

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

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

Friday, 23 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) NICHOLAS ONLEY
(2) PETER LAY
(3) SIMON MILNER-EDWARDS
(4) CHRISTIAN MURRAY-LESLIE
(5) MICHELLE CADET-ROSE
(6) VICTORIA LINDSELL
(7) MARGARET REID

Defendants

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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APPEARANCES

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

THE FIRST DEFENDANT appeared in Person.

MS OBORNE appeared on behalf of the Second, Third and Seventh Defendants.

THE FOURTH DEFENDANT appeared in Person

THE FIFTH DEFENDANT appeared in Person

THE SIXTH DEFENDANT appeared in Person

1. JUDGE KELLY: Nicholas Onley, Peter Lay, Simon Milner-Edwards, Christian Murray-Leslie, Michelle Cadet-Rose, Victoria Lindsell and Margaret Reid, you each appear before the court having admitted breaching the terms of an interim injunction granted by Mr Justice Sweeting on 14 April 2022, as varied by his order dated 6 May 2022.
2. Mr Lay, Mr Milner-Edwards and Ms Reid, you are all represented by Ms Osborne of counsel although each of you, at your request, have also addressed the court in person. Mr Onley, Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell, you each appeared as litigants in person. You were advised at the hearing last week and again today of your entitlement to legal advice and representation but you each wish to proceed in person.
3. On 15 September 2022 the claimant provided you with written particulars of the alleged contempt said to have occurred on 14 September 2022. You have each made admissions in accordance with the allegations in that document. These are civil not criminal proceedings. However, because they are contempt proceedings, the claimant nonetheless has to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions each of you have made, and having read the evidence served by the claimant, I am satisfied that each of you is in breach of the injunction in the way the claimant describes.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. Ms Cadet-Rose was a named defendant but the other defendants 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.

5. 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:"

6. 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.”

7. 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.
8. 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.
9. 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.
10. The claimant relies on various certificates of service within the papers. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. Whilst it appears that the claimant did not undertake all the required steps of alternative service promptly after the hearing on 5 May, the claimant did remedy the service position by competing steps between 23 August and 2 September 2022. The requisite service had therefore been completed in advance 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. On 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September the claimant 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.
11. On 14 September 2022 you were seven 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.

12. 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 were in breach of a High Court injunction and 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.

The approach to determining the appropriate penalty

13. You each accept that your conduct puts you in breach of paragraph 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. The claimant has prepared a sentencing note to assist the court in determining the appropriate penalty. Ms Osborne has handed in a copy of *National Highways Limited v Buse & others* [2021] EWHC 3404 (QB). I largely agree with the approaches adopted by both counsel in their submissions as to the correct approach to the determination of the sanction for contempt.

14. 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."

15. The Sentencing Council produce Definitive Guidelines to assist judges sentencing in the Criminal Courts. They do not produce any similar guidance for use by the civil courts when dealing with contempt of court. However, the Court of Appeal in a number of cases, including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 but also in *National Highways Ltd v Buse* and *Cuadrilla Bowland Ltd & Ors v Persons Unknown* [2020] EWCA Civ 9, endorses reference by civil courts to the Sentencing Council Guidelines when dealing with contempt. The guidelines can only be used 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 will need to be scaled down to some extent.

16. The claimant refers in its sentencing note to the Civil Justice Council report of July 2020 and its draft guidelines for dealing with contempt of court arising from breaches of injunctions granted under the Anti-Social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, reflect the lower range of penalties in the civil courts. The 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.

17. Counsel for the claimant has properly drawn the court's attention to *Cuadrilla Bowland Ltd v Persons Unknown* when 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...”

18. The court accepts that your actions 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."

19. Ms Osborne referred to the judgment of Dingemans LJ in *National Highways Ltd v Buse*. The approach to determining the sanction for contempt of court is considered at paragraphs 27 to 31. The approach is consistent with the aforementioned guidance in *Cuadrilla Bowland Ltd & Ors* and is one I adopt in this case.

20. I turn to the Sentencing Council Guideline for breach of a criminal behaviour order. There are three categories of culpability. Category A includes a very serious or persistent breach. Culpability B is a deliberate breach, falling between A and C. Culpability C is

a minor breach or a breach just short of reasonable excuse. Each defendant's case has to be considered separately.

21. Mr Milner-Edwards and Ms Reid, you each appear before the court for what is your fourth breach of the injunction within a five-month period. Your conduct amounts to persistence breach of the injunction and falls within culpability category A. Mr Onley, Mr Lay, Mr Muray-Leslie and Ms Cadet-Rose, this is your first breach of the injunction. Ms Lindsell, this is your second breach. Each of your cases falls within culpability category B, being a deliberate breach.
22. 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 leave the site to attend a medical appointment.
23. 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.
24. 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.

25. In my judgment, the impact on policing resources arising from the timing and scale of this protest results in the harm in this case falling above category 2, albeit not squarely within category 1. Category 1 is a breach that causes very serious harm or distress or a breach that demonstrates a continuing risk of serious criminal and/or antisocial behaviour. I therefore propose to proceed on the basis that the case falls between category 1 and 2.
26. As to Mr Milner-Edwards' and Ms Reid's cases, a category 1 harm, culpability A matter in the criminal courts has a starting point sentence of two years' imprisonment, with a range of one to four years' custody. A category 2 harm, culpability A matter would have a starting point of one years' imprisonment with a range of a high level community order to two years' custody.
27. As relevant to the remaining five defendants, 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.
28. In each of your cases, the court takes into account any aggravating and mitigating factors. That requires each of your cases to be considered separately.
29. Mr Onley, you have no previous convictions or cautions and are therefore of positively good character. This is your first breach. You have told the court you are of limited means and undertake voluntary work and run a food bank. Your income is said to be only £50 per week.
30. Mr Lay, you too have no previous convictions or cautions and are before the court for your first time for breach of the injunction. It is said on your behalf that you have found the experience of being remanded in custody very sobering. You are unemployed, not in receipt of State benefits and have very modest saving of some £600.
31. Mr Milner-Edwards, you are now before the court for your fourth breach of the injunction. I do not take that into account as an aggravating factor, because the question of persistence has already been accounted for when determining the category of culpability and I want to avoid double-counting. Your position is however aggravated by your previous criminal convictions. You have three convictions for obstructing the highway on different dates in 2022, with the offences themselves dating to the autumn of 2021. You were fined for each. You also have a conviction from May 2022 for failure to surrender. I am told that all the convictions arise from your protest activity. You have informed the court that you are a 65 year old retired musician. Through your counsel you say that you have had a very challenging time in custody and have said you have no intention to further breach the order.

32. Mr Murray-Leslie, you are before the court in respect of your first breach of the injunction. Mr Manning informed the court that you had two previous convictions. One from 16 April 2022 for aggravated trespass, for which you received a 12-month conditional discharge and a second from 17 June 2022 for obstructing the highway, for which you were fined. There is some doubt as to whether the first of those convictions still stands. Mr Murray-Leslie informed the court that he received notification by letter earlier this month to the effect that the conviction from April 2022 was being quashed and that there was to be a hearing on 12 September 2022 where that would be dealt with in his absence. I bear in mind these are contempt proceedings and attendant standard of proof. Given the uncertainty, I am not going to take the conviction for aggravated trespass into account. The only relevant conviction is thus one for obstructing the highway which was disposed of by way of a fine. In circumstances where there is a single conviction and Mr Murray-Leslie was not subject of the operational period of either a conditional discharge or a period of suspended imprisonment at the time of this breach, I am not going to treat that single conviction as an aggravating factor. Mr Murray-Leslie has told the court that he is a 78 year old retired consultant in rehabilitative medicine, who has now become involved in climate protesting. He has clearly made a very significant contribution to society throughout his lengthy career.
33. Michelle Cadet-Rose, you also appear before the court in respect of your first breach of the injunction. You have no previous convictions or cautions and I take that into account. You are therefore entitled for that mitigating factor to be taken into account. You also refer to your time spent on remand as being a difficult experience. You are now aged 65 and are in receipt of only a very modest income having taken early retirement at age 55.
34. Victoria Lindsell, you are before the court in respect of a second breach of the injunction. I did not take the repetition of breach into account when determining the category of culpability and therefore it is treated as an aggravating factor. Your case is also aggravated by three previous criminal convictions from May 2022 for obstructing the highway, for which you were fined. You are now aged 67 and has also found time in custody to be a sobering experience.
35. Margaret Reid, this is your fourth breach of the injunction. As with Mr Milner-Edwards, I do not take that into account as a further aggravating factor given its consideration when determining the category of culpability. You have no previous convictions or cautions. You are now aged 51 and, as with your co-defendants, have otherwise lived a lifestyle by which you contribute to society in a meaningful way.
36. Taking the aggravating and mitigating factors into account, the contempt of court arising from each of your involvement in this large-scale protest on 14 September 2022 is so serious that only a custodial sentence is appropriate.
37. As to Mr Onley, Mr Lay, Mr Murray-Leslie and Ms Cadet-Rose, this a first contempt for each and each is of good character or being treated as such. The starting point sentence for each of you is one of 56 days' imprisonment. You are each entitled to a one-third discount to reflect your admission at the earliest reasonable opportunity. Rounding down

in your favour reduces the term to 37 days. You have all spent a period of nine days in custody, one day following your arrests on 14 September and eight days from remand on 15 September to today. The irony is that the claimant did not oppose bail in the case of any individual for whom this was a first breach. However, at the hearings last week you each informed the court that you did not respect the authority of the court and, if bailed, would not voluntarily return to court and would breach the breach the injunction. It was against that background that each found themselves remanded in custody. Nine days in custody are the equivalent of an 18-day sentence. Unlike with criminal sentences, the prison service cannot adjust the period in custody to reflect time spent on remand. I therefore reduce the term of 37 days by 18 days spent on remand resulting in a term of imprisonment of 19 days. Mr Onley, Mr Lay, Mr Murray-Leslie and Ms Cadet-Rose are before the court for the first time for breach of this injunction. I bear in mind the guidance in *Cuadrilla Bowland Ltd & Ors*, and in *National Highways Ltd* as to whether a term of imprisonment should be suspended. In circumstances where these are first breaches and ones of civil disobedience, I have little difficulty in concluding that it is appropriate to suspend each of your sentences.

38. As to Ms Lindsell, this is your second contempt and your position is aggravated by three previous convictions. I adopt a starting point of 70 days' imprisonment in your case. Applying a one-third discount for your early admission, reduces that to 46 days, less the equivalent of 18 days on remand further reduces the sentence to one of 28 days' imprisonment. In your case Ms Lindsell this is a second breach and therefore gives the court far more pause for thought as to whether it is appropriate to suspend. With some reservations, I am prepared to give you the benefit of the doubt on this occasion and also suspend your sentence.
39. Each of the five sentences will be suspended for two years from today on condition of compliance 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 but if that order is subsequently varied, it would be the form of any varied order with which you must comply.
40. I turn to the cases of Mr Milner-Edwards and Ms Reid. Both fall into the highest category of culpability given the persistence of breach. There is a distinction to be drawn between the two defendants. Ms Reid, you have no previous convictions. Mr Milner-Edwards, you have three relevant previous convictions for obstructing highway and one conviction for failure to surrender.
41. Mr Milner-Edwards, in your case the sentence starting point is 154 days' imprisonment. Applying a one-third discount for your admission at the earliest opportunity reduces the term to 102. Less the time spent on remand reduces the term to 85 days.
42. Ms Reid, in your case the sentence starting point reflecting your lack of previous criminal convictions is 140 days' imprisonment. The one-third discount for your early admission

reduces that to 93 days, less the equivalent of eighteen days on remand results in a term of 75 days imprisonment.

43. As to both Mr Milner-Edwards and Ms Reid, I have considered whether it is appropriate to suspend the sentences. It is not. For both of you this is your fourth breach of the injunction within a five-month period.
44. As Mr Manning for the claimant made clear when he opened the case, the injunction does not prevent you from conducting all 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 injunction order, individuals can protest in that area. I do however remind you that in a democratic society, it is the duty of responsible citizens to obey the law and respect the rights of others, even where other people's lawful activities are contrary to your moral convictions.
45. The claimant has applied for each defendant to pay 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 a different order. In circumstances where Mr Milner-Edwards and Ms Reid will be serving immediate custodial sentences, I am going to depart from the general rule and not order them to pay a contribution to the claimant's costs. I am however going to order each of the other five defendants to pay a contribution to the claimant's costs. Earlier today, I determined that the overall figure sought by the claimant is proportionate and, indeed very modest sum compared to the true cost to the claimant of dealing with these contempt proceedings. Each of Mr Onley, Mr Lay, Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell shall pay a contribution to the claimant's costs in the sum of £412.46.
46. Having taken into account the defendants' differing financial circumstances:
 - a. Mr Onley, Mr Lay shall pay by instalments of £10 a month. I accept each is of very limited means. The first payment to be made by 4.00 pm on 23 October 2022, and at a rate of £10 per month until the balance is discharged.
 - b. Mr Murray-Leslie, Ms Cadet-Rose and Ms Lindsell are of sufficient means that each shall pay in full by 4.00 pm on 31 October 2022.
47. You each have a right to appeal the orders 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.

48. Those five defendants who are subject to suspended sentences will be released from court as soon as the custodians have processed the necessary paperwork, subject to you not being wanted in custody on any other criminal or civil 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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