrast to the purpose and direction of the Code's provisions

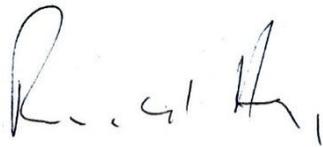
We conclude by thanking you for attending to a complaint which we regard as directed to a very serious matter indeed with wide-ranging deleterious consequences for the communities for which we have policing, community safety and criminal justice responsibilities.

We look forward to hearing from you soon

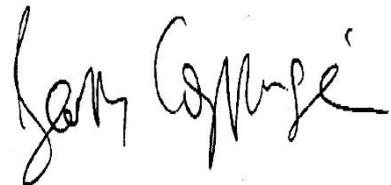
Yours sincerely,



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PCC – Northumbria



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