

[2023] EWHC 2876 (KB)

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 ISA IQBAL** (Defendant)

**MISS NEWMAN appeared on behalf of the First Claimant  
THE SECOND, THIRD AND FOURTH CLAIMANTS did not attend and were not  
represented  
MISS OLIVER appeared on behalf of the Defendant**

**APPROVED JUDGMENT  
1<sup>st</sup> NOVEMBER 2023**

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JUDGE EMMA KELLY:

1. Mr Iqbal appears before the court in respect of an admitted contempt of court arising from a breach on 28 May 2023 of an interim injunction granted by the Honourable Mrs Justice Hill by order of 22 December 2022, as amended by the order of the Honourable Mr Justice Ritchie dated 19 May 2023.
2. This judgment deals with the appropriate penalty for Mr Iqbal's contempt of court. The first claimant, as lead claimant in the action, has been represented at today's hearing by Miss Newman of counsel. Mr Iqbal has been represented by Miss Oliver of counsel.
3. The court reminds itself that these are contempt proceedings and therefore the burden rests on the first claimant to establish the allegation of contempt to the criminal standard, that is beyond reasonable doubt. The contempt proceedings themselves nonetheless remain civil proceedings.

### **Background**

4. The four claimant local authorities issued an application for an interim injunction aimed at prohibiting street or car cruising on the streets of their respective administrative areas. The four geographical areas are collectively referred to as the Black Country for convenience.
5. The application for injunctive relief followed concern by the claimants that anti-social and other unlawful behaviour in the form of car cruising or street cruising was occurring within their administrative areas following the expiry of previous similar injunctions.
6. The initial application for interim relief was heard by Hill J on 22 December 2022. She granted an interim order in favour of the claimants, on informal notice only, prohibiting street cruising on the streets of the Black Country.
7. The interim injunction was reconsidered by Ritchie J on 19 May 2023. It was amended on that date in a number of material respects.
8. Firstly, a fourth defendant was added to the proceedings defined as:

*“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.”*

It is that definition of persons unknown defendant that Mr Iqbal is alleged to fall within.

9. Secondly, Ritchie J amended paragraph 1 of the interim injunction such that it read as follows:

“It is forbidden for any of the fourth defendants being a driver, rider or passenger in or on a motor vehicle to participate between the hours of 3 pm and 7 am in a gathering of two or more persons within the Black Country area as shown on Plan A attached, at which some of those present engage in motor racing or motor stunts or other dangerous or obstructive driving.”

10. The order defines “stunts” as “driving manoeuvres often undertaken at such gatherings including but not limited to” four particularised type of stunt. Of relevance to this application is the following defined stunt: “‘Drifting’ Turning by placing the vehicle in a skid so that most sideways motion is due to the skid, not any significant steering input.” A power of arrest was attached to paragraph 1 of the injunction.

11. The interim order, as amended, was ordered to remain in force until the final hearing of the claim unless varied or discharged by further order. The claim has not yet been heard. Other than by the adding of further named defendants, the amended interim injunction of Ritchie J, has not been further amended to any substantial effect.

### **Service**

12. The order of Ritchie J of 19 May included various case management directions. By paragraph 9 of the case management order Ritchie J dispensed with the need for personal service of the amended interim injunction and powers of arrest on the persons unknown defendants.

13. Paragraph 11 of the same order set out steps the claimant had to undertake to effect alternative service of the order and power of arrest. The affidavit of Paul Brown of the first claimant, dated 29 June 2023, sets out steps that the claimants took to effect alternative service. The question of service of the amended interim injunction and power of arrest has been considered by this court in the context of other contempt proceedings against other persons unknown defendants and determined in favour of the claimants. Paragraph 7 of my order of 4 October 2023 made a declaration as to the validity of service of the interim injunction of Ritchie J and power of arrest. The same considerations apply in this case and for the same reasons the court is satisfied that Mr Iqbal has been served with the interim order and power of arrest. Indeed, Mr Iqbal takes no issue with service.

### **Events of 28 May 2023**

14. Mr Iqbal was stopped by police on the Black Country route at around 9.30 pm on 28 May 2023. He was arrested pursuant to the power of arrest attached to the interim injunction, produced before the court from custody and released. The contempt allegation thereafter proceeded by way of paper contempt application. The N600 application is dated 3 August 2023. The allegation is drafted in section 12 of that document in the following terms:

“On Sunday 28 May 2023 at approximately 21.30 the defendant was the driver of a BMW 5 Series motor car, with a 55 registration plate. On the Black Country route at or close to the junction with Anchor Lane (within the City of Wolverhampton Council area) the defendant carried out a full drift around the roundabout at the Anchor Lane junction. Thereafter, the defendant drove away at high speed until signalled to stop by police officers.”

15. Mr Iqbal has today made an admission as to breach of the injunction. It has been partially reduced to writing and further clarified through his counsel. His admission is not to the full facts of the allegation. His written admission reads as follows:

“I admit I drifted momentarily on Sunday 28 May 2023. I do not accept that I drove away at high speed. I stopped as soon as I saw the police vehicle. I admit my actions were a breach of the injunction.”

16. The court sought further clarification through Mr Iqbal’s counsel as to precisely what it was he was admitting. It has been established through his counsel that Mr Iqbal admits being the driver of a motor vehicle in the relevant geographical area covered by the injunction at the times covered by the injunction, and that he was present in a gathering of two or more persons at which he engaged in a motor stunt. He admits performing a drift manoeuvre. His description of the drift is that it was a momentary action only.

17. The court had the opportunity of viewing the police video evidence and has considered a map of the locus. Mr Iqbal entered a roundabout on the Black Country route having been driving along that route. Police officers were positioned in one of the other entry points onto the roundabout, opposite the Anchor Lane junction. One of the police officers had his body worn camera recording events. The video footage shows Mr Iqbal’s vehicle already established on the island, having entered using the junction before that in which the police vehicle was positioned. Mr Iqbal’s vehicle then drives around the island, which is a substantial traffic island, for nearly 360 degrees before exiting in the opposite direction from which he came, back along the Black Country route.

18. It is necessary to give some context to the drift admitted by Mr Iqbal as being ‘momentary’ only. Having viewed the video, and the court reminding itself of the criminal standard to which the claimant must prove any allegation, the courts proceeds on the basis

that Mr Iqbal's vehicle was in a drift for only a very short amount of time. It appears from the video that the drift manoeuvre is performed approximately at the point of which Mr Iqbal's car is 180 degrees through the drive around the island. To the extent that the police officers describe the stunt as 'a full drift manoeuvre', the court interprets that as being simply that the vehicle was put into a drift and then pulled out of it very shortly thereafter. It is not to be interpreted as the vehicle 'drifting' round the entirety of the island. Indeed, one would have thought that was impossible given the substantial size of the island and need for Mr Iqbal's vehicle to regain traction to navigate round the island and proceed past the other substantial exits to get back onto the Black Country route. This sentencing exercise thus proceeds on the basis that the 'drift' was only a momentary action.

19. The court further proceeds on the basis that Mr Iqbal did not then drive away at high speed. Having viewed the video footage, one can see Mr Iqbal's vehicle exiting the island and stopping very quickly after the police illuminated their lights. There is no evidence as to the precise speed of the vehicle. Spectators standing on the island watching the vehicles perform the motor stunts can be seen on the video footage.

20. Notwithstanding the caveats on the extent of Mr Iqbal's admission, the performing of a drift manoeuvre is a motor stunt within the scope of that prohibited by the injunction and his engagement with others at the given time and location, means that Mr Iqbal properly makes an admission of breach.

### **Approach to sentencing**

21. In determining the correct sentence for the breach, the court reminds itself that the objectives when imposing penalties for civil contempt are those as set out by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 at paragraph 39. Although Lovett concerned breaches of orders made pursuant to the Anti-Social Behaviour Crime and Policing Act 2014, which this case is not, the objectives remain the same. Those are in the following order. Firstly, ensuring future compliance with the order. Secondly, punishment and thirdly, rehabilitation.

22. At section 2.1, paragraph 6, of the judgment in *Breen & Ors v Esso Petroleum Company Ltd* [2022] EWCA Civ 1405 the Court of Appeal endorsed the approach to assessing sanctions in contempt cases as summarised by the Supreme Court at paragraph 44 of *Attorney General v Crosland* [2021] UKSC 15. This court has set out those principles in other contempt judgments within these proceedings and does not propose to repeat them here but adopts that approach to determine the correct sentence.

23. The Sentencing Council do not produce guidelines for breach of a civil injunction. In *Lovett* the Court of Appeal endorsed the use of the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report into "Anti-social behaviour in the civil courts." However, this court has to bear in mind the guidance in *Lovett* was limited to cases concerning breaches under the 2014 Act, which this case is not. Some parallels can nonetheless be drawn insofar as the type of driving is a form of anti-social behaviour. However, the risk of harm from car cruising of this type is necessarily particularly high and higher than many other types of anti-social behaviour. Therefore, whilst the concepts of culpability and harm remain applicable when determining the correct sentence, the court is careful not to place over-reliance on the Civil Justice Council matrix without further consideration.

#### **Sentence in this case**

24. As to the level of culpability, Mr Iqbal's actions on 28 May fall to be assessed as medium culpability. This was a deliberate piece of driving. It was planned to the extent that he found himself associating with other car cruisers and likeminded individuals in circumstances where he was some distance away from his home address.

25. In determining the level of harm, the court is entitled to take into account not just the level of harm that was actually caused, but also that which was intended or was at risk of being caused by the breach. The risk of harm that can flow from car cruising or street racing is self-evident and evidenced by two fatalities occurring at a car cruise in the Black Country in late 2022. In performing a drift manoeuvre, even if only momentarily, Mr Iqbal was not in full control of his car and there was a high risk he could have lost control. Performing that sort of manoeuvre on an urban dual carriageway, when other road users are in the vicinity, and pedestrians were standing near the mouth of the junction, increases that risk even higher.

26. The court has to consider whether there are any aggravating and mitigating factors in this case. As to aggravating factors, the court takes into account that earlier in the day Mr Iqbal was stopped by the police in Spring Hill, near Birmingham City Centre, adjacent to a car park in which a number of individuals had congregated and were revving engines with loud exhausts. There was no suggestion that Mr Iqbal was either in breach of any injunction on that occasion or himself was engaging in car cruising, but he came to the police's attention because he had no front number plate on his vehicle. He was therefore in immediate geographical proximity to other car cruisers and whilst not engaging in car cruising on that occasion, the court does not accept it was mere coincidence that later in the evening he again found himself in the company of car cruisers.

27. The court takes into account any relevant criminal previous convictions. Mr Iqbal's previous convictions are all now of some age. The most recent conviction dates back to 2018, thus some five years before the breach before the court today. He has older previous convictions for driving offences including using a vehicle whilst uninsured, failing to provide a specimen, thereafter failing to comply with the requirements of a community service order and an aggravated vehicle taking in which an accident occurred causing injury. That criminal history of poor driving is taken into account. It however accepted that at the time of this breach, Mr Iqbal was in possession of a full driving licence and was insured to drive the vehicle he was driving.

28. There are a number of mitigating factors to take into account. This is Mr Iqbal's first breach of the injunction. Because this matter has proceeded by way of a paper contempt application, and then the case has been adjourned for Mr Iqbal to obtain legal representation, just over five months have passed between the incident and today. There is to be no suggestion of any further allegations of breach during that time period.

29. The court accepts that Mr Iqbal, through his counsel, expresses remorse for his actions on that evening and apologises to the court.

30. The court also takes into account that Mr Iqbal is of poor health, suffering from a serious medical condition which means that he is unable to work at the moment having previously been employed as a delivery driver. He is a full-time carer to his wife who has mental health difficulties. He is now aged 32 years old, being aged 31 at the time of the incident.

31. Taking into account the aggravating and mitigating features, and considering the culpability and harm as aforementioned, this case is so serious that only a custodial penalty is appropriate. The deliberate performing of a drifting stunt on a public road, particularly in a busy area where there are spectators and other road users in the vicinity, gives rise to such a high risk of injury or worse that only a custodial sentence suffices. The provisional sentence in this case is one of 42 days' imprisonment. In determining that figure, the court takes into account the time spent in custody following arrest.

32. Mr Iqbal is entitled to credit for his admission. The court accepts that Mr Iqbal has made an admission at the earliest opportunity following the receipt of legal advice and therefore reduces the sentence from 42 days to 28 days, giving a one third discount.

33. The court is however prepared to suspend the sentence. This is a first contempt in these proceedings and there is a realistic prospect of rehabilitation. Mr Iqbal has already evidenced his ability to abide by the injunction over the 5 months since the breach occurred. There is no

evidence that he has otherwise brought himself to the attention of the police or the claimants. Moreover, albeit that Mr Iqbal has previous convictions, he has shown himself capable of not coming before the criminal courts in recent years. The 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's order and as subsequently amended to date as to the addition of further defendants, and as to the terms of any further subsequent form of amended injunction that is made in this claim.

34. Mr Iqbal has the right to appeal the 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 the judgment be obtained on an expedited basis and be published on the judiciary website once approved.

### **Costs**

35. The first claimant seeks its costs, to be a subject of detailed assessment, if not agreed and has failed to prepare a statement of costs for summary assessment. This matter was listed today for a hearing of one day or less. The first claimant, had they been planning to pursue a claim for costs, should have prepared a schedule of costs for summary assessment. It is simply not proportionate in a case such as this for the matter to go to detailed assessment, particularly in circumstances where Mr Iqbal states he has no means. Whilst the general rule is that a successful party is entitled to its costs, the court may make another order. There is reason to depart from the general rule given the failure of the first claimant to file or serve a schedule of costs. Therefore, in the absence of a schedule today so as to be able to quantify the costs, the appropriate order is that there be no order as to costs on. That is a windfall for Mr Iqbal. Had the first claimant prepared a schedule for summary assessment, the court would have been sympathetic to the application.

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