

Neutral Citation Number: [2023] EWHC 2358 (KB)

Case No: KB-2022-BHM-000221

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

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

Date: Wednesday 30th August 2023
Start Time: 14.12 Finish Time: 14.37

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

MOHAMMAD SHABBIR

Defendant

MS CAFFERKEY for the Claimant
MR OWEN for the Defendant

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HER HONOUR JUDGE EMMA KELLY:

1. Mohammad Shabbir appears before the court in respect of an admitted contempt arising from his breach on 5th February 2023 of an interim injunction granted by the Honourable Mrs Justice Hill by order dated 22nd December 2022. It falls to the court to determine the appropriate penalty for the contempt. The claimant is represented by counsel, as is Mr Shabbir.
2. These are contempt proceedings, and therefore the burden of proof rests on the claimant to establish the contempt to criminal standard of proof, that is, beyond reasonable doubt.

Background

3. By Order dated 22nd December 2022, the Honourable Mrs Justice Hill granted an interim injunction on an informal notice only basis aimed at prohibiting street cruising on the streets of Birmingham. The application followed concern by the claimant local authority that anti-social and often unlawful behaviour in the form of car cruising or street cruising was occurring within its administrative area following the expiry of previous similar injunctions.
4. The original defendants to the claim included seven named defendants and two further defendants who were defined categories of persons unknown. The 8th defendant was defined as “Persons Unknown who participate or intend to participate in street cruises in Birmingham, as car drivers, motorcycle riders, passengers and/or spectators”. The 9th defendant was defined as: “Persons unknown who, or who intend to, organise, promote or publicise street cruises in Birmingham”.
5. By paragraph 1 of the interim injunction: “The 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 the order at schedule 1.”
6. By paragraph 2 of the order: “The terms ‘street cruise’ and ‘participating in a street cruise’ have the meanings set out in schedule 2 to this order.”
7. Paragraph 1 of schedule 2 defines “street cruise” in the following way: “‘Street cruise’ means a congregation of the drivers of two or more motor vehicles, (including motorcycles) 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 person who is a driver, rider or passenger in or on a motor vehicle performs any of the activities set out at paragraph 2 below, so as by any 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.”
8. Paragraph 2 of schedule 2 states: “The activities referred to at 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;
 - (v) obstructing the highway or any private property.”
9. Paragraph 3 of schedule 2 defines ‘participating in a street cruise’ as follows: “A person participates in a street cruise if he is the driver or rider of, or passenger in or on, a motor vehicle, if he is present and performs or encourages any other person to perform any activity to which paragraphs 1 to 2 above apply, and the term ‘participating in a street cruise’ shall be interpreted accordingly.”
10. By paragraph 3 of the injunction a power of arrest was attached to paragraph 1 of the order. The order and the power of arrest came into force at 00.01 on 24th December 2022 and were ordered to remain in force until the hearing of the claim unless varied or discharged by further order of the court. The interim injunction was subsequently varied by order of Ritchie J on 19 May 2023 but that postdates the events that are material to the contempt before the court today.
11. By paragraph 9 of the interim injunction, personal service of the order and the attached power of arrest were dispensed with in relation to the 8th and 9th defendants. Various detailed provisions provided for the manner in which alternative service was to be effected. Those provisions are contained in schedule 3 to the injunction.
12. The claimant relies on the affidavit of Michelle Lowbridge, dated 13th February 2023, to evidence service. Ms Lowbridge exhibits to her affidavit her earlier witness statement, dated 30th January 2023, addressing the steps the claimant took to effect service of the order and the power of arrest. The question of service was considered by Freedman J at a hearing on 5th February 2023. In a judgment handed down on 13th February 2023, he made a finding at paragraph 58 that alternative service of the injunction and power of arrest had taken place. Moreover, Mr Shabbir accepts that service has occurred. Although not necessary for establishing good service, he also accepts he had personal knowledge of the injunction as a result of seeing signage that was in situ across the City. I am therefore satisfied to the criminal standard that both the injunction and power of arrest have been served in accordance with the provisions of alternative service.

Events of 5th February 2023

13. On 5th February 2023, Mr Shabbir was arrested pursuant to the power of arrest at around 10.10pm for alleged breach of the injunction. The basis of the arrest was that

Mr Shabbir fell within the category of persons unknown defined as the 8th defendant. He was produced before Freedman J on 6th February and released from custody. Directions were given for the claimant to pursue any allegation of contempt by an N600 paper application. The claimant thereafter issued the index application that is before the court today.

14. The allegation upon which the claimant relies has been reduced to writing and is described in the following way:

“On 5th February 2023 at about 22.10 the defendant breached the terms of an interim injunction term 1 by participating in a street cruise within the claimant’s local government area by congregating with two or more drivers on the public highway A45 Small Heath Highway and causing a danger to other road users by driving his Toyota Yaris, registration WX51 DTY, at speeds in excess of 60 miles per hour in a 40 mile per hour area, overtaking and undertaking vehicles, narrowly missing other vehicles.”

15. There is no issue as to service of the N600 application and supporting evidence. The certificates of service evidence personal service on 7th and 14th February 2023. Further, Mr Shabbir accepts he was so served.
16. Mr Shabbir has made the following admissions. He admits that he was present and participated in the street cruise on 5th February 2023 by driving his Toyota Yaris, registration number WX51 DJY. He admits that, in advance of his arrival at the Apple Green petrol station forecourt on the A45 Small Heath highway at around 10.10pm, he had followed the general route upon which members of the public had reported seeing car cruising activity. He does not however admit he was driving with other car cruisers earlier in the evening, including when “boy racers” were sighted at 21.47 pm on the A47.
17. Mr Shabbir does however admit that he congregated on the forecourt of the Apple Green service station with other vehicles involved in a car cruise. Those actions blocked the use of the service station by the sheer number of vehicles that parked there. The CCTV footage shows Mr Shabbir in his vehicle on the forecourt with his headlights on. He admits thereafter driving away from the forecourt at excessive speed, along with other vehicles. His admission is based on what is shown on the police body-worn camera footage. That footage shows Mr Shabbir’s vehicle exit the forecourt with other vehicles and then proceed into the outside lane of the two lane urban dual carriageway. He accelerates in the outside lane with a police car following him. He thereafter moves into the nearside lane and undertakes two vehicles. The speed limit on that stretch of highway is 40 miles per hour. The police officers report driving at 70 miles an hour to keep pace with Mr Shabbir and Mr Shabbir admits driving in excess of 60 miles an hour. After undertaking, Mr Shabbir thereafter accepts cutting back into the outside lane, causing the car in the outside lane to brake. The police follow Mr Shabbir’s vehicle, illuminating their blue lights, and when the defendant comes up behind another vehicle he stops for the police. The entire period of driving from the leaving of the forecourt to him stopping for the police lasts some 23 seconds.
18. Taking into account the admissions made, and having read the claimant’s evidence and viewed CCTV footage from the petrol station and the body-worn camera footage

from the police officers, I am satisfied that Mr Shabbir is in breach of the terms of the injunction by his participation in a car cruise within the relevant geographical area, as pleaded in the N600 application notice. I therefore proceed to sentence on that basis. For the avoidance of doubt, I do not sentence on the basis that Mr Shabbir was with car cruisers earlier than his arrival at the Apple Green petrol station, albeit he followed the general route of activity earlier in the evening.

Approach to sentencing

19. The objectives when imposing penalties for civil contempt 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 Anti-social 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 of priority: (1) ensuring future compliance with the order; (2) punishment; (3) rehabilitation.
20. The approach to sentencing a civil contempt was considered in *Breen v Esso Petroleum Co Ltd* [2022] EWCA Civ 1405. At paragraph 2.1 of the judgment the Court of Appeal endorsed the approach to assessing sanctions in contempt cases summarised in *Attorney General v Crosland* [2021] UK SC 15 at paragraph 44. The Supreme Court in *Crosland* gave the following guidance.

“44. General guidance as to the approach to penalty is provided in the Court of Appeal decision *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392... 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 affect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.”
21. The Sentencing Council does not produce guidelines for breach of a civil injunction. Thus, the approach to sentencing for contempt can only be by analogy to the concepts of culpability and harm. In *Lovett v Wigan* the Court of Appeal endorsed the proposed sentencing guidance arising from Annex 1 of the Civil Justice Council's July 2020 report “Anti-social Behaviour in the Civil Courts”. However, that guidance is limited to cases concerning breaches under the 2014 Act, which this case is not. Thus, whilst concepts of culpability and harm remain appropriate, I have to be careful not to place reliance on the Civil Justice Council matrix endorsed in the case of *Lovett*. Likewise, criminal guidelines such as for breach of a Criminal Behaviour Order give limited assistance, given the dissimilar nature of civil contempt and the different sentencing powers of the criminal courts.
22. Turning to the question of culpability. In my judgment, Mr Shabbir's actions on 5th February 2023 fall to be assessed as medium culpability. His actions in joining the street cruise, in pulling onto the petrol station forecourt, gathering with multiple other vehicles, driving off at the same time as other vehicles and thereafter driving at excessive speeds and performing a reckless undertaking manoeuvre were clearly deliberate. To the extent that the claimant sought to persuade the court that Mr Shabbir's actions fell within the highest level of culpability, I reject that submission. There is no evidence before the court that Mr Shabbir was engaged in any planning or other organisation of the car cruise, nor that he had participated in it for anything other than a very modest period of time. I therefore proceed on the basis that the culpability is to be assessed in any notional middle bracket.
23. Turning to the question of harm. In assessing the level of harm, the court is entitled to take into account the level of harm that was actually caused, but also that intended, or that which was at risk of being caused by the breach. The driving at speeds of 60 miles per hour in a 40 mile per hour limit alongside others in a car cruise in an urban area used by other innocent road users, gives rise to an obvious risk of serious harm to other road users and members of the public. Although the claimant opened the case on the basis that the driving was dangerous, it is telling that the statement of PC Styler described the driving as “careless”. Having viewed the video footage, I agree that the driving is better described as “careless” rather than “dangerous”. The manner of driving was not such as to render the level of harm in the very highest category. One can easily foresee cases in which drivers are performing stunts with pedestrians in close proximity, the sort of cases as to which undoubtedly the highest level of harm would be applicable. I therefore proceed on the basis the category of harm also falls within the middle of the range of any notional categories.
24. The court has to consider whether there are any further aggravating or mitigating circumstances. There are no additional aggravating factors in this case. There is, however, personal mitigation the court has to take into account. Firstly, Mr Shabbir is of positive good character with no criminal convictions or cautions or any other evidence before the court that he has appeared before the Civil Courts in relation to

breaches of other injunctions. This is, therefore, his first breach. Secondly, the breach dates now to February 2023, nearly seven months ago. It has taken some time for this matter to come to hearing due to difficulties in resolving Mr Shabbir's legal aid. The delay has however given Mr Shabbir the opportunity to demonstrate that he has not further breached the terms of the injunction.

25. Furthermore, the court has been told that Mr Shabbir is in fulltime employment having graduated from Birmingham City University last year with a Master's degree. He is working in a cyber security role on a one year fixed term graduate contract arranged by the University. The contractual term of that employment will cease in December of this year, whereupon he will need to find alternative work. His counsel understandably expresses concern on Mr Shabbir's behalf as to the effect that any custodial sentence would undoubtedly have on his employment prospects, including the need to disclose any suspended sentence, given the nature of the work he undertakes. In short, Mr Shabbir is of good character, has a stable lifestyle, is living with his parents and is in fulltime employment.
26. I have considered whether deferred consideration or a fine would be a sufficient penalty, but have concluded it is not. Breaching a High Court injunction by joining a street cruise as a driver and thereby driving on public roads in a busy urban area at speed is so serious that only a custodial penalty will suffice. The provisional sentence, before consideration of credit for the admission and the question of suspension, is one of five weeks or 35 days' imprisonment. I have taken into account the fact that Mr Shabbir has already spent one day in custody when arrested, which for a man of good character was no doubt a salutary experience.
27. Mr Shabbir is entitled to credit for his admission; the admission was made on the day of trial such that the claimant's witnesses, including three serving police officers, were required to be present at court, whether in person or remotely, to give evidence. It is submitted on behalf of Mr Shabbir that counsel was only in a position to give Mr Shabbir advice today. The papers in this case were served as long ago as February 2023. Mr Shabbir was aware of his own actions that evening. I therefore do not accept that the admission has been made in a timely manner. The maximum credit it is appropriate for the court to give in this regard is 10%. Rounding down in favour of Mr Shabbir reduces the term of 35 days to one of 31 days' imprisonment.
28. The court has to consider whether it is appropriate to suspend the sentence. The claimant accepted in its submissions that any custodial sentence should be suspended. Given that there is a realistic prospect of rehabilitation, as reflected by Mr Shabbir's stable employment and the lack of any repetition of behaviour over a period of nearly seven months, and the desirability of ensuring Mr Shabbir can continue to remain in employment, I am persuaded that it is appropriate to suspend the sentence. The sentence of 31 days' imprisonment 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 22nd December 2022, as amended by order of Ritchie J dated 19th May 2023, or any subsequent amended form of injunction made in this case. For the avoidance of doubt, that means that, should the order of Hill J, as amended by the order of Ritchie J, be further amended in the future, it will be the terms of that amended order with which Mr Shabbir must comply.

29. Mr Shabbir has a right to appeal this order of committal. Any appeal must be made to the Court of Appeal (Civil Division) and must be filed within 21 days of today.
30. The claimant applies for the costs of the contempt application. The court has a discretion as to costs but the general rule under CPR 44.2(2) is that an 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 succeeded in establishing the contempt. Realistically, the principle as to costs is conceded on behalf of Mr Shabbir. Mr Shabbir will therefore pay the claimant's costs of the contempt application to be subject of a detailed assessment if not agreed. Following clarification by the Court of Appeal in the *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 such as Mr Shabbir who are in receipt of legal aid for contempt proceedings. There is therefore no legal aid costs protection upon which Mr Shabbir can rely.
31. I direct that a transcript of this judgment be obtained at public expense on an expedited basis. The judgment will thereafter be published on the judiciary website.
32. The court makes it absolutely clear to Mr Shabbir that it does not expect to see him back before these courts in breach of the injunction. Should he find himself in that position, and a further contempt is proved, he stands a very real risk, indeed probability, that the suspended sentence will be activated in addition to any sentence for a subsequent breach.
33. In making the penalty in the terms that the court has, it intends to send a very clear message to anyone who is considering engaging in street cruising within the City of Birmingham. The court takes the breach of this High Court injunction very seriously indeed and those that breach it can expect custodial sentences.
