

Neutral Citation Number: [2022] EWHC 2538 (KB)

Case No: QB-2022-001236

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

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

Thursday, 22 September 2022

BEFORE:

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

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) WILLIAM WHITE
(2) TIMOTHY HEWES
(3) KAI SPRINGORUM
(4) JONATHAN COLEMAN
(5) MARCUS BAILIE
(6) VIVIENNE SHAH

Defendants

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

APPEARANCES

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department)
appeared on behalf of the Claimant

THE FIRST DEFENDANT appeared in Person.

THE SECOND DEFENDANT appeared in Person

THE THIRD DEFENDANT appeared in Person

THE FOURTH DEFENDANT appeared in Person

THE FIFTH DEFENDANT appeared in Person

THE SIXTH DEFENDANT appeared in Person

1. JUDGE KELLY: William White, Timothy Hewes, Kai Springorum, Jonathan Coleman, Marcus Bailie and Vivian Shah, you each appear before the court having admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by order dated 6 May 2022.
2. Following your arrests on 14 September 2022, you each appeared before the court on 15 September 2022. At that first hearing you were advised of your entitlement to legal representation and advice and the claimant provided you with written particulars of the alleged contempt. Each of you indicated that you did not want to obtain legal representation and have maintained that position today. I have therefore heard from each of you in person.
3. Mr White, Mr Springorum, Mr Coleman, Mr Bailie and Ms Shah admit breaching paragraph 1(a) and paragraph 1(b)(iii) of the injunction but were unwilling to admit allegations that involved encouraging others. Those admissions are acceptable to the claimant who does not seek to pursue the remaining allegations. Mr Hewes has admitted the particulars of breach in full as alleged by the claimant. All defendants accept materially similar conduct and the technical difference in the admissions will make no difference to the appropriate penalty.
4. In contempt proceedings in the civil court, the claimant has to prove the contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions made and having read the claimant's evidence, I am so satisfied.

Background

5. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Mr Hewes is a named defendant, the others were not. 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 six 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.
14. Vast numbers of police officers attended in light of the number of protestors in situ. They asked you each to leave, you were polite, but made it clear that you were not prepared to be move voluntarily. From about 3.50pm, the police began the considerable task of arresting all fifty-one of you.

The approach to determining the appropriate penalty

15. The claimant has prepared a sentencing note and I largely agree with the approach advocated. When determining the appropriate penalty for a contempt of contempt, 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. Those of you that have been before this court before will already be aware that the Sentencing Council produce guidelines to assist the criminal courts when sentencing. They do not produce guidelines for use when determining the appropriate penalty for contempt in the civil courts. 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. I am also mindful this is not a true antisocial behaviour injunction of the kind that is made under the Antisocial Behaviour Crime and Policing Act in the Civil Courts. 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 all six of you 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. Each of you have made your positions plain, namely that you made a deliberate decision to go to Kingsbury Oil Terminal on that day to protest. Your actions fall into culpability category B, failing between culpability A, which is a very serious or persistent breach and culpability C, which is a minor breach.

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 protesters. 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 exit the site using the access road you were blocking 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. The court has to consider any aggravating and mitigating factors. Previous criminal convictions are a statutory aggravating factor. Mr Hewes has 5 criminal convictions from 2022, all of which relate to protest activity occurring on various dates in late 2021. The convictions include one dated 7 June 2022, a hearing which post-dated Mr Hewes' last appearance before this court for breaching the injunction. On 7 June 2022 Mr Hewes was convicted of public nuisance and sentenced to twelve weeks' imprisonment, suspended for 12 months. It therefore follows that Mr Hewes was subject to the suspended sentence when he committed the contempt on 14 September 2022. Mr Hewes' convictions do aggravate the seriousness of his position. The remaining five defendants have either a single relevant previous conviction or no previous convictions or cautions at all, and I propose to treat the remainder of the defendants on the basis that they are of good character as far as criminal matters are concerned.
27. In some of the defendants' cases, their position is aggravated by virtue of having appeared before this court earlier this year in breach of the injunction. This is the second breach of the injunction as far as Mr Hewes, Mr White, Mr Coleman and Ms Shah are concerned.
28. I have heard what each have you have said in mitigation and I accept each of you acted as you did for conscientious reasons. All the defendants live otherwise law-abiding lives. Mr White, Mr Hewes and Mr Coleman are longstanding members of clergy. Ms Shah is a retired social worker and nurse. Mr Bailie and Mr Springorum equally are educated and articulate individuals.
29. Taking into account the Definitive Guideline by analogy and the aggravating and mitigating features, the contempt of court in each of your cases is so serious that it crosses the custody threshold. As to Mr Bailie and Spingorum, a penalty of 56 days' imprisonment is appropriate. As to Mr White, Mr Coleman and Ms Shah, there is upward movement to reflect that this is a second breach of the injunction and the appropriate penalty is 63 days' imprisonment. As to Mr Hewes, there is further upward movement to 70 days' imprisonment reflecting the previous criminal convictions and previous breach of the injunction.
30. You have each admitted the breach at the first reasonable opportunity. The Sentencing Council Guideline provides for the maximum one-third reduction from any sentence to reflect a guilty plea at the earliest opportunity. I apply that by analogy. The 56-day terms are reduced to 37 days, the 63-day terms to 42 days and the 70-day term to 46 days.
31. 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 8 days, 1 day following your arrest on 14 September 2022

and a further 7 days following your remand in custody on 15 September 2022. That is the equivalent of a 16-day sentence and needs to be deducted from the terms. As such, the terms of imprisonment are as follows:

- a. Mr Bailie and Mr Springorum: 21 days
- b. Mr White, Mr Coleman, Ms Shah: 26 days
- c. Mr Hewes: 30 days.

32. I then consider whether those sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland* and your motivation. As far as Mr Bailie and Mr Springorum are concerned, each are before this court on a first breach of the injunction. In each of their cases, I have no difficulty in accepting that it is appropriate that those sentences be suspended. I will revert to the conditions of suspension in due course.
33. As far as Mr White, Mr Coleman, Ms Shah and Mr Hewes are concerned, each of you are before the court for a second time for contempt of court arising out of a breach of the injunction. You were all given the benefit of the doubt on the last occasion, when no custodial penalty was imposed. I have given careful thought as to whether it is appropriate to suspend on a second breach. I am just about persuaded it is appropriate to suspend in circumstances where this if your first custodial sentence for contempt. Therefore, the sentences of all six defendants 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 remind you that if you fail to comply with the terms of the suspension, you must expect that the order for imprisonment will be implemented and you will be dealt with separately in relation to any future contempt.
34. Whilst each of you is aggrieved by the existence of the injunction, I remind you that it does not prohibit all protest activity, even in the locality of the terminal. Mr Manning referred in opening to the map attached to the order showing the red boundary line. There is a significant area of land by the terminal entrance and adjacent to the private road upon which you were protesting, which falls outside the red boundary line and where you are free to protest so long as you do not otherwise breach paragraph 1(b) of the order.
35. The claimant seeks that each of the six defendants make a contribution to its costs. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party, but the court may make another order. The claimant has been successful in bringing these contempt proceedings. As a matter of principle, the defendants are to pay the claimant's costs.

36. I have had sight of the claimant's cost schedule. The 51 defendants arrested on 14 September are spread over 4 days of hearings this week. The figure sought by the claimant reflects its costs for the appearance on 15 September plus today's hearing divided by the number of defendants appearing today. The total costs per day have changed depending on which solicitor attended. Prior to today, the claimant only sought to include the cost of one barrister attending in circumstances where two counsel have been present throughout the week. The attendance of two counsel is proportionate. All defendants are in custody, the vast majority act in person having refused legal representation and counsel are having to constantly draft orders dealing with disposals of the cases as well as conducting the advocacy. The fact that the claimant failed to include the second cost of counsel in the cost schedule prepared in respect of earlier hearing this week is their misfortune but not a reason to deprive them of the costs of both counsel attending today. I therefore summarily assess the contribution each defendant must make to the claimant's costs in the sum of £412.46.
37. I have heard from the defendants as to their means. Mr Bailie, Mr White and Mr Hewes have the means to make payment in full by 31 October 2022. Mr Coleman, Ms Shah and Mr Spingorum are of far more limited means and shall pay by instalments of £25 per month, the first payment payable by 22 October 2022 and thereafter by the 22nd of each month.
38. Each of the defendants has 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.
39. The effect of the suspended sentence is that you will each be released from custody today, subject the custodians processing the paperwork and you not being required in custody on any other unrelated matter.

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

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