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Ref. KB-2022-BHM-000188

**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**

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

**(1) WOLVERHAMPTON CITY COUNCIL
(2) DUDLEY METROPOLITAN BOROUGH COUNCIL
(3) SANDWELL METROPOLITAN BOROUGH COUNCIL
(4) WALSALL METROPOLITAN BOROUGH COUNCIL** (Claimants)

-v-

**MR ANTHONY GALE
MS WICTORIA SZCZUBLINSKA** (Defendants)

**MR SINGLETON appeared on behalf of the Claimants
MISS OLIVER appeared on behalf of Anthony Gale
MR GRIFFITHS appeared on behalf of Wictoria Szczublinska**

**APPROVED JUDGMENT
3rd OCTOBER 2023**

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JUDGE EMMA KELLY:

1. Mr Anthony Gale and Miss Victoria Szczublinka appear before the court in respect of admitted contempt of court arising from each of them breaching an interim injunction granted in this claim by the Honourable Mrs Justice Hill, by order dated 22 December 2022, as amended by the order of the Honourable Mr Justice Ritchie, dated 19 May 2022. This judgment deals with the appropriate penalties for each Defendant's contempt of court.
2. The Claimants have been represented at today's hearing by Mr Singleton of counsel. Each of the Defendants has been represented by counsel, Mr Gale by Miss Oliver, and Miss Szczublinka by Mr Griffiths.
3. These are contempt proceedings and therefore, the burden rests on the Claimants to establish the allegations of contempt to the criminal standard of proof, that is beyond reasonable doubt. The contempt proceedings, nonetheless, remain civil proceedings.

Background

4. The four Black Country local authorities issued an application for an interim injunction aimed at prohibiting street or car cruising on the streets of their respective administrative areas. In similar, but separate proceedings, Birmingham City Council also issued an application for a similar interim injunction, to prevent such activity in its administrative area. In each application, the claims were brought following concern by the various Claimant local authorities that anti-social and often unlawful behaviour in the form of car cruising or street cruising, was occurring within their administrative areas, following the expiry of previous injunctions.
5. Following the interim order granted on an informal without notice basis by Hill J on 22 December, the injunction was reconsidered at a hearing before Ritchie J on 19 May 2023. At that hearing, the scope of the injunction was amended. A fourth Defendant was added to the proceedings. The fourth Defendant was defined in the following way:

“Persons Unknown being drivers, riders or passengers in or on motor vehicles who participate between the hours of 3pm and 7am in a gathering of 2 or more persons within the Black Country area shown on plan A (attached) at which such defendants engage in motor racing or motor stunts or other dangerous or obstructive driving.”
6. Each of the defendants' actions are said to fall within that category of persons hitherto unknown.
7. Paragraph 1 of the amended interim injunction prohibited the following:

“It is forbidden that any of the fourth defendants being a driver, rider, or passenger in or on a motor vehicle, to participate between the hours of 3pm and 7am in a gathering of two or more persons within the Black Country area, shown on plan A (attached) at which some of those present engage in motor racing or motor stunts, or other dangerous or obstructive driving.”
8. The order went on to define 'stunts' as “driving manoeuvres often undertaken at such gatherings including but not limited to” ‘burnouts,’ ‘donutting,’ ‘drifting’ and ‘undertaking.’ The judge attached a power of arrest to the amended interim order. The order was ordered to remain in force until the hearing of the claim, unless varied or discharged by further order. The substantive claim has not yet been determined and therefore the injunction remains in force.

Service

9. On 19 May 2023 Ritchie J dispensed with the need for personal service of the amended interim injunction and power of arrest on the persons unknown. Paragraph 11 of his case management order set out the steps the Claimants had to undertake to effect alternative service of the interim injunction and power of arrest.

10. Each of the Defendants accepts valid service of the injunction and power of arrest. The court has had the opportunity of reading the affidavit of Paul Brown of Wolverhampton City Council of 29 June 2023, in which he sets out the steps he has taken to effect alternative service. That affidavit exhibits to it his witness statement, dated 16 June 2023, which details the steps taken. Having read that evidence and noting the admissions as to service, the court is satisfied to the criminal standard that proper service has taken place.

Mr Gale

11. Mr Gale was stopped by the police on Kenrick Way in West Bromwich shortly after 11pm on 28 May 2023. He was arrested pursuant to the power of arrest attached to the interim order, and because it was the bank holiday weekend, he was produced by video link to the Royal Courts of Justice. Bright J directed that the police release the Defendant and the matter proceed by paper contempt application. The Claimant issued a N600 contempt application dated 3 August 2023. No issue is taken with service of the contempt application. The allegation made in that application is as follows.

“On Sunday 28 May 2023, at around 2310 hours, the Defendant was the driver of a Vauxhall Corsa, registration mark YB04 DYY, on Kenrick Way, West Bromwich, within the borough of Sandwell. The Defendant raced his car against a motorcycle, at speeds in excess of 80 miles an hour.”

12. At the hearing today, Mr Gale has made written admissions to the following effect. He admits that he travelled with a motorcycle at excessive speed on Kenrick Way at speeds of up to 80 miles per hour, on what was a 40 mile an hour speed limit dual carriageway. He accepts it was a poor decision of his to chase the motorbike, but maintains that his actions on that evening were not preplanned. He had no prior intention to join the car cruise, but admits he took the opportunity to show off when it arose. He accepts there were spectators along the side of the road, watching events.

Miss Szczublinska

13. Miss Szczublinska was also stopped by the police at a similar time on the same day. The same procedure was adopted in relation to her case, such that the matter appears before the court today, following the Claimants issue of a paper contempt application. Again, no issue is taken with service.

14. The allegation in her case reads as follows:

“On Sunday 28 May 2023, at around 23.15, the Defendant was the driver of a BMW 318, registration mark EJ63 HHB, on Kenrick Way, West Bromwich, within the borough of Sandwell. The Defendant drove in a convoy around a roundabout with a Vauxhall Insignia, then raced her car against the Insignia, at approximately 90 miles per hour on Kenrick Way.”

15. Miss Szczublinska has made written admissions at today’s hearing. She accepts she drove in convoy with the Vauxhall Insignia on the date and location in question. She admits she raced at approximately 90 miles per hour on what was a 40 mile per hour urban dual

carriageway. She also accepts that her car had been seen with the Vauxhall Insignia in the two hour period preceding the incident in question, at various sites across the West Midlands, where other car cruising activity had been taking place. There is no suggestion that, on those earlier occasions, her driving had been such that it would have put her in breach of either the injunction in this case, or the similar injunction in the Birmingham claim.

16. Taking into account the admissions made by each Defendant in writing, having read the Claimant's evidence, and viewed the video footage, the court is satisfied that each of the Defendants' admitted actions amount to a breach of paragraph 1 of the interim injunction. Each of the Defendants admit to racing other vehicles on Kenrick Way in West Bromwich. The road falls within the geographical area specified in the injunction, and the prohibited time of day specified within the terms of paragraph 1. Their actions in racing another vehicle, whether that be a car or motorcycle, amount to motor racing within the definition of paragraph 1 of the injunction, as well as being otherwise dangerous or obstructive driving.

Approach to sentencing

17. The court reminds itself of the objectives when imposing penalties for civil contempt. Those objectives were considered by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 at paragraph 39. 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 in sentencing for a civil contempt remain the same. They are in the following order: (1) ensuring future compliance with the order, (2) punishment and (3) rehabilitation.

18. The court has to consider the appropriate approach to sentencing. At paragraph 2.1 of the judgment in *Breen v Esso Petroleum Company Limited* [2022] EWCA Civ 1405, 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] UK Supreme Court 15. At paragraph 44 of *Crosland*, the Supreme Court held as follows.

“General guidance as to the approach to penalty is provided in the Court of Appeal decision in *Liverpool Victoria Insurance Company Limited v Khan* [2019] EWCA Civ 392... That was a case of criminal contempt, consisting of 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 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 contemptner, such as children or vulnerable adults in their care.
6. There should be a reduction for an early admission of a 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 affect on others, such as children or vulnerable adults in the contemptner's care, may justify suspension."

19. The sentencing council do not produce guidelines for breach of a civil injunction. Any approach to sentencing for contempt, in this case, can only be by analogy to the concepts of culpability and harm. Although in *Lovett v Wigan Borough Council*, the Court of Appeal endorsed the use of the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report "Anti-social Behaviour in the Civil Courts", this court has to bear in mind that the guidance in *Lovett* was limited to cases concerning breaches under the 2014 Act. Therefore, the court is mindful not to place overreliance on the Civil Justice Council matrix, without further careful consideration.

20. In my judgment, the level of culpability for each of these Defendants falls to be assessed as medium. Their individual actions in choosing to drive as they did on that day were clearly deliberate.

21. As to the level of harm, the court has to take into account not just the level of harm that was actually caused, but also that was intended, or was at risk of being caused by a breach. The risk of harm that can flow from car cruising or street racing is evidenced by two fatalities that occurred at a similar street cruise in the Black Country in late-2022. The racing of vehicles at speeds of up to 80 miles per hour in Mr Gale's case, and at approximately 90 miles per hour in Miss Szczublińska's case, on a 40 mile an hour urban dual carriageway, when multiple other road users were around, gives rise to a very obvious risk of harm. The fact that there were spectators standing adjacent to the highway, exacerbated that risk even more. It is good fortune rather than good judgment that the Defendants did not injure anyone or damage any property on that night. The level of harm therefore falls at the higher end of medium.

22. In relation to each of the Defendants, the court has to consider whether there are any aggravating or mitigating circumstances.

23. In Mr Gale's case, there are no aggravating factors. There are, however, a number of mitigating factors that the court properly takes into account. Mr Gale is of positive good character, with no criminal convictions or cautions. This is his first breach of the injunction, and the court takes into account that over four months have passed since the events in question, and Mr Gale faces no further allegations. Through his counsel, he expresses and I accept that he remorseful for his actions on that day. It is clear from the police video footage that, immediately on arrest, he accepted his wrongdoing and his idiotic behaviour on that evening.

He is aged 32 years and he is the primary carer for his two children, aged eight and six years old. His elder child has autism. His fiancé is the primary breadwinner for the family. He tells the court, through his counsel, that he has since sold the car he was driving that evening and replaced it with a Ford Focus, family run-around vehicle.

24. In Miss Szczublińska's case, the court does take into account as an aggravating factor, the fact for a period of nearly two hours prior to her arrest on Kenrick Way she was tracked across the West Midlands in the company of the vehicle that she was racing against at the time of her arrest. The earlier locations across the West Midlands were identified locations of other car cruising activity that evening. Whilst present at those locations, the court accepts there is no evidence of earlier driving such that she was in breach of the injunction earlier in the evening.

25. There are a number of mitigating features in Miss Szczublińska's case. Many of which replicate those seen in Mr Gale's case. She is of positive good character, with no criminal convictions or cautions. This is her first breach of the injunction, and there is no suggestion of further breach since the events of over four months ago. She too expresses her remorse through her barrister. She is aged 23 years and the primary carer for her two year old child. She works on Friday and Saturdays in a responsible job, on the secure side at Birmingham Airport. She is trying to sell the vehicle that she was driving at the time of her arrest.

26. The court takes into account both Defendants' significant mitigating factors when determining the penalties. The driving in both Defendants' cases and consequent breaches of the injunction are so serious that only custodial penalties will suffice. The fact that these matters cross the custody threshold was sensibly conceded by counsel for each of the Defendants. Deliberate racing in a busy urban area, with spectators and other road users in the vicinity, gives rise to a very high risk of injury or worse and only a custodial sentence properly reflects that behaviour.

27. The provisional sentence in Mr Gale's case is one of 35 days' imprisonment, and in Miss Szczublińska's case, one of 42 days' imprisonment. The court draws a distinction between the two cases in circumstances where, in Mr Gale's case, there was no evidence of pre-mediation in following the car cruise around earlier in the evening and his admitted speed was slightly lower. In reaching the aforementioned figures, the court takes into account that each has already spent a day in custody following their arrest.

28. Each defendant is entitled to maximum credit for their admissions made at the first opportunity following the service of evidence and receipt of legal advice. The provisional sentence in each case will be reduced by one-third, rounding down where there is an odd number. In Mr Gale's case, that reduces the term to 23 days' imprisonment, and in Miss Szczublińska's case, to 28 days.

29. The court then has to consider whether to suspend the sentences. It is appropriate to suspend the sentences of imprisonment in each case. This was a first breach for both Defendants of good character and there is a realistic prospect of rehabilitation in each case. Furthermore, both Defendants are primary carers and any immediate custodial sentence would have a very significant and detrimental effect on their respective children. Each sentence 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, dated 22 December 2022, as amended by Ritchie J order of 19 May 2023, or any subsequent amended form of the injunction that is granted in this case.

30. Each Defendant has the right to appeal their 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. I direct that a transcript of this judgment be obtained on an expedited basis, for publication on the judiciary website.

31. The Claimant makes no application for costs. There will therefore be no order as to costs. The court has dealt with a number of other cases of contempt, arising from breach of this injunction or the Birmingham similar injunction. In most cases the Claimant applies for its costs following the proving of a contempt. The benevolent approach taken by the Claimant in these two cases therefore represents something of a windfall for these two Defendants. Although the Defendants are in receipt of public funding, because these are contempt proceedings and the public funding is provided under the Criminal Legal Aid regime, as the Court of Appeal confirmed in the *Secretary of State for Transport v Cuciurean* [2022], such defendants are not afforded the cost protection that is otherwise available for those in receipt of civil legal aid. Each of the Defendants should count themselves extremely lucky that they are not also walking away from court, today, with a costs order to pay.
