

Neutral Citation Number: [2022] EWHC 2540 (KB)

Case No: QB-2022-001236

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

Sitting at:
Birmingham Crown Court
1 Newton Street
Birmingham
B4 7NR

Friday, 23 September 2022

BEFORE:

HER HONOUR JUDGE EMMA KELLY

BETWEEN:

NORTH WARWICKSHIRE BOROUGH COUNCIL

Claimant

- and -

(1) KATE BRAMFITT
(2) JANINE EAGLING
(3) JULIA MERCER
(4) THERESA NORTON
(5) JADE CALLAND

Defendants

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

APPEARANCES

MR MANNING and MS CROCOMBE (instructed by the Borough Legal Department)
appeared on behalf of the Claimant

MS OBORNE appeared on behalf of the First Defendant

THE SECOND DEFENDANT appeared in Person

THE THIRD DEFENDANT appeared in Person

THE FOURTH DEFENDANT appeared in Person

THE FIFTH DEFENDANT appeared in Person

1. JUDGE KELLY: Kate Bramfitt, Janine Eagling, Julia Mercer, Theresa Norton and Jade Calland you each appear before the court having admitted a breach of the interim injunction granted by Mr Justice Sweeting on 14 April, as amended by his order dated 6 May.
2. Ms Bramfitt is represented by Ms O'Born of counsel. The remaining four defendants appear as in person. At the initial appearance last week and again at the start of today's hearing, all the defendants were informed of their entitlement to seek legal advice and representation. Save for Ms Bramfitt, you have all indicated that you want to proceed without legal representation or advice.
3. On 15 September 2022 the claimant provided you with written particulars of the alleged contempt said to have occurred on 14 September 2022. You have each made admissions in accordance with the allegations in that document. These are civil not criminal proceedings. However, because they are contempt proceedings, the claimant nonetheless has to prove its case to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions each of you have made, and having read the evidence served by the claimant, I am satisfied that each of you is in breach of the injunction in the way the claimant describes.

Background

4. On 14 April 2022, Sweeting J granted a without notice interim injunction against various named defendants and persons unknown. You were not named defendants. Persons unknown were defined as those who were:

“... organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels, in the locality of the site known as Kingsbury oil terminal, Tamworth B78 2HA.”

A power of arrest was attached to the injunction.

5. The terms of the injunction were varied at an on-notice the hearing on 5 May 2022 and drawn into an order dated 6 May 2022. The relevant paragraphs of the order of 6 May 2022 are as follows:

“(1) The defendants shall not (whether by themselves or by instructing, encouraging or allowing another person):

(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels at Kingsbury Oil Terminal (“the Terminal”),

taking place within the areas of the boundaries which are edged red on the map attached to this order at schedule 1.

(b) In connection with any such protest anywhere in the locality of the terminal perform any of the following acts:"

6. There then follows 11 sub-paragraphs defining prohibited activities. Those relevant to the matter before the court today are:

“(iii) obstructing of any entrance to the terminal; ...

(xi) instructing, assisting or encouraging any other person to do any act prohibited by paragraphs (b)(i) – (x) of this order.”

7. The map referred to in paragraph 1(a) of the injunction is prepared at a scale of 1:5000 and shows a red line largely following the perimeter of the oil terminal. A private access road off the public highway falls within the red line.
8. The injunction was ordered to continue until the hearing of the claim unless varied or discharged by further order of the court. The final hearing of the claim has not yet occurred, and the order of 6 May 2022 has not to date been further varied or discharged.
9. By paragraph 5 of the injunction, Sweeting J permitted the claimant to serve the order and power of arrest by alternative means specified in schedule 2. The alternative service included the placing of the order in prominent locations along the boundary and outside the terminal, the junctions to the road leading into the zone and on various social media platforms that the claimant utilised.
10. The claimant relies on various certificates of service within the papers. I am satisfied on the evidence before me that the claimant has proved the necessary service by alternative means. Whilst it appears that the claimant did not undertake all the required steps of alternative service promptly after the hearing on 5 May, the claimant did remedy the service position by competing steps between 23 August and 2 September 2022. The requisite service had therefore been completed in advance of your activity on 14 September 2022. The claimant posted details of the amended order on its website with links to social media on 10 May 2022. On 23 August 2022 the claimant posted details on its Twitter and Facebook accounts. On 24 August 2022, 26 August 2022 and 2 September the claimant completed steps to ensure that copies of the order and power of arrest were displayed in multiple locations at, around and in the vicinity of the terminal.
11. On 14 September 2022 you were five of just over 50 individuals who gathered at Kingsbury Oil Terminal from approximately 11.30am to protest against the production and use of fossil fuels. You positioned yourselves on a private access road within the red boundary demarcated on the map attached to the injunction. It is accepted by the claimant that it was a purely peaceful protest but it was nonetheless one which obstructed the road. The sheer volume of protestors involved meant that when you sat down across

the road you blocked vehicular access into and out of the terminal. You were accompanied by various "Just Stop Oil" banners, with many of you wearing hi-vis jackets marked with the Just Stop Oil logo.

12. Initially you allowed some private vehicles but not oil tankers to enter and exit the terminal but after a period of time you stopped all vehicular traffic. There is evidence that one worker asked one of your number for permission to leave in their vehicle to attend an urgent medical appointment at 2.30 pm but they were not allowed vehicular egress. The police attended and asked you to move, warning that you were in breach of a High Court injunction and that you would be arrested if you chose not to comply. You refused to move and from 3.50 pm onwards the police began the very considerable task of arresting all 51 of you.

The approach to determining the appropriate penalty

13. You each accept that your conduct puts you in breach of paragraph 1(a), 1(b)(iii) and 1(b)(xi) of the injunction. The claimant has prepared a sentencing note to assist the court in determining the appropriate penalty. Ms Osborne, on behalf of Ms Bramfitt, has handed in a copy of *National Highways Limited v Buse & others* [2021] EWHC 3404 (QB). I largely agree with the approaches adopted by both counsel in their submissions as to the correct approach to the determination of the sanction for contempt.

14. In determining the appropriate penalty for a civil contempt of court, I bear in mind the guidance given by the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699. There are three objectives to consider when imposing a penalty. Pitchford LJ at para 20 held:

"the first is punishment for breach of an order of the court; the second is to secure future compliance with the court's order if possible; the third is rehabilitation, which is a natural companion to the second objective."

15. The Sentencing Council produce Definitive Guidelines to assist judges sentencing in the Criminal Courts. They do not produce any similar guidance for use by the civil courts when dealing with contempt of court. However, the Court of Appeal in a number of cases, including *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 but also in *National Highways Ltd v Buse* and *Cuadrilla Bowland Ltd & Ors v Persons Unknown* [2020] EWCA Civ 9, endorses reference by civil courts to the Sentencing Council Guidelines when dealing with contempt. The guidelines can only be used by analogy. I bear in mind that civil courts have different sentencing powers to those available in the criminal courts. A breach of a criminal behaviour order in the criminal courts gives rise to a maximum sentencing power of five years' imprisonment. The maximum penalty for a civil contempt of court is one of two years' imprisonment on any one occasion. The criminal courts also have a variety of community orders available to it which this court does not. The analogy is not therefore a complete one and the suggested criminal sentences will need to be scaled down to some extent.

16. The claimant refers in its sentencing note to the Civil Justice Council report of July 2020 and its draft guidelines for dealing with contempt of court arising from breaches of injunctions granted under the Anti-Social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, reflect the lower range of penalties in the civil courts. The guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration. I therefore adopt the criminal guideline as the best analogy.
17. Counsel for the claimant has properly drawn the court's attention to *Cuadrilla Bowland Ltd v Persons Unknown* when Leggatt LJ considered the approach to sentencing protestors:

“[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

[96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons...”
18. The court accepts that your actions on 14 September 2022 were undertaken for conscientious reasons. At paragraph 98 of *Cuadrilla* Leggatt LJ discussed the reasons for showing greater clemency in response to acts of civil disobedience and at concluded at paragraph 99:

"These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented."
19. Counsel for Ms Bramfitt referred to the judgment of Dingemans LJ in *National Highways Ltd v Buse*. The approach to determining the sanction for contempt of court is considered at paragraphs 27 to 31. The approach is consistent with the aforementioned guidance in *Cuadrilla Bowland Ltd & Ors* and is one I adopt in this case.
20. Turning to the Sentencing Council Guideline for breach of a criminal behaviour order. In my judgment, this case falls within culpability category B, that is a deliberate breach falling between the highest and lowest categories of culpability. Each of you made a

deliberate decision to go to Kingsbury Oil Terminal and obstruct the access road, knowing such actions were prohibited by the injunction.

21. When determining the category of harm, the guideline requires consideration of the “harm that has been caused or was at risk of being caused.” The claimant submits that the harm falls into category two, falling between the highest and lowest categories. In determining the level of harm, the court has to look at the facts and circumstances of this particular protest. Your actions prevented the normal operation of the oil terminal for a minimum period of about 4.5 hours from 11.30am until the first arrests started at 3.50pm. The actual period of disruption and inconvenience was longer than that because of the period of time it took to affect the arrest of 51 protesters. During that period, whilst you stopped oil tankers accessing and egressing the terminal and for part of the period you stopped workers entering and exiting in their own vehicles. It is accepted that you continued to allow individuals to access and egress on foot. The court has not been provided with any evidence from the operators of the terminal as to the impact on their business. Therefore, other than the inconvenience that is self-evident from the blocking of the passage of oil tankers, I do not take into account any specific business impact. There is however evidence that one worker was stopped from using their vehicle to leave the site to attend a medical appointment.
22. The harm also extends to the consequences of the closure of part of the public highway whilst the protests and arrests were ongoing. That will have impacted on ordinary members of the public, including in particular those living in the vicinity of the terminal, who were trying to go about their daily lives.
23. Your actions also caused very significant harm to the police resources in Warwickshire and beyond at a time when resources were already very stretched as a result of the unprecedented impact of the late Queen's death and the consequent period of national mourning necessitating the redeployment of Warwickshire Police officers to London. The scale of your protest meant that multiple officers from across Warwickshire had to be diverted away from their normal policing duties to attend, including firearms, traffic and dog unit specialist officers. They attended not because there was any suggestion your protest was other than peaceful but due to the sheer number of protestors that needed to be arrested and processed. The diversion of police resources clearly created a risk of very significant harm to other parts of Warwickshire that were left under resourced. Warwickshire Police had call for mutual aid from West Midlands Police and West Mercia Police, further diverting police resources from those areas. There is also evidence before the court that officers had to work long past their shifts ended to process those arrested. Inevitably that will have impacted on their welfare and resulted in the police force incurring overtime costs.
24. In my judgment, the impact on policing resources arising from the timing and scale of this protest results in the harm in this case falling above category 2, albeit not squarely within category 1. Category 1 is a breach that causes very serious harm or distress or a breach that demonstrates a continuing risk of serious criminal and/or antisocial behaviour. I therefore propose to proceed on the basis that the case falls between category 1 and 2.

25. A category 1 harm, culpability B matter in the criminal courts would have a starting point sentence of 1 years' imprisonment with a range of high level community order to two years' custody. A category 2 harm, culpability B case would have a starting point of 12 weeks' custody with a range from a medium level community order to 1 years' custody. The penalty for contempt of court has to reflect the lower maximum sentence of the civil court.
26. I have to consider any aggravating and mitigating factors in each of your cases. As to previous criminal convictions or cautions:
- a. Ms Mercer, you have one relevant conviction for public nuisance from 29 April 2022 when you were sentenced to twelve weeks' imprisonment, suspended for twelve months. The operational period of the suspended sentence was therefore live when the contempt occurred on 14 September 2022.
 - b. Ms Eagling, you have two relevant previous convictions. One dated 17 May 2022 for obstructing the highway, for which she was fined. A second dated 19 May 2022, for a public assembly offence for which there was a six-month conditional discharge. The operation period of the conditional discharge was therefore live when events occurred on 14 September took place within the period of conditional discharge.
 - c. In both Ms Mercer's and Ms Eagling's cases, the contempt of court is aggravated by their relevant previous convictions. The remaining three defendants have no previous convictions and/or cautions and that is taken into account in mitigation.
27. I have heard from all five of the defendants in person. Although Ms Bramfitt also has the benefit of counsel, she too wished to address the court in mitigation. This is a first breach of the injunction for each of you. Each of you has spoken passionately about your reasons for protesting. I accept that each of you all acted on grounds of social conscience, rather than wishing to deliberately cause disruption to the local community in Warwickshire and beyond. I also accept that, save for your protest activity, each of you are generally law-abiding citizens who make very valid contributions to society. I have taken into account the character references supplied by Ms Norton and Ms Eagling.
28. Taking into account those aggravating features as far as Ms Mercer and Ms Eagling are concerned, and the mitigating features in respect of you all, the contempt of court arising from your involvement in this large -scale protest on 14 September 2022 is so serious that only a custodial sentence is appropriate.
29. Before I turn to the question of credit for your admission and effect of time spent on remand, the sentence starting point as far as Ms Eagling and Ms Mercer is concerned is one of 63 days' imprisonment. As far as Ms Bramfitt, Ms Norton and Ms Calland are concerned, the starting point is one of 56 days' imprisonment. Each of you admitted the contempt at the earliest reasonable opportunity. You are entitled to a one-third reduction

under the applicable Sentencing Council Guideline. That reduces the 63-day terms to 42 days and the 56-day terms to 37 days, rounding down in your favour.

30. You have all spent a period of nine days on remand in custody. One day in custody following your arrest on 14 September and a further eight days from 15 September through to today's hearing. It is unfortunate you have spent time in custody, but you are each the author of your own misfortune in that regard. The claimant did not oppose bail in the case of any defendant who was before the court on a first breach but, at the first hearing, you each informed the court that, if bailed, you would not abide by the terms of the injunction and would not voluntarily return to court. Unlike in the criminal court, the prison service cannot adjust the term served to reflect time spent on remand. Nine days on remand is the equivalent of an eighteen-day sentence. The term in respect of Ms Eagling and Ms Mercer is therefore reduced from 42 days to 24 days' imprisonment. In Ms Bramfitt, Ms Norton and Ms Calland's cases, the terms are reduced from 37 days to 19 days' imprisonment.
31. I bear in mind the guidance in *Cuadrilla Bowland Ltd & Ors*, and in *National Highways Ltd* as to whether a term of imprisonment should be suspended. In all of your cases, this is the first breach of the injunction. In those circumstances, I have little difficulty in concluding that it is appropriate to suspend each of those sentences. In each of your cases, terms of imprisonment will be suspended on condition of compliance for a period of 2 years from today with the terms of any interim or final injunction order made in this claim (of which the current claim number QB-2022-001236) in relation to protest activity at Kingsbury Oil Terminal. For the avoidance of doubt, the current order in force is the interim order of Mr Justice Sweeting dated 6 May 2022 but if that order is subsequently varied, it would be the form of any varied order with which you must comply. I remind you of the words of Leggatt LJ in *Cuadrilla Bowland Ltd & Ors*. If you do not comply with the condition of suspension, you must expect that an order for imprisonment will be implemented.
32. As Mr Manning for the claimant made clear when he opened the case, the injunction does not prevent you from conducting all protests, even immediately outside the terminal. You have a copy of the injunction order and plan within the evidence. Mr Manning highlighted an area immediately outside the entrance to the terminal which is not within the red boundary. Subject to your actions not otherwise falling foul of paragraph 1(b) of the injunction order, individuals can protest in that area.
33. The claimant has applied for a contribution towards its costs from each defendant and has served a schedule of costs. The contribution sought from each defendant is £412.46 being the claimant's total costs divided between all the defendants. I have seen similar schedules of costs in other like cases earlier this week. The sum sought by the claimant is proportionate. The general rule in civil litigation is that the successful party is entitled to its costs from the unsuccessful party, but the court may make a different order. The claimant has succeeded in establishing the contempt and it entitled to its costs as a matter of principle.

34. Each defendant has told the court something of their financial circumstances and the orders for payment will reflect their means. In your case, Ms Mercer, you have modest savings and will pay the £412.46 in full by 31 October 2022. The remaining defendants have lesser means and will pay by instalments. As far as Ms Eagling and Ms Norton are concerned, payment of the £412.46 each shall be by instalments of £25 per month, first payment by 23 October 2022 and thereafter by the 23rd of each month. As far as Ms Bramfitt and Ms Calland are concerned, payment of the £412.46 will be payable by lower instalments of £10 per month as you are each in receipt of state benefits. Again, the first payment by 23 October 2022, and thereafter by the 23rd of each month.
35. You have a right to appeal the 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 transcript of this judgment shall be obtained at public expense on an expedited basis and published on the Judiciary website.
36. Subject to you not having any outstanding criminal or civil matters that require ongoing detention in custody, once the paperwork has been drawn up and the custodians have processed the same, you will be released from this court building today.

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

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