

Neutral Citation Number: [2022] EWHC 2569 (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

Wednesday, 21 September 2022

BEFORE:

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

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

- 1) SHEILA SHATFORD**
- (2) TEZ BURNS**
- (3) CHARLOTTE KIRIN**
- (4) MARY ADAMS**
- (5) JERARD LATIMER**
- (6) DARCY MITCHELL**
- (7) GEORGE OAKENFOLD**
- (8) MICHELLE CHARLESWORTH**
- (9) ANTHONY WHITEHOUSE**
- (10) CHLOE NALDRETT**
- (11) HOLLY EXLEY**
- (12) SARAH BENN**
- (13) STEPHEN GINGELL**
- (14) RICHARD MORGAN**

Defendants

APPROVED JUDGMENT

A P P E A R A N C E S

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department)
appeared on behalf of the Claimant
SHEILA SHATFORD appeared in Person.

TEZ BURNS appeared in Person
CHARLOTTE KIRIN appeared in Person
MARY ADAMS appeared in Person
JERARD LATIMER appeared in Person
DARCY MITCHELL appeared in Person
GEORGE OAKENFOLD appeared in Person
MICHELLE CHARLESWORTH appeared in Person
ANTHONY WHITEHOUSE appeared in Person
CHLOE NALDRETT appeared in Person
HOLLY EXLEY appeared in Person
SARAH BENN appeared in Person
STEPHEN GINGELL appeared in Person
RICHARD MORGAN appeared in Person

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1. JUDGE KELLY: Darcy Mitchell, George Oakenfold, Anthony Whitehouse, Chloe Naldrett and Jerard Latimer, you each appear before the court today having admitted breach of an interim injunction granted by Sweeting J on 14 April 2022, as varied by his order dated 6 May 2022.
2. At the first hearing on 15 September 2022, you were advised of your entitlement to seek legal advice and representation in these contempt proceedings. Each of you informed the court on that occasion that did not want to obtain legal advice and wanted to conduct your own advocacy. You again confirmed that position today. You each therefore appear in person and I have heard each of you speak very eloquently as to your individual positions.
3. On 15 September 2022 the claimant provided each of you written particulars of the alleged contempt and has thereafter served the written witness evidence upon which it relies. Each of you has admitted the breaches as alleged by the claimant, save for Mr Whitehouse, who has made a more limited admission as to paragraph 1(a) and 1(b)(iii) of the injunction only. That more limited admission is acceptable to the claimant and it does not wish to pursue the further allegation. The claimant's position is unsurprising as the facts pertaining to each of your involvement in protest activity on 14 September 2022 is materially identical.
4. These are civil, not criminal, proceedings. However, as contempt proceedings the court has to be satisfied to the criminal standard of proof, that is beyond reasonable doubt. In light of your admissions and having read the police witness 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 Whitehouse was a named defendant, the other defendants before the court at this hearing 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 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 five 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.
15. Your conduct puts you in breach of paragraph 1(a) and 1(b)(iii) of the injunction. All of the defendants, bar Mr Whitehouse, also admit breach of paragraph 1(b)(xi) of the injunction. The distinction between the admissions makes no difference to the overall penalty as actions of each defendant were essentially the same.

The approach to determining penalty

16. The claimant provided a sentencing note. I largely agree with the approach the claimant's advocate adopted.
17. 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."

18. 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. 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.

19. 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.
20. 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...”

21. The court accepts the actions of all five 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."

22. I turn to the Definitive Guideline for breach of a criminal behaviour order as the best analogy. Your actions on 14 September were deliberate and fall into category B culpability. Each of you has stated in express terms that you were aware of the injunction and deliberately acted in the knowledge that you would be in breach of its terms.
23. 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.
24. 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.
25. 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.
26. 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.

27. 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. The court as to consider any aggravating or mitigating factors in each of your cases.
29. Mr Mitchell has one previous conviction from May 2022 for obstructing the free passage of the highway. Mr Whitehouse has one previous conviction from July 2022 for criminal damage. Mr Latimer has two previous convictions for public nuisance and obstructing the free passage of the highway dating to events in 2021. Mr Latimer was not however the subject of the operational period of any suspended sentence or conditional discharge at the time of the contempt. Unlike other co-defendants in these proceedings, none of you have three or more convictions. I propose to treat the three of you as of good character for the purpose of assessing the appropriate penalty.
30. As to mitigation, Mr Oakenfold and Ms Naldrett have no previous criminal convictions or cautions. Mr Oakenfold, Mr Whitehouse and Mr Latimer are all in their 70s and retired. Ms Naldrett and Mr Mitchell are both in their 40s. Ms Naldrett is a highly educated theatre producer supporting her 2 children under the age of 18. Mr Mitchell is not working and dependant on his wife's salary. Other than your recent protest activity bringing you into conflict with the law, each of you has hitherto led otherwise law-abiding lives and contributed to society in positive ways. Each of you has informed the court that you acted on grounds of moral conscience and felt compelled to act as you did when your other efforts to address climate change had failed.
31. Taking into account the Definitive Guideline by analogy and aggravating and mitigating features, the contempt of court is so serious that it crosses the custody threshold. A penalty, before consideration of your admissions and time spend on remand, of 56 days' imprisonment is appropriate.
32. 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 and reduce the 56 days to 37 days, rounding down in your favour.
33. In fixing the term of imprisonment, the civil court has 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 7 days, 1 day following your arrest on 14 September 2022 and a further 6 days following your remand in custody on

15 September 2022. That is the equivalent of a 14-day sentence. The term therefore further reduces to 23 days' imprisonment.

34. I then consider whether the sentences can be suspended. I bear in mind the guidance of the Court of Appeal in *Cuadrilla Bowland*, your motivation and that this is your first breach of the injunction. I am satisfied that it is appropriate to suspend each of your terms of imprisonment. In each of your cases, the 23-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.
35. 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.
36. The claimant has made an application that each of you pay a contribution to its costs. The general rule is that the successful party is entitled to its costs although the court may make a different order. The claimant has succeeded in proving the contempt, and it is appropriate therefore that you make contribution to those costs. The claimant has prepared a schedule of costs. Other than removing the costs associated with the solicitor attending a hearing yesterday in which you were not involved, I am satisfied that claimant's stated costs are proportionate. That results in a figure of £320.77 for each defendant whose case is dealt with today.
37. You have each provided the court with some information as to your means. Mr Oakenfold, Mr Whitehouse and Mr Latimer are all retired and in receipt of modest pensions such that they would have significant difficulty paying £320.77 as a lump sum. Each of those three defendants shall pay a contribution to the claimant's costs in the sum of £320.77 by instalments of £25 a month, the first payment to be made by 21 October 2022 and thereafter by 21st of each month until the total sum is discharged. Mr Mitchell and Ms Naldrett are in stronger financial positions and each shall pay the claimant the sum of £320.77 in full by 31 October 2022.
38. Each defendant 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. A 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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