

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1459 (QB)

Ref. QB-2022-001236

**IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY**

Sitting at
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL

(Claimant)

-v-

**(1) JONATHAN COLEMAN
(2) SAMUEL JOHNSON**

(Defendants)

**MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of Mr Coleman
Mr Johnson appeared in person**

Hearing date: 12th May 2022

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Jonathan Coleman and Samuel Johnson, you each appear before the court to be dealt with in relation to one admitted breach of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. You have each had the opportunity of obtaining legal representation. I have heard from Mr Jones, of counsel, on behalf of Mr Coleman. Mr Johnson has spoken to counsel prior to the hearing but indicated that he wishes to undertake his own advocacy at today's hearing.

3. The particulars of alleged breach have been provided to you by the claimant in writing. You have each admitted breaching the interim injunction on 27 April 2022. In light of the admissions each of you have made, I am satisfied that the contempt of court have been proved, as alleged by the claimant, to the criminal standard of proof.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Neither of you were named defendants. The injunction was however also granted against "persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA." A power of arrest was attached to that order.

5. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. It did not prohibit protesting in its entirety in the vicinity of the oil terminal, but it created a buffer zone of 5 metres around the boundary to the site. By paragraph 1(a) of the injunction:

"The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

- (a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the "buffer zone").

For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the

buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone.”

6. Paragraph 1(b) of the order further prohibited “in connection with any such protest anywhere in the locality of the Terminal” a number of defined acts including at subsection (iii) “obstructing any entrance to the Terminal...”

7. The order was served on 14 April 2022 by alternative methods permitted by Sweeting J, including by placing signage in prominent locations around the site and on the claimant’s website and social media accounts.

8. The breach on 27 April 2022 occurred just after 4pm when you were part of a group of 10 individuals gathered on the grass verge at the side of the main entrance to the oil terminal to protest against the use and production of fossil fuels. It is accepted by the claimant and this court that it was a wholly peaceful protest. It was, nonetheless, inside the buffer zone and thus in breach of paragraph 1(a) of the injunction. The police advised you to move away and indicated where you could continue the protest lawfully, but you refused to move and were thereafter arrested pursuant to the power of arrest attached to the injunction. If you had simply moved five metres away from the terminal boundary so as to be outside the buffer zone the protest would not have been in breach of the injunction.

9. You have already heard me say to others being dealt with for similar contempt matters that when determining the penalty for contempt of court, the court has to consider the three objectives identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699:

“The first objective is punishment for breach of an order of the court; the second is to secure future compliance with the court’s orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective.”

10. Both counsel have referred me to the Sentencing Council Definitive Guidelines. The Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 concluded that the guideline for breach of an anti-social behaviour order was equally relevant when dealing with breaches of anti-social behaviour orders in the civil courts. I thus consider the Definitive Guidelines, albeit by analogy only given that they apply in the criminal courts, not directly to the civil courts. I bear in mind that this court does not have the same sentencing powers as the criminal court; that this court does not have community disposals available; and that this is not an antisocial behaviour injunction in the true sense.

11. As to culpability, the single breach falls with category B. I do not accept it was a minor breach or one falling just short of reasonable excuse such that it falls within category C. Your actions were deliberate; that being the defining characteristic for culpability B. The likelihood is that had you heeded the advice of the police to move your protest outside the buffer zone, it is very likely they would not have proceeded to arrest you and the claimant is unlikely to have taken enforcement action.

12. As to category of harm, in my judgment it clearly falls in category 3 (causing little or no harm or distress). That gives rise to a starting point sentence in the criminal courts of a high level community order, with a category range of a low level community order to 26 weeks' custody.

13. In terms of aggravating factors, each of you has a previous conviction for obstructing free passage. Whilst that is relevant to the nature of the protest you were engaged in on that day, I do not take the view it aggravates the breach to any significant extent. The court accepts that each of you has admitted the breach at the very earliest opportunity, at the next hearing following your remand on bail having had a reasonable time to take legal advice. You are therefore each entitled to the maximum one-third discount anticipated by the Definitive Guideline for Reduction in Sentence for a Guilty Plea.

14. In my judgment the appropriate penalty for the single breach is a fine. The court has the ability to impose an unlimited fine but the level of fine has to reflect the individual's means. That may result in different defendants facing different levels of fine for the same factual breach depending on their personal circumstances. Counsel has provided information as to Mr Coleman's assets...

[MR COLEMAN INTERRUPTS AND WISHES TO ADDRESS THE COURT IN MITIGATION. JUDGE POINTS OUT HE IS REPRESENTED BY COUNSEL WHO HAS ALREADY SPOKEN ON HIS BEHALF. JUDGE ALLOWS MR COLEMAN A SHORT OPPORTUNITY TO ADD TO COUNSEL'S SUBMISSIONS.]

JUDGE KELLY:

15. I return to my judgment. Unconventionally I paused my judgment and afforded Mr Coleman the opportunity to address the court directly notwithstanding his counsel had already addressed the court on his behalf. I recognise he feels strongly about this matter and wished for his voice to be heard. I return to the question of financial penalty. As far as Mr Coleman's position is concerned, he is of moderate financial means. He has a number of

assets. By contrast, Mr Johnson has very minimal income or assets, indeed less income that he would receive were he claiming state benefits. It is therefore appropriate that the financial penalty in Mr Coleman's case is greater than that for Mr Johnson.

16. In Mr Coleman's case, the starting point for the financial penalty is £900. That is reduced by one-third to reflect the admission at the earliest opportunity to £600. In Mr Johnson's case the starting point is £450, reduced by one-third to £300.

17. In Mr Coleman's case the financial penalty will be payable in full by 1 June 2022, given his savings position. In Mr Johnson's case, the sum of £300 will be payable at rate of £20 a month, first payment by 1 June 2022.

18. I make it clear that the financial penalties in relation to the incident on 27 April 2022 have lower starting points than I have adopted in relation to other defendants involved in the protest on 26 April. A distinction between the two protests can be drawn. The protest on 27 April was purely peaceful, causing no inconvenience to any road-users, as opposed to events on 26 April, when part of a group sat down across the road.

19. The claimant has made an application for costs. Unlike similar cases that have proceeded before the court over the past two days, the claimant has now prepared a costs schedule. However, the costs schedule relates to the hearings on 4 and 5 May 2022. On 4 May neither Mr Colemann or Mr Johnson's cases were listed. They were not part of the protest group arrested and produced on 5 May. The costs schedule is thus irrelevant to either defendant. In the absence of the claimant serving a relevant costs schedule, I am not prepared to make a costs order. There will therefore be no order as to costs as between the claimant and Mr Coleman and Mr Johnson.
