

**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, 28 September 2022

BEFORE:

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

BETWEEN:

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**NORTH WARWICKSHIRE BOROUGH COUNCIL**

Claimant

- and -

**BARRY MITCHELL**

Defendant

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**MR MANNING AND MS CROCOMBE** appeared on behalf of the Claimant  
**MR MITCHELL** appeared in person

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**APPROVED JUDGMENT**  
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1. JUDGE KELLY: Mr Mitchell, you appear before the court having admitted breaching an interim injunction granted by Sweeting J on 14 April 2022, as varied by his order dated 6 May 2022.
2. This is the third hearing within these contempt proceedings. Following your arrest on 14 September 2022, you were produced on 15 September and informed of your entitlement to seek legal advice and representation. At the next hearing on 22 September, you indicated that, although you had not yet sought legal representation, you now wished to. Your case was adjourned to today to afford you that further opportunity. You have informed the court today that you have had a change of heart and no longer wish to obtain legal representation or advice, and therefore the case has proceeded with you acting in person.
3. The claimant has provided you with written particulars of the alleged breach and copies of the evidence upon which it relies. You have admitted breaching of paragraph 1(a) and paragraph 1(b)(iii) of the injunction by your actions on 14 September 2022. These are contempt proceedings, and therefore the court has to be satisfied that any alleged breach is proved to the criminal standard of proof, namely beyond reasonable doubt. In light of your admission, and having read the Claimant's evidence, I am satisfied that you engaged in a protest on 14 September 2022 against the production or use of fossil fuels in the private access road to Kingsbury Oil Terminal. That put you in breach of paragraph 1(a) and paragraph 1(b)(iii) of the injunction.

#### 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. They included at (iii) "obstructing of any entrance to the terminal."
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 means of alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, at 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 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 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 claimant has prepared a sentencing note to assist the court with the approach to take in relation to the imposition of the sanction for contempt. I largely agree with the approach advocated for by the claimant. 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 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. I agree with the claimant's submission that the case falls within culpability category B being a deliberate breach. Culpability A is described as a very serious or persistent breach. You are coming close to your actions being deemed to be persistent. This is your third breach of the injunction within a five month period. Other defendants appearing before this court on a fourth contempt within that timeframe have fallen into culpability A category, but I treat your case, as I have done others who face a third contempt, as one within category B.
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 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.

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 take into account any aggravating matters or mitigating factors. The claimant does not seek to put before the court any relevant conviction or caution, and therefore I treat you as a man of good character as far as the criminal convictions are concerned. However, your position is aggravated by two previous matter of contempt of court arising from your breaches of the interim injunction on 26 April 2022 and again on 4 May 2022. The breach before me today is therefore the third breach within a five-month period.
26. As to mitigation, you are a retired man aged 74 years. I accept, as I have done with all of the defendants in this case, that your actions were motivated by reasons of social conscience. Your actions amount to civil disobedience as opposed to a desire to go out and commit criminal misconduct.

27. Taking into account the Definitive Guideline by analogy, the contempt of court arising from your involvement in this large-scale protest on 14 September 2022, is so serious that only a custodial sentence is appropriate. A penalty of 70 days' imprisonment is appropriate before consideration of your admission and time spent on remand.
28. You admitted the alleged contempt. The Sentencing Council guideline provides for a reduction in sentence for those who make admission. The extent of the reduction is dictated by the timing of the admission. An admission at the earliest opportunity attracts a one-third discount with the discount reducing as a case approaches trial. Your admission was not made at the first opportunity. That would have been at the hearing on 22 September, when many of your co-defendants made admissions and were dealt with. You have not however required a trial or put the witnesses to the inconvenience of attending court. In those circumstances, I propose to proceed on the basis that this is an early admission but not one made at the earliest opportunity. A discount of 25-per-cent will be applied. Rounding down in your favour reduces 70 days to 52 days.
29. In fixing the term of imprisonment, the civil court has to take into account time spent on remand. Unlike when a custodial sentence is passed in the criminal courts, the Prison Service cannot adjust the penalty to take account of time spent on remand. You have spent 14 days in custody. That is equivalent to a 28-day sentence. I therefore reduce the 52 days by 28 days, leaving a 24-day term of imprisonment.
30. I turn to consider whether that 24-day custodial term can be suspended. I bear in mind the guidance in *Cuadrilla v Bowland*. I also bear in mind the guidance in *National Highways v Buse* [2021] EWHC 3404 (QB). I have been prepared to suspend the sentences of co-defendants coming before this court for a first breach and indeed second breach of this injunction. However, this is not your first or second breach of the injunction. The fact that this is a third breach evidences your history of poor compliance with the court order. Like others who have appeared before this court on a third breach, I am not persuaded that it is appropriate to suspend the sentence. You have continued to show blatant disregard for the interim injunction and therefore the rule of law. The term of 24 days will therefore be an immediate custodial sentence.
31. I turn to the question of costs. The claimant has made an application that you pay a contribution to its costs in the sum of £1,564.46. There were various contempt hearings involving co-defendants listed during the course of last week. On each occasion, the claimant calculated the contribution it sought by splitting the total between multiple defendants appearing on a given day. Unlike many of your co-defendants, you did not make any admission last week and your case was adjourned to today to be listed on its own. You have therefore lost some of the advantage of being able to share the costs with others.
32. The general rule in civil litigation is that the successful party is entitled to its costs against the unsuccessful party, unless the court makes another order. The claimant is the successful party and has established the contempt of court. I therefore make an order in principle that you make contribution to the claimant's costs.



33. As to the quantum of those costs, in earlier cases I have summarily assessed the reasonable costs of the hearings on 15 September and 22 September as amounting to £412.46 per defendant. The costs of today's hearing come with a significantly higher price tag as you are the only defendant appearing. I accept that attendance by two counsel today was proportionate; it being cheaper for Ms Crocombe to attend in lieu of an instructing solicitor. Bearing in mind the time at which this hearing will finish, I am will reduce counsels' attendance to two hours on the basis that they will have needed to be here half an hour or so before the hearing started at 10.30 am, and there will need to be time afterwards for counsel to draw the orders. By my calculation, that reduces the costs by £320 plus VAT, which is a total of £384. Subtracting that from the total means that the costs are assessed in the sum of £1,180.46.
34. Mr Mitchell, you have told the court you have around £20,000 in savings and pension income of around £1000 per month. In light of your means, the £1,180.46 contribution to costs will be paid as a lump sum by 31 October 2022.
35. I have made an order for committal. Mr Mitchell has a right of appeal to the Court of Appeal (Civil Division). Any appeal must be filed within 21 days of today.
36. I direct a transcript of this judgment 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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