

Case No: BL-2023-000713

Neutral Citation Number: [2023] EWHC 2643 (Ch)

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 11 October 2023

BEFORE:

MR JUSTICE MILES

BETWEEN:

JOCKEY CLUB RACECOURSES LIMITED

Claimant

- and -

KIDBY & OTHERS

Defendants

MR PAUL HIGGINS (instructed by Pinsent Masons LLP) appeared in behalf of the Claimant

MR TIM JAMES-MATTHEWS (instructed by ITN Solicitors LLP) appeared on behalf of the Ninth Defendant

**APPROVED
JUDGMENT**

Mr Justice Miles:

Introduction

1. This is the hearing of a contempt application dated 11 August 2023, made by Jockey Club Racecourses Limited as claimant against the ninth defendant, Mr Benjamin Newman (“the defendant”). The claimant was represented before me by Mr Paul Higgins and the defendant by Mr Tim James-Matthews. I thank both for their clear and cogent submissions.
2. The application concerns now admitted breaches of an interim injunction order made by Sir Anthony Mann, sitting as a Judge of the High Court, dated 26 May 2023. In short, on 3 June 2023 the defendant entered the racetrack at the Epsom Racecourse shortly after the commencement of the Epsom Derby and remained on the race track for about 24 seconds before being removed by the police. The defendant admits that that conduct constituted a breach of paragraphs 1 and 6 of the injunction.
3. The events of 3 June 2023 gave rise to criminal charges on 6 July 2023. The defendant pleaded guilty to one criminal offence of causing a public nuisance contrary to section 78 of the Police, Crime, Sentencing and Courts Act 2022, for which he received a suspended custodial sentence of 18 weeks suspended for two years. The defendant admits the breach of the injunction. He has apologised to the court, to the claimant and to those adversely affected by his actions. He has also offered various undertakings both to the claimant and the court, which I shall return to.
4. It follows that the only issue for the court at this hearing is the appropriate sanction to be imposed on the defendant in respect of his admitted contempt of court.

The facts

5. The claimant owns Epsom Racecourse, which hosts the Epsom Derby Festival, a two-day horseracing festival. Mr Newman is an animal rights activist. In his witness statement, he describes himself as being motivated by a profound concern for the welfare of animals and the planet more generally. Mr Newman has been associated with Animal Rising, a direct action protest group.
6. On 22 May 2023 the claimant applied for an interim injunction in anticipation of the 2023 Epsom Derby Festival. This followed disruption at the earlier Grand National, which involved members of Animal Rising, including, it appears, Mr Newman. The defendants to the application before Sir Anthony Mann were Mr Daniel Kidby and

various categories of persons unknown. The defendant was not a named defendant to the application.

7. Sir Anthony Mann made the order on 26 May 2023. The defendants to the order relevantly included:

“(2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE “RACE TRACK” ON THE DAY OF A “RACING FIXTURE”, EXCEPT AT “CROSSING POINTS” WITH “AUTHORISATION”, AS DESCRIBED BELOW

(6) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE “HORSE RACES”, AS DESCRIBED BELOW.”

8. The defendant accepts that by his conduct on 3 June 2023, he fell within the definition of “persons unknown” within sub-paragraphs (2) and (6) and thereby became a defendant to the order.
9. So far as relevant, the order provided substantively that:

"Until judgment or further order on the day of any Racing Fixture at the Epsom Racecourse (which for the avoidance of doubt includes Oaks Day on 2 June 2023 and Derby Day on 3 June 2023) the respondents must not (1) enter the Racetrack except at Authorised Crossing Points ... and (6) intentionally obstruct the Horse Races."

10. The order then set out various means by which, pursuant to CPR 6.15, 6.27 and 81.4(2), service of the order could be affected. These steps included the order being posted electronically on social media and paper copies being affixed at various points at the race course. The existence of the order was widely publicised in the press.
11. The Derby was one of the major sporting events of the weekend of 2 and 3 June 2023. It was particularly widely publicised because of the anticipated possibility of disruption and the order of the court, and because it was Frankie Dettori’s final appearance at the festival.
12. The defendant accepts that the injunction was validly served on him and that he was actually aware of the injunction. Indeed, on 2 June 2023 he gave an interview to BBC Radio Surrey in which he confirmed that, despite the injunction, individuals were planning to go on to the track with a view to trying to stop the horses running.

13. In anticipation of protests at the festival, the claimant put additional security measures in place, and Surrey police also had a significantly increased presence. On the morning of the Derby, a number of arrests were made of animal rights activists. Nineteen arrests in total are reported to have been made. Eleven people had been arrested at addresses in the early hours, and a further eight were arrested after their vehicle was stopped in Canons Lane in Burgh Heath.
14. On 3 June 2023 the defendant entered the race track at the Epsom Racecourse shortly after the start of the Derby. Specifically, at approximately 13.32.24 the defendant entered the race track. He ran along the track towards the finishing line, away from the horses, and was chased by stewards and police officers. At approximately 13.32.48 the defendant was removed from the racetrack by police officers.
15. The parties have agreed the following facts: (1) The horses were approximately 1.4 miles away from the defendant at the time he went on to the race track. (2) The horses were approximately 1.15 to 1.2 miles away from the defendant at the time he was removed from the race track. (3) The horses were approximately two minutes 21 seconds to two minutes 24 seconds away from the defendant when he entered the race track, and approximately one minute 58 seconds to two minutes two seconds away from him when he was removed from the race track. (4) In accordance with British Horseracing Authority (BHA) protocols, specific procedures were in place to stop the race in the event of a major hazard. This procedure required that orange/yellow stop race flags be deployed and waved by predetermined race course personnel on the instruction of the clerk to the course. In addition, the persons deploying the flags were required to blow a Fox 40 whistle to ensure riders were aware of their presence. Further to the above, there was live visual monitoring of the race from the steward's room and monitoring via visual technology provided by Racecourse Technical Services Limited. For the Derby 2023, the Jockey Club had in place a system of additional flag positions to that normally in place at Epsom, plus different flags to the standard orange/yellow in order to confuse potential protests. Jockeys were briefed accordingly. The defendant's encroachment was handled swiftly with the race in progress but at an early stage, and it was not necessary to implement the procedures described above. (5) The procedure above is as robust as any involving radio communications, appropriate human action as a result plus comprehension and action by riders on horses travelling at speed can be. It involves an element of risk in terms of its implementation, and the speed and timeframe of flat races exacerbates this. The earlier the clerk can make the decision the better, in that it potentially increases the number of flags that can be deployed. (6) In the event that it had proved necessary to do so, the race could have been stopped in time had the system described above operated as it should have done. (7) The claimant does not allege that any horse or jockey's welfare was in fact compromised by the defendant's actions during the running of the 2023 Betfred Derby Stakes.
16. The defendant has served a witness statement dealing with (among other things) the events of 3 June 2023. He accepts that his actions amounted to a breach of the order, and in particular paragraphs (1) and (6). He says that his actions were motivated by a profound concern for the welfare of animals and the planet more generally. He says that he did not set out to create a dangerous situation for animal or human

participants in the race. In particular, he says that his intention had been to delay the start of the race and he had not intended to enter the track once the race had started.

17. The defendant was immediately arrested, he was remanded into custody and in the event spent 36 days in custody. On 6 July 2023 he pleaded guilty to one criminal offence of causing a public nuisance. He was sentenced to a suspended custodial sentence of 18 weeks suspended for two years together with 80 hours of unpaid work and costs of £1,356.
18. On 11 August 2023 the claimant issued the present contempt application. On 19 September 2023 solicitors for the defendant wrote to the claimant's solicitors. They explained that the defendant wished to admit that he had breached the injunction and that this amounted to a contempt of court. The defendant also offered to provide a written admission that his conduct amounted to a breach of the order, to provide a written apology to the claimant, and to provide written undertakings in the following terms: (1) to comply with the injunction order of Sir Anthony Mann dated 26 May 2023; (2) not to engage in any of the following conduct (in each case where that conduct would have the effect of damaging and/or delaying and/or hindering the claimant by obstructing, impeding or interfering with the lawful activities undertaken by them): (a) entering or being present on any racetrack owned or managed by them, (b) entering or being present on any other area of any racecourse owned or managed by them without authorisation and (c) intentionally obstructing or disrupting any horse race organised or hosted by them.
19. On 4 October 2023 the defendant made his witness statement. In addition to the points already mentioned, the defendant apologised to the court and to those who were adversely affected by his actions. He accepted that he created a frightening situation for those who had to enter the track to remove him and that he caused stress to a number of others. He explained the process by which he had come to reflect on his actions. In particular, he explained that the time spent in custody had afforded him an opportunity to reflect on his actions and he now wished to express his regret for them. He also said that the current proceedings have further underlined to him the serious consequences of breaching court orders. He reiterated his willingness to be bound by the undertakings set out in the letter of 19 September 2023. He stated that he can assure the court that, having reflected seriously upon his own conduct, he will not further breach any order of the court or any undertaking given to the court.

Sanction

20. The authorities show that the court should adopt a structured approach. First, the court should assess the seriousness of the conduct by reference to the contemnor's culpability and the harm caused, intended or likely to be caused. Secondly, and in the light of the court's assessment of the seriousness of the conduct, due weight should be given to matters of mitigation such as genuine remorse, previous positive character and similar matters. There should in particular be a reduction for an early admission of a contempt, to be calculated consistently with the approach set out in

the applicable Sentencing Council guidelines. See *HM Attorney General v Crosland* [2021] UKSC 15 at [44].

21. There are special considerations where the breach is an act of civil disobedience. The relevant principles have been discussed in a number of recent Court of Appeal decisions. There is a helpful summary in *Breen v Esso Petroleum* [2022] EWCA Civ 1405 at paragraphs 6 to 11, and I shall follow the principles set out there:

“6. The correct approach was summarised in *Crosland* at [44] 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; [2019] 1 WLR 3833, paras 57 to 71. 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 in 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.”

7. This guidance has been repeated in a number of subsequent cases, in particular at [28] of the judgment of the Divisional Court in *Buse*, which also emphasised that “the purpose of imposing a sanction for contempt is to punish the breach, ensure compliance with the court orders and rehabilitate the person in contempt”.

2.2 Particular Considerations in Protestor Cases

8. In accordance with general principles, any sanction for civil contempt must be just and proportionate. It must not be excessive. But in civil contempt cases, the purposes of sanctions are rather different from those in criminal cases. Whilst they include punishment and rehabilitation, an important aspect of the harm is the breach of the court's order: see [17] of *Cuciurean*. An important objective of the sanction is to ensure future compliance with the order in question: see *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699 at [20].

9. When dealing with protestors for contempt, the courts have talked about the “moral difference” between “ordinary law-breakers” and protestors which, in many circumstances, can justify a more benign sentencing regime: see [98] of *Cuadrilla and R v Roberts* [2018] EWCA Crim 2739; [2019] 1 WLR 2577 at [34]. This is to encourage a dialogue with the defendant so that he or she appreciates that, in a democratic society, it is the duty of responsible citizens to obey the law and respect the right of others, even where the law or other people's activities are contrary to the protestor's own moral conviction: see [98] of *Cuadrilla*.

10. The specific issue of dialogue was addressed by Dame Victoria Sharp, President of the King's Bench Division, in *Heyatawin*. She said at [53]:

“53. In some contempt cases, there may be scope for the court to temper the sanction imposed because there is a realistic prospect that this will deter further law-breaking or, to put it another way, encourage contemnors to engage in the dialogue described in *Cuadrilla* with a view to mending their ways or purging their contempt. However, it is always

necessary to consider whether there is such a prospect on the facts of the case. In some cases, there will be. In some cases, not. Moreover, it is important to add, that 'there is no principle which justifies treating the conscientious motives of the protestor as a licence to flout court orders with impunity': *Attorney General v Crosland* [2021] UKSC 15, at [47]."

11. In this way, the importance of complying with court orders, no matter the sincerity of the protestor's views, still remains paramount: as the Supreme Court said in *Crosland* at [47]:

"47. The respondent was motivated by his concerns and fears relating to the consequences of global warming and his disagreement with the decision of the Supreme Court. However, this does not begin to justify his conduct. There is no principle which justifies treating the conscientious motives of a protester as a licence to flout court orders with impunity. It was, moreover, a futile gesture as the judgment would in any event have been available some 22 hours later for scrutiny and criticism by the media and the public. However, we do accept that greater clemency is normally required to be shown in cases of civil disobedience than in other cases; see *Cuadrilla Bowland Ltd v Persons Unknown* [2020] EWCA Civ 9; [2020] 4 WLR 29 and *Cuciurean v Secretary of State for Transport* [2021] EWCA Civ 357."

22. I turn to the application of these principles.
23. First, the breach of the injunction was serious and the defendant has a high degree of culpability. Breach of any court order undermines the administration of justice, the rule of law and the authority of the court. The order of the court in this case was made to protect the claimant against exactly this kind of disruption. The Derby Festival is a major sporting event attended by many thousands and watched by millions. The defendant knew of the terms of the injunction and that it prevented him from entering the racetrack. He deliberately flouted that order. His actions were planned in advance. He said publicly in the radio interview on 2 June that he intended to ignore the order and, indeed, encouraged others to take part. He was not acting under pressure or compulsion, and his actions were his own. Orders of the court must be obeyed by everyone and they are not optional.
24. Secondly, on the other hand, I find that the defendant was motivated by conscientious objectives. It is not for the court to rule on the merits of the defendant's views concerning animal welfare. The case law shows that conscientious motivation is not an excuse and that orders of the court must be complied with and are not optional. But the cases also show that a conscientious protest may serve to lessen the culpability of the defendant and the severity of the sentence.

25. Thirdly, turning to harm, the defendant says that he did not intend to cause any harm. He says that he did not set out to create a dangerous situation for animal or human participants in the race and that his intention had been to delay the start of the race, and he had not intended to enter the track once the race had started. The defendant was not cross-examined about this evidence, and I accept it. In the event, the harm caused by the defendant was comparatively limited. The claimant has agreed that it does not allege that any horse or jockey's welfare was in fact compromised by the defendant's actions during the running of the race. On the other hand, the defendant accepts that he created a frightening situation for those who had to enter the track to remove him and that he caused stress to a number of others. The parties are also agreed that the horses were some two minutes away from the respondent when he entered the track and still around two minutes away from him when he was removed from the track and that he was on the track for around 24 seconds. They also agree that measures were in place to stop the race in the event of disruption to the race track and that the race could have been stopped in time had the system I have already described been operated as it should have done.
26. Fourthly, I turn to mitigation. There is significant mitigation in the present case: first, the fact that the defendant has made an early admission of the relevant contempt. In accordance with the guidance from the Supreme Court in *Crossland*, there should be a reduction for that admission consistently with the approach set out in the applicable Sentencing Council guidelines, i.e. one third of any penalty which would otherwise be imposed. A second element of mitigation is the defendant's expression of remorse. In the present case, it appears to me that this goes beyond merely saying he is sorry. He has admitted the contempt at an early stage. He has made a guilty plea to the analogous criminal proceedings. He has apologised in his witness statement. He has sought to resolve the proceedings to the satisfaction of the claimant and has offered undertakings to the claimant and the court. There is no evidence of the defendant engaging in similar disruptive protests since 3 June 2023.
27. A further element of mitigation is the fact that the defendant has already spent 36 days in custody following his arrest, which arose from the same conduct as constitutes the relevant contempt, albeit in relation to the criminal proceedings.
28. Another mitigating factor is that the defendant has already received a custodial sentence in relation to the criminal proceedings arising from that same conduct. Counsel for the defendant accepted that criminal sentences serve different interests to sanction for contempt of court. The defendant, moreover, accepts that the court is entitled to punish the contempt, notwithstanding that there has been a separate criminal sentence. Nonetheless, the defendant submits that the sentence imposed by the criminal proceedings is relevant in mitigation of sanction. I accept the broad submission that the court should have regard to the totality of the legal sanctions imposed on the defendant for the same events and take it into account in reaching an overall sentence.
29. I also accept the submission of counsel for the defendant that this is an appropriate case for the application of the principles found in the protest cases, based on the

following factors. First, I accept the defendant's evidence that he has reflected genuinely on his conduct during the time he has already spent in custody. He has explained that that period of custody has afforded him the chance to reflect on his actions and that he has reassessed his approach to orders of the court. I also accept in this regard that the fact that the defendant has not engaged in conduct in breach of the order or any disruptive protest since the date of the contempt reflects on the genuineness of defendant's reflections upon the seriousness of the conduct. I have also had regard to the fact that the defendant's conduct, albeit disruptive, is within the scope of the protection given by Articles 10 and 11 of the ECHR.

30. Taking into account all of these various factors, I have reached the conclusion that the minimum sanction the court can proportionately impose in response to the defendant's breaches is a custodial sentence of two months. This is the shortest period of imprisonment which properly reflects the seriousness of the breach and the other factors.
31. I turn to consider whether the sentence should be suspended in light of the various factors set out above. I have decided that this is an appropriate case to suspend the sentence. The defendant has apologised and agreed to give undertakings. He has also tasted imprisonment and his evidence is that it has changed his views about the need to obey orders of the court. As to the period of suspension, it appears to me that the appropriate period is 18 months. As to the conditions for such suspension, I have heard submissions from the parties. The conditions are that the defendant shall not enter on or be present on any race track owned or managed by the claimant, and shall not intentionally obstruct or disrupt any horse race organised or hosted by the claimant. I have considered in the light of submissions whether there should be other conditions, including preventing the defendant from going on to any other area of a race course owned or managed by the claimant, but I do not consider that the imposition of those conditions is necessary or proportionate. The conditions will need to be drafted so that the terms "race track" and "horse race" are appropriately defined. They were defined in the order of Sir Anthony Mann, and counsel for the parties confirmed that they will be able to agree definitions which will be sufficiently clear and certain.
32. The defendant is therefore sentenced to two months imprisonment, suspended for 18 months on the above conditions.
33. The defendant has the right to appeal to the Court of Appeal, without permission, within 21 days.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Unit 1 Blenheim Court, Beaufort Business Park, Bristol BS32 4NE

Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge