

Neutral Citation Number: [2024] EWHC 2259 (KB)

Case No: KB-2022-BHM-000221

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

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

Date: Monday 8 July 2024

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

MS VICTORIA ADSHEAD

Defendant

MS ARUCI, Counsel, instructed by the Claimant's legal department appeared for the **Claimant**
Mr ROBINSON, Solicitor, of McGrath & Co appeared for the **Defendant**

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. The Defendant, Ms Victoria Adshead, appears before the Court having admitted contempt by virtue of her driving on 23 June of 2024. She accepts that her conduct on that day amounted to a breach of paragraph 1 of an injunction, granted by Julian Knowles J, on 27 February 2024.
2. The Claimant has been represented at today's hearing by Ms Aruci of Counsel. The Defendant is represented by her solicitor, Mr Robinson.

Background

3. The order made by Julian Knowles J is aimed at preventing street-cruising occurring on the streets of Birmingham. The application followed concern by the Claimant local authority that antisocial and often unlawful behaviour in the form of car-cruising, or street-cruising, was occurring within in its administrative boundary.
4. The Defendants to the claim included a number of named Defendants, but also a category of "persons unknown" Defendant. The 10th Defendant was defined as:

"Persons unknown who participate or intend to participate in street cruises in Birmingham, as car drivers, motorcycle riders, or passengers in motorcars or on motorcycles".

It is that category of "persons unknown" within which the Defendant falls.

5. Paragraph 1 of the injunction states as follows:

"The 1st and 4th to 20th Defendants are forbidden to participate 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 outlined the administrative area of Birmingham.

6. At paragraph 3 of the order, defines the terms "street cruise" and "participating in a street cruise" have the meaning set out in Schedule 2 to the Order.
7. At paragraph 1 of Schedule 2, "street cruise" is defined as:

"... 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 street cruise.”
8. Paragraph 2 of Schedule 2 lists a number of activities referred to in paragraph 1 above. They include but are not limited to:
- “(i) Driving or riding at excessive speed or otherwise dangerously;
 - (ii) Driving or riding in convoy;
 - (iii) Racing against other motor vehicles; ...
9. Paragraph 3 of Schedule 2 defines the term, “participating in a street cruise” in the following way:
- “A person participates in a street-cruise if he or she is
- (i) the driver or rider of, or passenger in or on, a motor-vehicle at a street cruise and performs or encourages any person there present to perform any activity, to which paras.1-2 above apply, or
 - (ii) is a spectator at a street cruise...”
10. By paragraph 4 of the injunction, a Power of Arrest was attached to paragraph 1 in relation to any defendant who participates in a street cruise as a driver, rider or passenger.
11. The order came into force on 27 February 2024 and remains in force for a period of three years, with a review hearing listed in 2025.

Service

12. The Defendant accepts that she has been validly served with the injunction and accepts that she had actual knowledge of the order.
13. The injunction permits, at paragraph 9, a number of methods of alternative service against the “persons unknown” Defendants. The requirements as to alternative service are set out in Schedule 3 to the Order. The deemed date of service is the date of completion of the final of those steps.
14. The Claimant relies, as it has done in earlier similar contempt applications, on the affidavit of Michelle Lowbridge, dated 4 April 2024. Ms Lowbridge is the Claimant’s Community Safety Officer. Her evidence addresses the steps taken to effect service and states that the final step was completed on 22 March 2024.
15. For reasons that I gave earlier this morning, I am listing the substantive claim for review at a hearing in a couple of weeks’ time to reconsider the alternative service provisions. The reason for that hearing is my concern there may not have been continuous compliance with a requirement that the Claimant retain a prominent direct link to the dedicated car cruising webpage on the landing page of its website. Given the Defendant’s admission as to valid service and indeed actual knowledge, the issue as to any period of non-compliance with an aspect of the service requirements has no practical bearing on

the index contempt application. In light of the Defendant's admitted position, I proceed on the basis that she has been validly served.

23 June 2023

16. The Defendant was arrested at the roadside just after half past midnight on Sunday 23 June 2024. She was produced before this Court from custody on Monday 24 June when she was bailed to allow her to obtain legal advice and representation, and for the Claimant to serve an N600 contempt application and the evidence in support.
17. On receipt of legal advice, the Defendant has made a written admission to the allegation of contempt. That is an admission that has been made at the earliest opportunity, following receipt of legal advice.
18. She admits breaching paragraph 1 of the injunction, in that she accepts driving in convoy and thus racing with another vehicle firstly, at speeds of 60 to 65 miles per hour over a short distance; and secondly, at speeds of up to approximately 70 miles per hour.
19. She does not accept the Claimant's case that her speeds reached in excess of 80 miles per hour nor that she had to brake hard to avoid overshooting a roundabout junction or to avoid a collision with a member of the public. She further does not accept that she was driving very close to a vehicle in front of her; although, cannot comment on the manner of driving of the vehicle in the convoy behind her. The Claimant does not seek to further litigate the
20. The matters that the Defendant does not accept are not matters that the Claimant seeks to challenge by further litigation. The case therefore proceeds on the factual basis of the admissions made by the Defendant.
21. The Court has had the opportunity of viewing the video footage taken from the police vehicle. I accept that largely accords with the admissions made by the Defendant. The driving took place on Heartlands Parkway, which is a 40 mile per hour urban dual carriageway. The video footage shows the Defendant driving in convoy with others. A change of lane that was thought by the police to be somehow sinister was, I accept, nothing more than the Defendant realising that she was in the wrong lane for proceeding straight over the island and therefore changing lanes at very slow speed when the traffic lights were on red. The video then shows the Defendant proceeding to drive at high speed, far in excess of the 40 mile per hour speed limit in convoy. On her admitted case, her speed reached approximately 70 miles per hour. The period of driving includes travel through a section of dual carriageway that was reduced to a single carriageway due to roadworks, making her speed all the more dangerous. The Defendant stopped her vehicle very promptly when the police activated their emergency lighting.
22. These are contempt proceedings. The burden of proof rests on the Claimant to establish the contempt to the criminal standard, that is beyond reasonable doubt. Taking into account the Defendant's admissions, and having watched the video footage, I am satisfied contempt has been proved on the factual basis admitted. There is clear evidence of street cruise activity by the racing engaged in by the Defendant, the driving in convoy and the driving at excessive speed. Those matters come together so as to cause a danger to other road users, a risk of damage to property, and a nuisance to individuals who are going about their lawful business and trying to use the roads in an ordinary manner.

Approach to sentencing

23. This Court has already sentenced a number of individuals for contempt of what was an interim version of the injunction and, subsequently, for breach of the final injunction. I adopt the same sentencing approach as I have in previous cases and, for the sake of proportionality, do not propose to repeat that in detail here. The parties agree, as do I, that the Court should follow the guidance in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631. The use of that guidance, by analogy, in street cruising cases was endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355.
24. As to the question of culpability, both parties contend that the matter falls within culpability Category B although the Claimant submits it falls at the higher end of that category. I agree that it falls within Category B, being a deliberate breach, falling between Categories A and C. Category A is reserved for a very serious breach, or persistent serious breaches.
25. As to the question of harm, both parties agree that this falls within Category 2 harm. I also agree. The Court has to look at the harm that was actually caused which, fortunately on the facts of this case, was limited. However, the Court also has to look at the risk of harm. The risks of harm associated with the Defendant's driving on that evening were significant. Racing and driving in convoy at speeds very significantly over the speed limit give rise to a very obvious high risk of harm, or worse, to those travelling in the vicinity whether that be others racing, law abiding road users or pedestrians. The harm, whilst in Category 2, is at the upper end of that bracket.
26. The starting point for culpability B, Category 2 harm case is a sentence of one month's imprisonment, with a range from adjourned consideration to three months' imprisonment. If the case had been in the higher category of harm, the starting point would have been three months' imprisonment, with a range of adjourned consideration to six months.
27. The Court then has to take into account any aggravating or mitigating circumstances before determining the appropriate sentence.
28. There are no aggravating factors in this Defendant's case.
29. There are a number of matters of relevant mitigation. The Defendant is aged 22. Her relative youth brings with it immaturity, which I have no doubt impacted on her poor decision-making that evening. She is of positive good character. For someone of positive good character to find themselves arrested in the early hours of Sunday morning, kept in custody throughout Sunday, and then not produced at court not until Monday will no doubt have been a very sobering experience. This is this Defendant's first breach of the injunction. Through her solicitor she expresses remorse and has indicated an intention to comply with the injunction in the future. The Defendant is someone who otherwise lives an entirely law-abiding life, making positive contributions to society. She is in permanent employment, as a service adviser, and earns a good income for someone of her youthful age, earning £1,900 net per month. She lives with her parents and is single. The court is told that she purchased the car she was driving that evening in April 2024, having been driving for some years since passing her test in November 2019. It seems that her involvement in car cruising on that evening was a moment of stupidity by she had driven

from her home in the Black Country to go and join others that she knew were engaging in this type of behaviour.

30. Notwithstanding the mitigation in this case, neither a deferred consideration or a fine are an adequate penalty for the breaches of this Injunction. Breach of the injunction by participating in the street-cruise and racing on the public highway is an extremely serious matters, with associated very significant risks. The contempt is so serious that only a custodial penalty will suffice. Taking into account the basis of plea, I take the view that the appropriate sentence, before consideration of credit for the admission, is one of 39 days' imprisonment.
31. The Defendant is entitled to maximum credit for her admission. The sentence is thus reduced by one-third to 26 days' imprisonment. The sentence will however be suspended. The Court of Appeal in *Lovett* endorsed suspension as usually being the first way to attempt to secure compliance with the underlying order. The Defendant's previous good character, her expression of intention to comply with the order in the future and expressed remorse mean that it is appropriate to suspend in this case. I very much hope, and have high confidence, that I will not see this Defendant back before the Court. The sentence will be suspended for a period of 12 months from today, on condition of compliance with the terms of the final injunction in its current form, or any subsequent version of the injunction, should it be amended between now and the end of the period of suspension.

Costs

32. The Claimant makes an application for its costs. A schedule of costs has been served in the sum of £2,174.30. The Defendant does not oppose either the principle or the quantification of those costs. That is a sensible concession, bearing in mind the general rule: the successful party will be entitled to its costs from the unsuccessful party. The costs schedule sets out relatively modest sums and are proportionate in amount. I will, therefore, summarily assess the costs, as drawn, at £2,174.30.
33. The Defendant makes an offer of payment by instalments of £250 per month. That is a reasonable offer taking into account her means and will ensure the costs liability is fully discharged within a 12-month period. The first payment is to be made by 4.00 pm on 8 August 2024, and thereafter on 8th of each month.
34. The Defendant does not have the benefit of costs protection that attaches to civil Legal Aid, because contempt proceedings are funded by criminal Legal Aid provisions that do not afford the costs protection under section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
35. The Court has made a suspended order of committal. The Defendant has a right to appeal. Any appeal lies to the Court of Appeal Civil Division and must be filed within 21 days of today.
36. I direct that a transcript of this judgment be obtained, on an expedited basis, at public expense. The transcript will be published on the Judiciary website in due course.

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