

Neutral Citation Number: [2022] EWHC 2570

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

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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

1. JUDGE KELLY: Sarah Benn, you before the court having admitted breach of the injunction granted by Sweeting J on 14 April 2022, as varied by 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. You were again reminded of that entitlement today. You have clearly indicated that you want to proceed with the matter without the benefit of legal advice or representation.
3. At the last hearing, the claimant provided you with written particulars of the alleged contempt. You have made a full admission in accordance with that document. These are civil not criminal proceedings. However, as contempt proceedings the claimant has to prove any allegation of contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of your admission, and having read the claimant's witness evidence in writing, I am so satisfied.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not a named defendant. 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. 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.
11. On 14 September 2022 you were one 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.

13. 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

14. The court has to determine the appropriate penalty for your admitted breaches of paragraphs 1(a), 1(b)(iii) and 1(b)(ix) of the injunction. I largely agree with the legal framework put forward by the claimant in its sentencing note. 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."

15. 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.
16. 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.
17. 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...”

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. 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. I have considered whether your actions, which amount to a third breach of the injunction within a period of less than five months, amount to persistence of breach such that the contempt falls to be considered as a culpability A matter. I am persuaded it can fall into the lower category B, albeit the previous two contempt matters will be treated as aggravating factors.
20. 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 exit the site using the access road you were blocking to attend a medical appointment.

21. 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.
22. 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.
23. 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.
24. 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.
25. The court has to consider any aggravating or mitigating features. This is your third breach of the injunction. You were before this court in respect of breaches on 26 April 2022 and 4 May 2022. You admitted those breaches and no order was made thereon as you had already spent eight days in custody. But for the time in custody, you would have received a financial penalty on that occasion. The previous contempts aggravate your case.
26. As to mitigation, you have no previous criminal convictions or cautions. When addressing the court in mitigation, you did not put any relevant material before the court other than to say you were acting on grounds of social conscience. You told the court

that you not prepared to discuss your means or background as you considered it demeaning.

27. 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 70 days' imprisonment is appropriate. The duration of the term reflects that your position is aggravated by your previous two breaches of the injunction.
28. You have admitted the contempt 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 70 days to 46 days, rounding down in your favour.
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 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 the term to 32 days.
30. I turn to the question of whether it is appropriate to suspend the sentence. I bear in mind the guidance in *Cuadrilla Bowland* as to the approach to be taken in cases of civil disobedience amounting to contempt of court. I also bear in mind the Sentencing Council guideline on the Imposition of Community and Custodial Sentences. You have a history of poor compliance with this injunction order, having been before the court for two breaches in the past, within the last five months. In the course of your submissions today, you have made it clear you offer no apology and will continue to take action. Against that background, I am not persuaded it is appropriate to suspend the sentence. The appropriate punishment can only be achieved by an immediate custodial sentence. You continue to show blatant disregard for the injunction and therefore the rule of law. You will therefore serve an immediate term of imprisonment of 32 days. I am not going to make an order as to costs given the immediate custodial sentence.
31. Ms Benn 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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