

# Imprisonment for breach of injunctions

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## 1. Why injunctions?

Different governments over the past 30 years have introduced a range of measures to control anti-social behaviour – for example the [Public Spaces Protection Order](#) and the [Community Protection Notice](#). Less well-known is the use of injunctions. Breach of an injunction can lead to the civil courts sending defendants to prison.

There is a hotch-potch of common law and statutory powers that allow a claimant in a civil matter to request an injunction, some are only open to specified public bodies. In particular, local authorities (LAs), social landlords and the police have injunction powers under:

- Anti-Social Behaviour Crime and Policing Act 2014, s.1 (police, LAs, social landlords)
- Town and Country Planning Act 1990, s.187B (LAs)
- Local Government Act 1972, s.222 (LAs)
- Policing and Crime Act 2009, s.34 (police, LAs)

There is evidence that this use of injunctions (using a range of injunction powers) has become the ‘go-to’ legal remedy for local authorities. There are now several cases where local authorities have used them, including borough-wide prohibitions. As was acknowledged in *Bromley London Borough Council v Persons Unknown* [2020], the widespread use of injunctions at the local authority level is ‘aimed squarely at the Gypsy and Traveller community,’ pointing to a total of ‘38 of these injunctions in place nationwide.’

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## 2. What is the law if there is breach of an injunction?

Before any sanction can be applied, the court must be satisfied to the *criminal standard of proof* that the person: (i) having received notice of the order did an act prohibited by it; (ii) intended to do the act; and (iii) had knowledge of all the facts which would make doing the act a breach of the order. If that standard is met, the principal sanctions for a civil contempt are imprisonment, fine and seizure of goods. If the court decides on imprisonment, the Contempt of Court Act 1981, section 14(1) provides a fixed maximum sentence of 2 years. The court may suspend the sentence.

The case law makes it clear that task of the court is different from sentencing in criminal cases. This is because the objectives underlying penalties are different from crime. In *Lovett v Wigan B.C. and others* [2022] the Court of Appeal stated:

... the current Sentencing Council guidelines can only be relevant in the very broadest and generalised sense. The maximum penalty available to the civil court is far shorter than that for a criminal breach of a criminal behaviour order, which is 5 years. The differences between the two systems are great enough that as a general rule, if a sentence contemplated in a civil court was one which was the same or more severe than what would be derived from the Sentencing Council guidelines, it is likely to be wrong.

Many of the reported cases emphasise the difficulty of comparing cases because the circumstances surrounding contempt cases are much more varied, so there is no general advice for judges in deciding when to imprisonment or for how long.

## 3. Use of imprisonment

The data in this briefing is based on decisions that are made available on the Ministry of Justice [Judicial Website of judgments](#). The Civil Procedure Rules require decisions to commit to prison to be published on the website (there is evidence this does not always happen). We created a spreadsheet of cases from 1 January 2020 to 31 December 2022 where the recorded outcome of the committal was a sentence of imprisonment, whether immediate or suspended. The total number of cases was 263.

We classified cases in different types:

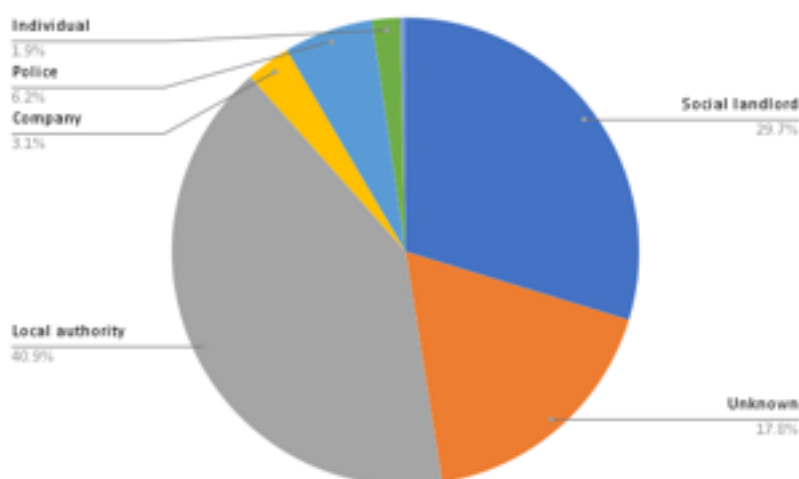
Classification	Scope
Anti-social Behaviour	In these cases there was no evidence that anything else was involved beyond the anti-social behaviour of the defendant and the applicant was a social landlord, a local authority or the police. This classification also includes gang injunctions under the 2009 Act.

Protest	In these cases, the behaviour of the defendant was motivated by protest.
Gypsy and Traveller	In these cases, the dispute identified the defendants as Travellers and was concerned with their use of land.
Family Disputes	In these cases, the dispute arises because of the family relationships between the parties.
Property Disputes	In these cases, the dispute arises between neighbouring landowners.
Other	Examples of these cases include an injunction preventing the defendant from disclosing, or making adverse and derogatory remarks about the claimants and a social landlord seeking access to undertake gas inspections.
Unknown	Information about the context of the injunction and/or breach is not provided in the case information.

### The types of injunctions and applicants

The majority of cases were anti-social behaviour injunctions – 76% of all cases. The total of sentences of imprisonment for breach of an anti-social behaviour injunction was 196 spread over 3 years.

The most active claimants were local authorities. As well as anti-social behaviour committals they were involved in protest and Gypsy and Traveller cases.



## Sentencing decisions – outcomes and consistency

Across the full sample, the longest sentence was 730 days, with the shortest at 0.5 days – the average was 95 days and the median 60 days, with the bulk of cases detailing a sentence of fewer than 100 days. Looking at the longest tariffs (more than 100 days) these included 15 cases when previously suspended sentences were added to the tariff. There were also more cases where the court committed for a number of breaches of the injunction.

Grouping the sentences into four quartiles in respect of sentence length demonstrates that Gypsy and Traveller cases were disproportionately more likely to receive a higher sentence in the sample than other kinds of cases. Indeed, 70% of Gypsy and Traveller cases sat in the highest quartile for sentencing, compared to 24% of ASB cases and 4% of protest cases.

Once the court has decided on the tariff, the judge should consider whether to suspend the sentence. There was a close split between suspension (46.7%) and immediate imprisonment (49.8%). Here, the data illustrate that – in addition to receiving disproportionately higher sentences – Gypsy and Traveller cases were also far more likely to receive immediate, rather than suspended, sentences (80% of cases in the sample). ASB cases also had a significantly high rate of immediate sentencing (around half, at 53%), with rates for Protest cases far lower than average (at 19%).

## Whether defendants are represented

Any committal application is treated as ‘quasi-criminal.’ Non-mean-tested representation is available and there is an obligation on the court to ensure that it is made available. Lack of legal representation for a defendant in committal proceedings represents a serious procedural flaw accordingly to the case law. Representation was one of the data points with the highest number of unknowns (n=161). Where the data was known, 55 defendants were not represented and 42 were. For ASB cases where presentation was known, defendants were more likely to be unrepresented (39 cases) than for lawyers to be in court for them (29 cases).

Our analysis reveals a concerning landscape in the realm of legal representation for defendants in committal hearings. Despite the technical availability of legal aid, the phenomenon of ‘advice deserts’ profoundly affects access to legal representation, particularly in certain regions and case types. Our database further underscores this issue, showing a significant number of cases with unknown representation status and a notable disparity between represented and unrepresented defendants.

## 4. Conclusions

There has been very little written about the use of injunctions and particularly how they lead to imprisonment. In the first detailed interrogation of this issue, analysis of our database of 263 committal for contempt decisions demonstrates the wide range of penalties applied, the (far) higher sentencing imposed in Gypsy and Traveller cases and the uneven nature of legal representation. The courts are sentencing, but without the full range of sentencing options, without some of the usual procedures in criminal courts, and with minimal guidance.

***The full research on which this briefing is based is available in [Legal Studies](#), 1 July 2024.***