Neutral Citation Number: [2024] EWHC 271 (KB)

Case No: KB-2022-BHM-000221

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

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

Date: 30 January 2024

Before:

HER HONOUR JUDGE EMMA KELLY

- -

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

(1) CONNOR HILL
(2) ASIM RAHMAN
(3) AMAN KAYANI

Defendants

- -
- -

Ms Charlotte Crocombe (instructed by **Birmingham City Council**) for the **Claimant**
Mr Peter Ricketts of **Harringtons Solicitors** for the **Defendants**

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APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Connor Hill, Asim Rahman and Aman Kayani each appear before the court in respect of contempt applications arising from events, in Mr Hill's case in the late hours of 14th January 2024, and in Mr Rahman and Mr Kayani's cases in the early hours of 15th January 2024. By each of the contempt applications, the claimant asserts that the defendants breached the terms of an interim injunction granted by Hill J, on 22nd December 2022, as amended by the order of Richie J, on 19th May 2023 and as further amended by order I made on 16th October 2023.

2. The claimant has been represented at today's hearing by counsel, Miss Crocombe. The defendants are all represented by their solicitor, Mr Ricketts.

3. These are contempt proceedings and although they remain civil proceedings, the burden rests on the claimant to establish the contempt to the criminal standard of proof, that is, beyond reasonable doubt. Each of the defendants have made written admissions accepting that they are in breach of the terms of the interim injunction. Taken together with the claimant's written and video evidence, the court is satisfied the contempt has been proved on the factual basis outlined in each written admission. This judgment deals with the appropriate sentence in relation to each of those admissions. I will return to the detail of the admissions in one moment.

Background

4. On 22nd December 2022 Hill J granted an interim injunction aimed at preventing street cruising occurring on the streets of Birmingham. The application followed concern by the claimant local authority that antisocial and unlawful behaviour in the form of car cruising, or street cruising, was occurring within its administrative boundary.

5. The original defendants to the claim included seven named defendants and two defendants who were defined as categories of persons unknown. The interim injunction granted by Hill J was reconsidered by Richie J at a hearing on 19th May 2023. The terms of the injunction were amended by Richie J and a tenth defendant was added. The tenth defendant was defined in the following way:

> "Persons unknown who participate or intend to participate in street cruises in Birmingham, as car drivers, motorcycle riders or passengers in motor cars or motor cycles."

It is that category of defendant within which each of the defendants to these contempt proceedings find themselves having fallen.

6. The substance of the injunction granted by Richie J was not varied when the order was further varied in October 2023 to add named defendants as the eleventh to fourteenth defendants when their identities as hitherto persons unknown became apparent.

7. Paragraph 1 of the amended interim injunction prohibits the defendants "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." The plan attached to the order outlines the administrative area of Birmingham.

8. By paragraph 2 the terms "street cruise" and "participating in a street cruise" have the meaning set out in schedule 2 to the order.

9. By paragraph 1 of schedule 2 of the order:

> "'Street cruise' means a congregation of the drivers of two or more vehicles, (including motor cycles,) 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 in paragraph 2 below, so as by 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."

10. By paragraph 2 of schedule 2, the activities referred to in paragraph 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; or
>
> (v) Obstructing the highway or any private property."

11. Paragraph 3 of schedule 2 defines participating in a street cruise in the following way:

> "[The defendants] participate in a street cruise if they are or any of them 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 paragraphs 1 to 2 above apply and the term 'participating in a street cruise' shall be interpreted accordingly."

12. By paragraph 3 of the interim injunction, as amended, a power of arrest was attached to paragraph 1 of the injunction.

13. The original order came into force on 24th December 2022 and was ordered to continue until the final hearing of the claim, unless varied or discharged by further order. The final hearing of the matter has not yet taken place and is listed to be heard at the end of February 2024.

Service

14. Each of the defendants to these contempt proceedings accepts that the service provisions have been complied with and that they each acknowledge that they personally had a basic awareness of the existence of the car cruising injunction, albeit they were not aware of the details of the order.

15. The interim injunction as granted by Hill, J, and then when subsequently amended, dispensed with personal service of the order and power of arrest on the persons unknown defendants. Paragraph 13 of the case management order of Richie J, dated 19 May 2023, gave various detailed steps that the claimants had to comply with in respect of alternative service requirements against the persons unknown. In earlier contempt proceedings in relation to different defendants, this court found that the claimant had complied with those service requirements. The case management orders I made in October 2023, and again in December 2023, gave directions as to how the further varied order was to be served on the persons unknown defendants.

16. The claimant relies on the evidence of Michelle Lowbridge which details the steps the claimant has taken to again serve the further amended version of the order. In circumstances where each of the defendants accept valid service, I do not propose to address the question of service further in this judgment, and proceed on the basis of the admissions.

Facts of the contempt

17. Each of the defendants was arrested either very late in the evening on 14th January, or the very early hours of 15th January, and produced before the court from custody on 15th January 2024. At stage the defendants were represented, but the solicitors were not yet in receipt of public funding. The defendants were bailed and the matter was adjourned for the claimant to file and serve an N600 contempt application and the evidence in support and for the defendants to take legal advice. On receipt of legal advice, the defendants have each provided details in writing of the admissions that they make in relation to the allegations.

18. I turn to Mr Hill's case. At around 23.09 on Mr Hill accepts that he was the driver of a silver BMW and drove in excess of the speed limit on the A47 in Birmingham. He admits that for a short period he was racing his vehicle, along with another vehicle, at speeds approaching 70 miles per hour. The court has had the opportunity of viewing the video footage that has been taken from the police motor vehicle that was following Mr Hill's vehicle. That shows Mr Hill driving, along with another car, along the A47 urban dual carriageway in a 40 mile per hour speed restricted area towards Saltley viaduct. The video footage

shows Mr Hill's vehicle and a black BMW racing along that highway. The court proceeds on the basis of the admission Mr Hill makes that his speed approached 70 miles per hour, rather than the claimant's case as pleaded, which was in excess of 70 miles an hour and up to 80 miles an hour.

19. The facts of Mr Kayani and Mr Rahman's cases are very similar as they arise out of the same incident. At around 00.40 on 15th January 2024, Mr Rahman and Mr Kayani each accept that they were driving their respective vehicles, initially on the Chester Road in Birmingham towards Spitfire Island, and then on Fort Parkway. Mr Rahman accepts that he was the driving of a Volkswagen vehicle, Mr Kayani a black BMW. They admit that they were driving alongside each other at speed and that their respective vehicles exchanged places as they were driving along the dual carriageway. They accept that their speeds were up to 60 miles per hour. Again, I proceed on the basis of that admission, rather than the claimant's pleaded case that they were travelling at 70 miles per hour in a 40 mile per hour speed restricted area. Again, the court has had the opportunity of viewing the video footage from the in-car police video equipment. That shows both defendant waiting at red lights on the Spitfire traffic island, the claimant's case being that they were revving their engines. It is clear from the video that the two vehicles accelerate harshly away from the island on to Fort Parkway and the two vehicles are alongside each other, exchanging places at various times depending on who is travelling faster at any one time. Mr Kayani's and Mr Rahman's vehicles were stopped by a 'stinger' device that the police deployed although there is no evidence that the police tried to stop either of the vehicles prior to the 'stinger' being deployed.

Approach to sentencing

20. The objectives when imposing penalties for civil contempt are those set out by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 at para. 39. They are in the following order: to ensure future compliance with the order, punishment and rehabilitation.

21. This court has sentenced a number of individuals within these proceedings for contempt. In common with the approach the court has adopted in earlier cases. I adopt he approach summarised by the Supreme Court at paragraph 44 of *Attorney General v Crosland* [2021] UKSC 15 and endorsed by the Court of Appeal in *Breen v Esso Petroleum Co Ltd* [2022] EWCA Civ 1405. For the sake of brevity, I do not read out the entirety of paragraph 44 of the Supreme Court's decision but make it clear that the same has been taken into account.

22. The Sentencing Council do not produce guidelines for breach of a civil injunction. The parties agree, as do I, that the court should follow the guidance in *Lovett v Wigan Borough Council.* That requires the use the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report in relation to contempt arising from orders made under the Antisocial Behaviour Crime and Policing Act 2014. The use of that analogy when sentencing for contempt in cases outside the 2014 Act but nonetheless involving some form of anti-social behaviour was endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355. *Birmingham City Council v Lloyd* is a direct

comparator because it involved contempt proceedings arising from car cruising behaviour in relation to another defendant in this claim.

23. I turn to the question of culpability. The claimant contends that each of the defendants' cases falls within category A. The defendants contend that it falls within category B. In my judgment, each of the defendants' cases fall within category B, being a deliberate breach falling between A and C. Category A is reserved for a very serious breach or persistent serious breaches. I do not take the view that on a first breach, on the facts as admitted, that it is appropriate to categorise this as culpability A.

24. Turning then to the question of harm. The claimant contends this is a category 2 harm case, albeit at the top end of the bracket. The defendants contend it is a category 2 case. When assessing the level of the harm, the court has to take into account the harm that was actually caused, but also that was intended or at risk of being caused by the breach. Whilst there was limited actual harm caused in each of these cases, in my judgment there was a risk of significant harm being caused by the defendants who were each willing to partake in racing vastly in excess of the speed limit, in what were busy urban areas. That self-evidently creates a very obvious high risk of serious harm both to the individuals involved, but also other road users and pedestrians. In Mr Hill's case, there were spectators at the side of the road. In my judgment, the harm in each defendant's case falls to be categorised in category 2, albeit at the upper end of medium.

25. The starting point for a culpability B, category 2 harm case is a sentence of one month imprisonment, with a range of adjourned consideration to three months' imprisonment. If the case had been in the higher category of harm, it would have given a starting point of three months' imprisonment with a range of adjourned consideration to six months. I do not categorise these cases in the higher category of harm, but it gives some indication as to by how much the range increases with a higher classification.

26. The court has to take into account any aggravating or mitigating circumstances in relation to each of the defendants. I proceed on the basis that there are no aggravating features as far as any of these defendants are concerned. Quite the contrary, each of them has a number of mitigating factors that it is appropriate that the court take into account.

27. In relation all three defendants, they are men of good character, without previous convictions or cautions. Each of them, through their solicitor, has shown remorse for their actions and indicated that they do not intend to put themselves in a position in the future whereby they would breach the injunction. Each of them appears before the court in relation to a first breach of the injunction. The court is told that Mr Rahman and Mr Hill each have a clean driving licence and, in Mr Kayani's case he has one endorsement from 2021 but otherwise a clean licence. Each defendant has a good record of employment.

28. Mr Hill is aged 27. The court is told he works in car detailing, earning around £1,600 a month. He has financial responsibilities for his children, aged 5 and 10 and pays his partner £800 a month in that regard.

29. Mr Rahman is aged 20. He is also in employment, working, somewhat ironically, for the RAC at their breakdown centre. He is understandably concerned that, if his employer knows about his involvement in these court proceedings, his job may be at risk. He earns about £1,000 a month and lives with his parents and two siblings.

30. Mr Kayani is aged 21. He is not currently in work but, until several weeks ago, had been working as a recruitment consultant. He is currently looking for a similar role and has recently had an interview. His prior income was some £1,500 per month and. He has caring responsibilities for his mother, who is not in good health and he helps her with her mobility issues.

31. It is apparent that each of the three defendants all usually entirely law-abiding citizens, who make meaningful contributions to society through their work and their care for their family members. I take into account that the it will not doubt have been a very salutary experience for each of them to have been arrested and to have spent the night in cells. In Mr Rahman and Mr Kayani's case, they had the no doubt rather startling experience of their vehicles being stopped by a police 'stinger' device, with the attendant cost that that no doubt has entailed in repairing their vehicles.

32. All of the aforementioned mitigation is taken into account in relation to each of the defendants. In my judgment, notwithstanding those matters, neither deferred consideration or a fine would be a sufficient penalty for the breach of the High Court injunction. Breach of the injunction by participation in street cruises in racing at speeds of coming close to twice the speed limit in urban areas, is not something that this court will tolerate. The breach in each of the cases is such that only a custodial penalty will suffice. However, the mitigation in relation to each of the defendants means that the court can reduce the sentences.

33. In my judgment the appropriate sentence, before consideration of credit for admissions, in relation to each of the defendants is 35 days' imprisonment. I draw no distinction between the facts of the defendants' cases. In my judgment, the driving is much of a muchness between the cases. The risks to the public and other road users are similar as between each of the three defendants and each of the three defendants has very similar positive character mitigation prayed in their aid.

34. All of the defendants are entitled to credit for their admission. I treat the admissions as being made at the first opportunity after being served with the evidence and having had the opportunity to obtain legal advice. I reduce the sentences by one third. The calculation will be rounded down in favour of the defendants, such that the sentence in respect of each defendant will be one of 23 days' imprisonment.

35. In the case of each of these defendants the sentences will be suspended. The Court of Appeal in *Lovett* observed (at paragraph 45) that suspension is usually the first way of attempting to secure compliance with the underlying order. In circumstances where each of these defendants was hitherto of good character and has expressed remorse, it is entirely appropriate that the sentences be

suspended to give the defendants the opportunity to demonstrate that they can comply with the terms of the injunction. The sentences in each case will be suspended for a period of twelve months from today, on condition of compliance with the terms of the interim injunction's current form or any subsequent version of the amended injunction that is made in this case.

Costs

36. The claimant makes an application for a contribution to its costs from each of the three defendants. No schedule of costs has been prepared, a matter about which I have already expressed my concern. The costs sought are however limited to a contribution to reflect the issue fee for each contempt application and a contribution towards the costs of counsel's attendance today and at the first hearing. The claimant's solicitor is not making any application for payment of their time costs. The issue fee in each case was £255. The court is told that counsel's fee on the last occasion, which was an emergency listing following the arrests, was £650. Counsel's fee for today's hearing, which was listed for three hours but has taken rather longer to resolve due to the time take to reduce the admissions to writing, was £1,650. Notwithstanding the lack of costs schedule, the costs are therefore simple to understand.

37. The general rule under CPR 44.22(2) is that the unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. The claimant is clearly the successful party, having established the contempt. There is no reason to depart from that general rule. I am therefore going to order that each of the defendants makes a contribution to the claimant's costs. Each defendant will pay the £255 issue fee. Counsel's fees across the two hearings amounts to £2,300 but those costs relate to these three defendants and a fourth, whose case has been adjourned for trial. The overall cost of cost of counsel's fees is proportionate. It is appropriate to divide counsel's fee by the four and each of these three defendant will by one-quarter. The costs of the fourth defendant have already been ordered as costs in the contempt application pending the trial. Mr Hill, Mr Rahman and Mr Kayani will therefore each pay a contribution to the claimant's costs, summarily assessed in the sum of £830, being £255 issue fee and £575 contribution to counsel's fees.

38. Each defendant has the benefit of legal aid. However, following clarification 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 to those in receipt of civil legal aid does not apply to those in receipt of criminal legal aid to defend contempt proceedings. The costs orders will therefore be enforceable.

39. As to payment of the costs, I propose to make what I deem to be the best assessment the court can today as to payment by instalments. I accept that on the levels of income intimated to the court, the defendants are unlikely to be able to pay the costs in full in a short period of time. I am going to order that each defendant discharge the sum of £830 by payments of £100 per month. It is open for any of the defendants to make an application to vary those instalments by way of paper application, but that would have to be supported by documentary evidence as to that defendant's current financial position. The first

payment will be 21 days from now and thereafter on the same date of n on whatever date that is, the same date each month thereafter until the £830 has been discharged.

40. The defendants each have a right to appeal the suspended order of committal. Any appeal lies to the Court of Appeal Civil Division and must be filed within 21 days of today.

41. I direct that a transcript of this judgment be obtained on an expedited basis at public expense and, in accordance with the provisions of the Civil Procedure Rules, a copy of the approved transcript will be published on the judiciary website.
