

Neutral Citation Number: [2022] EWHC 2536 (KB)

Case No: QB-2022-BHM-001236

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

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

Tuesday, 20 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a Judge of the High Court)

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) ZOE COHEN
(2) GILLIAN BIRD

Defendants

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department)
appeared on behalf of the Claimant
MS Z COHEN appeared in person
MS G BIRD appeared in person

APPROVED JUDGMENT

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1. JUDGE KELLY: Zoe Cohen and Gillian Bird, you each appear before the court in respect of an admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.
2. When first produced before this Court on 15 September 2022, you were informed of your entitlement to legal representation and a reasonable time to prepare your case but indicated that you did not wish to instruct legal representatives. Having been remanded in custody and produced again today, you each again informed the court that you still do not want legal representation and have thus represented yourselves at today's hearing.
3. On 15 September 2022 the claimant provided you each with written particulars of the alleged contempt. You have each informed the court today that you admit that you were in breach of the injunction on 14 September 2022 as alleged. Bearing in mind that the claimant's evidence was served after the first hearing but before today, I take your admissions as being ones made at the earliest reasonable opportunity.
4. On an application for committal for contempt, the court has to be satisfied that the claimant has proved its case to the criminal standard, namely beyond reasonable doubt. In light of the admissions that you have made to the court and having read the claimant's evidence, I am so satisfied. The court has to determine the appropriate penalty for the contempt.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

“... 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 the injunction.

6. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

"(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another 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 of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

7. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

“(iii) obstructing of any entrance to the terminal; ...

(xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order.”

8. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.
9. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.
10. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.
11. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. The claimant took a variety of steps, not all of them immediately after the hearing in May but had nonetheless completed service before the date of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022 but did not immediately comply with the other requirements as to alternative service. However, on 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.
12. On 14 September 2022 you were two of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

13. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.
14. This court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. In my judgment, the fact that three separate limbs of the injunction were breached makes no difference to the appropriate penalty as they all arise from the same facts, namely your involvement in the protest which blocked the access road to the terminal.

The approach to determining the appropriate penalty

15. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

"the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

16. The Sentencing Council do not produce guidelines in respect of contempt of court arising from the breach of a civil injunction. However, the Court of Appeal, in a number of cases including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 has indicated that the definitive guideline can be used in the civil courts by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences have to be scaled down to some extent.
17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.
18. The claimant has quite fairly referred the court to the decision of the Court of Appeal case of *Cuadrilla Bowland Ltd and Others v Persons Unknown* [2020] EWCA Civ 9. I

have no doubt that had each of you been legally represented, your advocate would have relied upon the guidance in that case to support a submission for clemency. Leggatt LJ considered the approach to sentencing protestors:

“[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

[96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons...”

19. The court accepts the actions of you both on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

"These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."

20. I turn to the Definitive Guideline for breach of a criminal behaviour order. Your actions on 14 September were deliberate and fall into category B culpability.
21. When determining the category of harm, the guideline requires consideration of the “harm that has been caused or was at risk of being caused.” The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protestors. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.

22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.
23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.
24. In those circumstances, the impact on policing resources arising from the timing and scale of this protest means the case falls above category 2 albeit I accept it does not fall squarely within category 1, that is to say very serious harm or distress. I therefore proceed on the basis that harm is to be assessed falling between category 1 and category 2.
25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.
26. I turn to consider any aggravating factors. Each of you has one previous criminal conviction for a public order matter arising from your failure to comply with conditions of public assembly. In Ms Cohen's case a single conviction from 2019 and in Ms Bird's case a single conviction in 2021. Although those conviction arise from your protest activity, I am mindful you each have only one conviction and do not propose to move upwards from the starting point.
27. In terms of mitigation, this is the first breach of the injunction order for both of you. Each of you has told the court something of your backgrounds. You each have led respectable lives, making very valid contributions to society. Ms Cohen worked in the public sector, including the NHS, for many years before giving up her career. Prior to retirement, Ms Bird worked as a teacher in exclusion units. The court accepts you acted with conscientious motives.

28. In my judgment, the contempt before the court is so serious that only a custodial sentence is appropriate. The appropriate term of imprisonment being 56 days' imprisonment taking into account the aggravating and mitigating features. Each of you admitted the contempt at the earliest opportunity and you are entitled to a one-third credit pursuant to the Sentencing Council Guideline. Rounding down in your favour, reduces the term to one of 37 days' imprisonment.
29. In fixing the term of imprisonment, I have to take account of any time that you have spent on remand. Unlike in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take account of time spent on remand. You have each been in custody for a total period of 6 days, 1 day following your arrest on 14 September 2022 and a further 5 days following your remand in custody on 15 September 2022. That is the equivalent of a 12-day sentence. The term therefore further reduces to 25 days' imprisonment.
30. I bear in mind the guidance in *Cuadrilla Bowland* as to the approach to be taken to suspension, particularly in circumstances where you are before the court in relation to a first breach of the injunction. I am persuaded that it is appropriate to suspend each of your terms of imprisonment. In both your cases, the 25 day term of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022. I make it clear, if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment would be implemented and you will be dealt with separately in relation to any future contempt.
31. As Mr Manning made clear when he opened the case, the injunction does not prevent you from conducting protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the order, individuals can protest in that area. As Leggatt LJ made clear in *Cuadrilla Bowland*, in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others even when those laws are contrary to your own moral convictions.
32. The claimant applies for a contribution to its costs in the sum of £412.46 per defendant, being 1/13th of the total costs to reflect the 13 defendants listed for hearing today. A schedule of costs has been prepared. The general rule is that the general rule is that the successful party is entitled to their costs from the unsuccessful party but the court may make a different order. There is no reason to depart from the general principle in this case. Having considered the claimant's costs schedule, the total cost incurred is proportionate and the costs will be assessed as drawn. Each defendant will therefore pay a contribution of £412.46 to the claimant's costs.
33. Ms Bird, I have heard what you say about your limited financial means and reliance on a widow's and state pension. You will pay the £412.46 by instalments of £25 per month. The first payment shall be made by 20 October 2022 and thereafter monthly by 20th of each month until the sum is discharged.

34. Ms Cohen, you have not provided the court with details of your income but have accepted you have some savings. I am therefore going to order that the entire £412.46 be paid by 31 October 2022.
35. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today. I transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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