

Neutral Citation Number: [2023] EWHC 2594 (KB)

Case No: KB-20222-BHM-000221

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

Birmingham Civil Justice Centre
Priory Courts
33 Bull Street
Birmingham B4 6DS

Date: 28th September 2023

Before:

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

Between:

BIRMINGHAM CITY COUNCIL

Applicant

- and -

MR CALLUM BLUNDERFIELD

Defendants

Ms Crocombe for the Claimant
Mr Harrington for the Defendant

APPROVED JUDGMENT

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JUDGE EMMA KELLY :

1. Mr Callum Blunderfield appears before the court in respect of an admitted contempt arising from his breach on 28 August 2023 of an interim injunction granted in Claim Number KB-2022-BHM-000221 by Hill J, by order of 22 December 2022 as amended by the order of Ritchie J, dated 19 May 2022. This Judgment deals with the appropriate penalty for the contempt of court.
2. The Claimant is represented at today’s hearing by Ms Crocombe of counsel. Mr Blunderfield is represented by his solicitor, Mr Harrington.
3. These are contempt proceedings and, therefore, the burden of proof rests upon the Claimant to establish the allegation of contempt to the criminal standard, that is beyond reasonable doubt. The contempt proceedings nonetheless remain civil proceedings.

Background

4. The Claimant issued an claim for injunctive relief to prohibit what is known as street or car cruising within its administrative area. The Claimant named seven defendants and also sought relief against two categories of “persons unknown” defendants. The application for injunctive relief followed concern by the Claimant as to the occurrence of antisocial and often unlawful behaviour in the form of car cruising or street cruising within its administrative area following the expiry of previous injunctions. A similar claim was issued on behalf of four Black Country local authorities under a linked but separate claim in which similar injunctive relief was sought.
5. Applications for interim injunctions in both the Birmingham claim and the Black Country claim were listed before Hill J on 22 December 2022. She granted interim injunctions on an informal notice only basis. The interim orders were reconsidered at a hearing before Freedman J on 5 February 2023 but the terms remained unchanged.
6. At a hearing before Ritchie J on 19 May 2023 the interim injunction in the Birmingham claim was further considered and amended. Ritchie J granted permission to add a tenth “persons unknown” defendant with the following definition: “Persons unknown who participate, or intend to participate, in street cruises in Birmingham as car drivers, motorcycle riders or passengers in motor cars or on motorcycles.” Mr Blunderfield’s actions are said to put him within the category of persons defined as the tenth defendant.
7. Paragraph 1 of the interim injunction, as amended by Ritchie J, reads as follows:

“The first to seventh inclusive and tenth defendants are forbidden from participating in a street cruise within the Claimant’s local government area (known as the City of Birmingham) the boundaries of which are delineated in red on a map attached to this order at Schedule 1.”
8. Schedule 1 is a map showing the Birmingham administrative boundary edged in red. By paragraph 2 of the order “The terms “street cruise” and “participating

in a street cruise” have the meanings set out in Schedule 2 to this order.” Paragraph 1 of Schedule 2 of the order defines street cruise in the following way:

“Street cruise” means a congregation of the drivers of two or more motor vehicles (including motorcycles) on the public highway or at any place to which the public have access within the Claimant’s local government area (known as the City of Birmingham) as shown delineated in red on the map at Schedule 1, at which any driver, rider or passenger in or on a motor vehicle performs any of the activities set out at para. 2 below, so as, by any such conduct, to cause any of the following:

- (i) excessive noise;
- (ii) danger to other road users (including pedestrians);
- (iii) damage or the risk of damage to private property;
- (iv) any nuisance to another person not participating in the car cruise.”

9. Paragraph 2 of Schedule 2 states: “The activities referred to at para. 1, above, are:

- (i) driving or riding at excessive speed or otherwise dangerously;
- (ii) driving or riding in convoy;
- (iii) racing against other motor vehicles;
- (iv) performing stunts in or on motor vehicles;
- (v) obstructing the highway or any private property.”

10. Paragraph 3 of Schedule 2, as amended by Ritchie J, defines “participating in a street cruise” as follows: “Any of the 1st to 7th (inclusive) or 10th Defendants participates in a street cruise if he is the driver or rider of, or passenger in or on, a motor vehicle at a street-cruise and performs or encourages any other driver, rider or passenger to perform any activity, to which paras. 1-2 above apply, and the term “participating in a street cruise” shall be interpreted accordingly.”

11. By paragraph 3 of the amended interim injunction order, Ritchie J attached a power of arrest to paragraph 1 of the injunction. The interim order was ordered to remain in force until the hearing of the Claim unless varied or discharged by further order. The Claim has not yet been heard and the interim order has not otherwise been amended.

Service

12. At the hearing on 19 May 2023 Ritchie J also made a case management order. At paragraph of that order he dispensed with the need for personal service of the amended interim injunction and powers of arrest on the persons unknown defendants. By paragraph 13 of the order, he gave permission for the Claimant to take various steps to comply with the alternative service requirements in respect of the persons unknown defendants. This court considered the issue of service of the amended interim injunction and power of arrest at a hearing on 4 September 2023 in respect of another persons unknown defendant facing contempt proceedings. On that occasion, the court considered the written evidence of Michelle Lowbridge, dated 23 August 2023, in which she addressed the requirements of paragraph 13 of Ritchie J's order. She explained, and the court accepted, that she had complied with sub-sections (1) to (8) of paragraph 13 but had not complied with sub-section (6) to the full extent. Sub-section (6) was a requirement to ensure that the webpages hosting a video previously uploaded to YouTube and to the Claimant's website and social media pages was amended to state that the order of 19 May 2023 had now been made and interim injunction and power of arrest continued in force. The effect of the Claimant's evidence was that it was not possible to retrospectively amend the posts that had been posted on YouTube or their social media accounts. At most, the Claimant explained that it could put a comment into the public comments box but that comment would immediately be subsumed in the midst of other comments as soon as another comment was made by a member of the public. In those circumstances, given the impossibility of fully complying with that aspect of the order, to the extent that the court needed to, retrospective permission was given for the Claimant to effect alternative serve in the other ways required by paragraph 13 of Ritchie J's order. The court therefore concluded that there had been valid alternative service of the amended interim injunction and power of arrest. That position applies equally so far as service on Mr Blunderfield is concerned. Indeed, the court is told that Mr Blunderfield accepts valid alternative service of the amended interim injunction and power of arrest has taken place.

The contempt

13. Mr Blunderfield was arrested in the early hours of Sunday morning on 3 September of 2023. He was produced before the court on the afternoon of Monday 4 September and bailed to return to court today. At the hearing on 4 September 2023, two allegations were being made. One in respect of an alleged breach of the Birmingham injunction on 28 August 2023 and a second in respect of an alleged breach of the Black Country injunction on 2 September 2023. The court directed that any Claimant planning to pursue a contempt application must file an N600 contempt application and evidence in support by 4pm on 18 September 2023. The Black Country Claimants have elected not to pursue any allegation of breach in respect of 2 September. On 22 September 2023 the Claimant did however file and serve a contempt application in respect of the alleged Birmingham breach. Albeit that application was served slightly late, no

issue is taken by Mr Blunderfield and his solicitor accepts valid service on the solicitor and that he is in a position to proceed today. The court is therefore satisfied as to service of the contempt application.

14. The contempt allegation is drafted in the following terms:

“On or about 28 August 2023 at about 00:18 hours he participated in a street cruise, as defined in schedule 2 of the interim injunction within the City of Birmingham (schedule 1) by driving his dark blue Audi S3 motor vehicle, vrm ND63 BCO in the following manner:

He raced with other vehicles along Heartland Parkway towards Cookoo Bridge at speeds in excess of 100 miles an hour in a 40 mile per hour zone. He drove around the island and back along Heartlands continuing to race and drive at excessive speed. He cut across vehicles and went through 2 red traffic lights.”

15. Through his solicitor, Mr Blunderfield admits the allegation on the basis of the full facts. The court has had the opportunity of reading the written evidence from PC Latimer, the police officer who observed Mr Blunderfield’s actions on 28 August. The court has also had the opportunity of viewing the video footage taken from the unmarked police car. The evidence of PC Latimer is to the following effect. Shortly after midnight on 28 August Mr Blunderfield’s vehicle overtook the unmarked police car and slow moving traffic on Heartlands Parkway. The police noted that the second numerical character of the registration plate of the vehicle was obscured by white sticky tape. The police vehicle continued to follow Mr Blunderfield’s vehicle across the junction with Bromfield Lane and as it raced other cars at speeds in excess of 100 miles per hour in a 40 mile an hour zone before driving around a traffic island and racing back in the same direction. At a traffic island with Bromford Lane, PC Latimer noted that there were two marked police cars whereupon Mr Blunderfield accelerated hard onto Bromford Lane, cut up a vehicle, went through a red traffic light at Wheelwright Road before then proceeding through a second and third set of red traffic lights at the junction with Tyburn Road and Oakfield Road, all whilst travelling at about 60 miles an hour. The police officer thereafter lost sight of the Defendant’s vehicle.
16. The court has a witness statement from PC Bostock who saw Mr Blunderfield’s vehicle on 2 September in the West Bromwich area in the vicinity of a car cruise which was taking place on Kenrick Way. Again, it was initially noted that there was masking tape obscuring part of the vehicle registration plate. The police officer pursued Mr Blunderfield’s vehicle onto the motorway but did not manage to stop him. On both 28 August and initially on 2 September, the police were following Mr Blunderfield in unmarked police cars such that he would not have been unaware that the cars following him at speed were police cars.

Approach to sentencing

17. The court reminds itself that the objectives when imposing penalties for civil contempt are those as set out by the Court of Appeal in *Lovett v Wigan Borough*

Council [2022] EWCA (Civ) 1631. Although the case of *Lovett* concerned breaches of orders made pursuant to the Antisocial Behaviour, Crime and Policing Act 2014, which this case is not, the objectives for sentencing civil contempt remain the same. They are in the following order:

- (1) to ensure future compliance with the order;
- (2) punishment;
- (3) rehabilitation.

The priority of those objectives differs from the approach that the criminal courts take when sentencing.

18. The court is mindful of the guidance given by the Court of Appeal at section 2.1 of the judgment in *Breen v Esso Petroleum Company Limited* [2022] EWCA (Civ) 1405 where the Court of Appeal endorsed the approach to assessing sanctions in contempt cases, as summarised by the Supreme Court in *Attorney-General v Crosland* [2021] UKSC 15. At paragraph 44 of *Crosland* the Supreme Court held as follows:

“44. General guidance as to the approach to penalty is provided in the Court of Appeal decision in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392... That was a case of criminal contempt consisting in the making of false statements of truth by expert witnesses. The recommended approach may be summarised as follows:

- (1) The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.
- (2) In light of its determination of seriousness the court must first consider whether a fine would be a sufficient penalty.
- (3) If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
- (4) Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
- (5) Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.
- (6) There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council’s Guidelines on Reduction of Sentence for a Guilty Plea.

- (7) Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension."
19. The Sentencing Council did not produce guidelines for breach of a civil injunction. The approach to sentencing for contempt in a case such must however nonetheless ensure that the concepts of culpability and harm are considered. In *Lovett v Wigan* the Court of Appeal endorsed the use of the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report on antisocial behaviour in the civil courts. This court bears in mind that some parallels can be drawn insofar as the type of driving arising in this matter on the streets of Birmingham are a type of antisocial behaviour. However, it is not a complete analogy. The proceedings in his case are not brought under the Anti-social Behaviour, Crime and Policing Act 2014 in the County court. Moreover, the risk of harm from car cruising type behaviour is particularly high and more so than the type of conduct seen in most 2014 Act claims. The court does however take into account the guidance in *Lovett v Wigan* by analogy, taking care not to place over-reliance on that Civil Justice Council matrix without further consideration.
20. Turning to the question of culpability, in my judgment, Mr Blunderfield's actions on 28 August are at the higher end of medium culpability. His actions that night were clearly deliberate and involved significant pre-planning insofar as he travelled a considerable distance from his home in Suffolk to Birmingham for the purposes of the meet. Furthermore, he came prepared with tape to obscure part of his number plate to avoid detection by the police.
21. As to the level of harm, the court has to take into account not just the level of harm that is actually caused but also that was intended or, particularly pertinent to this case, that which was at risk of being caused by the breach. The racing of other vehicles at speeds exceeding 100 miles an hour on a 40 mile per hour urban dual carriageway, when there is a significant volume of other traffic on the road, and thereafter driving through three sets of red traffic lights at approximately 60 miles per hour creates the most obvious and real risk of danger to other road users, pedestrians and property. It is mere good fortune rather than good judgment that no one was injured or worse. Taking those factors into account, I take the view that the risk of harm is at the higher end of the scale.
22. I turn to consider whether there are any aggravating or mitigating circumstances. There are limited further aggravating factors in this matter. I do not take into account the fact that Mr Blunderfield did not stop on 28 August as any aggravating factor as he would not have been aware that he was being pursued by an unmarked police car. Similarly, when first followed on 2 September, he would not have known that he was being pursued by an unmarked police car. The court has considered the partial masking of the number plate on 28 September as a matter relevant to the assessment of culpability and accordingly does not treat that as an aggravating factor.

However, Mr Blunderfield again masked part of his number plate on 2 September in what was a clear attempt to evade identification by the police. I proceed on the basis that his attempt to further obscure his identity immediately before being stopped is an aggravating factor.

23. There are, however, a number of mitigating factors to take into account. Mr Blunderfield is before the court for the first time in respect of breach of this injunction. He is a man of positive good character with no criminal convictions or cautions. He was cooperative on arrest and is still at a relatively young age, aged 21 years. I have heard through his solicitor and accept that he is genuinely remorseful for breaching the High Court injunction. Through his solicitor he has told the court that he has taken the car he was driving off the road and plans to sell it. His only remaining vehicle being one supplied as part of his role as a farm worker to travel to different places of work. The court has been told that Mr Blunderfield has deleted the Instagram account that he had been following and on which he had seen the details of the car cruising meet advertised. Mr Blunderfield is in stable employment as a farm worker earning what is a very good income for a young man of his age of £650 a week. He lives at home with his mother and has expenses of approximately £250 per week. The court takes into account the number of very real mitigating factors in this case.
24. However, in my judgment, Mr Blunderfield's breach of the interim injunction is so serious that only a custodial penalty will suffice. The facts he admits are so serious that this matter cannot be dealt by way of a financial penalty, no order or deferred consideration. The provisional sentence in this case, before consideration of credit for his admission, is one of 70 days' imprisonment. In assessing the appropriate sentence the court has taken into account that Mr Blunderfield has already spent nearly two days in custody, from the early hours of Sunday to Monday afternoon, the equivalent of a four day sentence. Mr Blunderfield is entitled to maximum credit for his admission. His admission today was at the first opportunity following service of the contempt application and his receipt of legal advice. Reducing the sentence by one third and rounding down in Mr Blunderfield's favour reduces the term to 46 days.
25. The court has had to consider whether to suspend the sentence. By a very narrow margin, I am persuaded that it is appropriate to suspend the sentence. The primary objective of the sentencing exercise in the civil court is to secure future compliance. I am mindful that Mr Blunderfield is a young man of good character in stable employment who has shown genuine remorse. In those circumstances, it seems to me there is a very realistic prospect of rehabilitation such that Mr Blunderfield will comply with the order in the future. The sentence of 46 days' imprisonment will be suspended for a period of 12 months from today on condition of compliance with the terms of the interim injunction of Hill J, as amended by Ritchie J's order or any subsequent amended form of the injunction in this case.
26. Mr Blunderfield has a right to appeal the suspended order of committal. Any appeal must be made to the Court of Appeal (Civil Division) and must be filed within 21 days of today.

27. The Claimant seeks a contribution to its costs in the sum of £1,000. The court is told that those costs reflect the costs of the Claimant today only and not the Claimant's full costs in pursuing this application. Through his solicitor, Mr Blunderfield concedes the principle as to costs. That is a sensible concession in circumstances where costs follow the event, and there is no reason to depart from the general rule in circumstances where the Claimant has proved the breach.
28. The Defendant is in receipt of public funding for the purposes of the contempt application. As clarified by the Court of Appeal in *Secretary of State for Transport v Cuciurean* [2022] EWCA (Civ) 661, costs protection afforded by section 26 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 for those in receipt of civil legal aid does not apply to those who are in receipt of criminal legal aid for the purpose of contempt proceedings. Therefore, Mr Blunderfield does not have the benefit of that costs protection. Mr Blunderfield will therefore be ordered to pay a contribution to the Claimant's costs, summarily assessed in the sum of £1,000. The court is told Mr Blunderfield has no savings but he does nonetheless have an income of £650 per week against expenses of £250 per week. Furthermore, he is about to sell his motor vehicle. Rather than make an order for instalments, the Court will grant a slightly longer period than normal within which Mr Blunderfield must discharge the entire £1,000 costs liability to the Claimant. There must be payment in full by 4pm on 30 November 2023. That provides a period of just over two months for Mr Blunderfield to raise the funds, whether by saving through his employment or by using part of the proceeds of his car.
29. Mr Blunderfield, you have come within a hair's width of going to prison in relation to your actions that night. The court has granted a suspended sentence. You must ensure that you comply with the terms of the injunction. If you do not, you will find yourself back before this court whereupon the court would have to determine the appropriate penalty for any future breach and consider whether to activate the suspended sentence. The general rule is that a suspended sentence would be activated. I believe you have learnt your lesson. Insofar as any criminal proceedings arise from your driving, it will be for that court to take into account sentence that has been passed today. I make it clear that I do not expect to see you back in this court for breach of the injunction.

(This Judgment has been approved by HHJ Emma Kelly.)