

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1460 (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) LUCIA WHITTAKER DE ABREU

(2) ALYSON LEE

(Defendants)

**MR SHEPHARD appeared on behalf of the Claimant
MR JONES appeared on behalf of Ms Whittaker De Abreu
Ms Lee appeared in person**

Hearing date: 12th May 2022

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Lucia Whittaker De Abreu and Alyson Lee, you each appear before the court having admitted two breaches each of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Ms Whittaker De Abreu, you are represented by counsel, and I have heard what he has said on your behalf. Ms Lee, you have solicitors on record and have spoken to counsel but inform the court that you wish to conduct your own advocacy at today's hearing.

3. You each face an allegation of breaching the injunction on 27 April 2022 and 4 May 2022. The claimant provided particulars to you in writing and you have each made admissions today in accordance with those particulars. In light of your admissions, the court is satisfied that the allegations of contempt of court have been proved to the criminal standard, namely beyond reasonable doubt.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Ms Lee was named as a defendant but Ms Whittaker De Abreu was not. The injunction was 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. 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...” The injunction did not therefore prohibit all protest activity in the vicinity of the oil terminal, but it did create a buffer zone of 5 metres around the site.

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 first breach on 27 April 2022 occurred just after 4pm when you were two of a group of 10 individuals who had 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 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 outside the five-metre area and continued your protest there, you likely would not have been before the court. You were each produced before the court on 28 April and bailed on condition to comply with the injunction. Your cases were listed on 4 May 2022.

9. Instead of attending court on 4 May, you each made a deliberate decision to attend Kingsbury Oil Terminal to continue your protest, in breach of paragraph 1(a) of the injunction. Approximately 2 pm you were amongst a group of 11 who stood on a grass verge to the side of the entrance to the site, again with placards and banners. Some of your number told police officers that you were due to appear in court that day and had failed to do so. Some individuals slow-walked across the road junction, causing access problems for vehicles. I accept that you are not named in any of the evidence as individuals who caused traffic problems by your actions.

10. When determining the appropriate penalty, the court has to consider the objectives of such an exercise. Pitchford LJ in *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699 held as follows:–

“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; the third is rehabilitation, which is a natural companion to the second objective.”

11. Both counsel have made reference to the Sentencing Council's Definitive Guidelines. Those guidelines are produced for use in the criminal courts. The Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 however held that the definitive guidelines for breach of an antisocial behaviour order were equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. There are some distinctions. One has to bear in mind that the criminal courts have far greater sentencing powers: a maximum of five years' imprisonment for breach of antisocial behaviour as against a two-year maximum on any one occasion under the Contempt of Court Act. The criminal courts also have a whole range of community orders available to them which the civil courts do not. I also bear in mind that this was not an antisocial behaviour injunction in the true sense under the Anti-social Behaviour, Crime and Policing Act 2014. Nonetheless, the aims of the interim injunction draw parallels with the type of conduct that one would find in an antisocial behaviour injunction order. I consider the Definitive Guideline for breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order) by analogy only.
12. The two breaches in question, the first on 27 May and the second on 4 May, each fall within the culpability B category. They were deliberate breaches falling between the highest category (persistent breach) and the lowest category (minor breach). The second breach does not cross the threshold into persistence. I accept what is said on behalf of Ms Whittaker De Abreu that they fall towards the bottom end of the culpability B range.
13. As to the category of harm, the claimant concedes and I agree that both breaches fall within category 3, causing little or no harm or distress.
14. The guideline gives a starting point for sentence in the criminal courts as a high level community order, with a category range from a low level community order to 26 weeks' imprisonment. One has to bear in mind that this is in the civil courts and therefore the starting point and range will necessarily be lower.
15. Turing to aggravating factors. Each of you committed the first breach on 27 April, only 13 days after the interim injunction was granted. The breach on 4 May is further aggravated by the fact that you were both on bail at the time and had failed to surrender to your bail for the hearing that same day.
16. You have both admitted breaches of the injunction and you are entitled to credit for your admission under the Definitive Guideline for Reduction of Sentence for a Guilty Plea. Your admissions in relation to events on 27 April was made at an early, but not the first, opportunity. The first opportunity following the reasonable time to obtain advice would have been 4 May, when you failed to surrender. You would thus receive a 25 per cent discount for

your admission regarding events on 27 April. Your admissions in relation to events on 4 May are at the first opportunity allowing reasonable time for you to obtain legal advice. That admission would attract a one-third reduction in penalty.

17. But for the fact that you have been remanded in custody since the hearing on 5 May, the appropriate penalty in respect of the two breaches you each face would have been a fine. You have however served nine days in custody in total: one day when arrested on 27 April; and eight days following your arrest on 4 May. You have therefore served a sentence equivalent to 18 days. The time in custody is more draconian penalty than a financial penalty these breaches would otherwise have warranted. It would be unjust for you to be ordered to pay a financial penalty in addition to the time you have each spent in custody. I am, therefore, not going to make any order on the breaches. The order will however record the reason why no fine is being imposed, namely that you have spent time in custody equivalent to an 18-day sentence.

18. If the court had been imposing a financial penalty, I would have proceeded on the basis that each of you are of very modest means. In relation to the breach on 27 April, the starting point would have been £600, reduced by 25 per cent to reflect your admissions to £450. In relation to the breach on 4 May, that breach was much more serious, given your position on bail and your failure to attend court. The starting point would have been £900, reduced by a third to reflect your admissions to £600.

19. The claimant has made an application that you pay a contribution towards its costs in the sum of £195 each. The claimant has produced a costs schedule setting out their costs of the hearings that were listed on 4 May and 5 May. You were supposed to attend court on 4 May but failed to do so. On 5 May you were produced from custody following your arrest. Counsel on behalf of Ms Whittaker De Abreu opposes the making of a costs order on the basis that other defendants that appeared before the court over the past two days have had not been ordered to pay costs. Over the last two days the claimant has failed to file or serve a schedule of costs and therefore the court and the defendants had no information before them as to how those costs were being quantified. The position today is different. The claimant has now provided a schedule of costs. The defendants have had the opportunity to consider that. It is a schedule which is generous to the defendant as it does not include any costs from the hearing on 28 April or in relation to today. I am going to make an order that the defendants make a contribution to the claimant's costs. Whilst that will mean that there is not parity between all the defendants facing contempt of court matters, that is the good fortune of the defendants who appeared earlier this week and not a reason why the claimant

should be deprived of its costs now that it have got their house in order. The general rule is that costs follow the event, and there is no reason to depart from that rule. As to the quantum of those costs, the sum of £195 is sought from each defendant. That is a perfectly proportionate sum and I order each defendant to pay the claimant the sum of £195. Having considered the financial circumstances of each defendant, Ms Whittaker De Abreu has modest savings and Ms Lee's financial position generally is such that the sums are to be paid in full to the claimant by 1 June 2022.

20. The practical effect of today's judgment is that you will be released from custody today. You need to go down to the cells with the dock officers, but they will then process the paperwork and you will be released.
