

Neutral Citation Number: [2024] EWHC 1525 (KB)

Case No: KB-2022-BHM-000221

**IN THE HIGH COURT OF JUSTICE**  
**KINGS BENCH DIVISION**  
**BIRMINGHAM DISTRICT REGISTRY**

Priory Court  
33 Bull Street,  
Birmingham B4 6DS

Date: 15<sup>th</sup> April 2024

**Before:**

**HER HONOUR JUDGE EMMA KELLY**

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**Between:**

**BIRMINGHAM CITY COUNCIL**

**Claimant**

**- and -**

**(1) MR DANIEL GORDON**

**Defendants**

**(2) MR JOSEPH DAWSON**

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**MR MANNING** instructed by the Claimant's legal department for the **Claimant**  
**MR ROBINSON** solicitor of McGrath & Co for the **Defendants**

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**APPROVED JUDGMENT**

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**JUDGE KELLY:**

1. The defendants Mr Joseph Dawson and Mr Daniel Gordon each appear before this court having admitted contempt arising from their breach of an injunction in the early hours of the morning on 25 March 2024.
2. The claimant is represented today by Mr Manning of counsel and both defendants are represented by their solicitor, Mr Robinson.
3. The claimant brings this application alleging that each of the defendants has breached paragraph 1 of the terms of a final injunction granted by Julian Knowles J by order dated 27 February 2024.

Background

4. The order made by Knowles J is aimed at preventing street-cruising occurring on the streets of Birmingham. The application followed concern by the claimant local authority that antisocial and often unlawful behaviour in the form of car-cruising, or street-cruising, was occurring within its administrative boundary.
5. There are a number of named defendants to the claim but also a number of unnamed defendants defined as various categories of persons unknown. Relevant to the matter before the court today is the description of the 10<sup>th</sup> defendant, described: “Persons unknown who participate or intend to participate in street-cruises in Birmingham, as car drivers, motorcycle riders or passengers in motor cars or on motorcycles.”
6. Paragraph 1 of the final injunction order states:

“The 1<sup>st</sup> and 4<sup>th</sup> - 20<sup>th</sup> 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 this Order at Schedule 1.”
7. The map at Schedule 1 shows the Birmingham City Council administrative area.
8. Paragraph 3 of the order states:

“The terms ‘street-cruise’ and ‘participating in a street cruise’ have the meaning set out in Schedule 2 to this Order.”
9. Paragraph 1 of Schedule 2 to the Order defines the terms “street cruise” as follows:

“‘Street cruise’ means a congregation of the drivers of two or more vehicles (including motor cycles) 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 performs any of the activities set out in paragraph 2 below, so as, by 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 street cruise.”
10. By paragraph 2 of Schedule 2 the activities referred to in paragraph 1 above are listed. They include nine specified activities, including at subparagraph (v) “obstructing the highway or any private property”.
11. By paragraph 3 of Schedule 2, “participating in a street cruise” is defined in the following way:
- “A person participates in a street-cruise if he or she is
    - (i) the driver or rider of, or passenger in or on, a motor vehicle at a street cruise and performs or encourages any person there present to perform any activity, to which paras. 1-2 above apply, or
    - (ii) a spectator at a street cruise,
- and the term ‘participating in a street-cruise’ shall be interpreted accordingly.”
12. By paragraph 4 of the order, a power of arrest was attached to paragraph 1 of the injunction in relation to any defendant who participates in a street cruise as a driver, rider or passenger. The power of arrest is not attached to the activities of spectators.
13. The order came into force at 4pm on 27 February 2024 and is to remain in force until 27 February 2027, with provision made for annual reviews of the order.

#### Service

14. No issue is taken by the defendants with service of the injunction order or power of arrest.
15. Paragraph 9 of the order permitted alternative service against the persons unknown defendants by various methods specified in Schedule 3 to the order. Paragraph 1 of Schedule 3 sets out a series of eight that the claimant was required to take. By paragraph 12 of the order, the deemed date of service is the date of completion of the last of the steps in paragraph 1 of Schedule 3.
16. The court has before it the affidavit evidence of Michelle Lowbridge dated 4 April 2024 as to service. Ms Lowbridge is the claimant’s community safety manager. She set out the steps that have been taken to comply with the various requirements and states that the final step was completed on 22 March 2024, when steps were taken to send messages to various third party Instagram accounts. There was some discussion during the hearing as to when Michelle Lowbridge’s evidence was reduced to affidavit as opposed to witness statement form and served on the defendants. It has now been determined that, although initially a witness statement version was sent, it was followed by an affidavit adopting the same wording on 5 April 2024.
17. In light of Ms Lowbridge’s evidence as to service, and noting that no defendant takes issue with the question of service, I proceed on the basis that the court is satisfied that it is a valid service.

The contempt application

18. Both of the defendants were arrested shortly before 1am on 25 March 2024 and produced before this court later the same day. The matter was adjourned so that the defendants could obtain legal advice and to give the claimant an opportunity to file an N600 contempt application.
19. The claimant's case is that the defendants participated in a street-cruise when, as passengers in a motor vehicle, they encouraged others to perform street racing or street cruising activity, to which paragraphs 1 and 2 of Schedule 2 of the injunction apply.
20. On receipt of legal advice, each defendant has made written admissions of contempt. The basis of the admissions for each of Mr Gordon and Mr Dawson is identical and made in the following terms. The defendants admit breaching paragraph 1 of the injunction order on 25 March 2024 at 0100 hours by removing traffic cones on or around Heartlands Parkway and/or Aston Church Road to enable and/or assist in a street-cruise. Knowing of the injunction, they attended as spectators at the location and were standing at the roundabout by a factory. An Asian man in a dark Audi A3 pulled up and asked for help to remove the cones. Stupidly, they agreed to do so, Mr Gordon removed about 10 cones and Mr Dawson about three to four cones. They had been doing this for a short time when the Audi driver told them to get back into his car as he said he wanted them to go to another position to do the same thing. They had just got back into the car when the police approached and arrested them. The defendants admit that they were passengers, albeit momentarily, in the aforementioned vehicle that was participating in a street-cruise, contrary to paragraph 1 of the injunction order. They apologise to the court for breaching the injunction.
21. The court has had the opportunity of reading the witness statement of Acting Police Sergeant Rich Storer who describes his movements on that evening in the company of PC Minton. Both of the officers were in an unmarked police vehicle and state they were made aware of car cruising activity taking place on Heartlands Parkway. The court has also had the opportunity of viewing the police video footage produced by PS Storer. The video footage commences immediately after the point of arrest. It shows traffic cones having been apparently moved from the highway, and sitting either in an adjacent hedge or having been thrown on to the pavement and various small lights from the top of the traffic cones littering the roadway and the footpath.
22. These are contempt proceedings and, therefore, the burden of proof rests on the claimant to prove the contempt to the criminal standard of proof, namely beyond reasonable doubt. Taking into account the admissions that each defendant has made, and having viewed the video evidence and read the police officer's statement, I am satisfied that the contempt has been proved on the factual basis outlined in each written admission. There is clear evidence of street cruising activity taking place on Heartlands Parkway that evening given the police officers witnessed other cars racing. Indeed, the defendants do not seek to suggest otherwise. The actions of the defendants in moving the traffic cones that had been put in place to close a carriageway clearly encouraged others to partake in street cruising activity by facilitating the re-opening of two lanes of the dual-carriageway.

Approach to sentencing

23. The court has already sentenced a number of other defendants for breach of what was an interim version of the injunction in this case. I propose to adopt the same approach to sentencing as used in those previous cases and for the sake of brevity I do not propose to repeat the detail of it here. I do, however, remind myself that, when considering the objectives of this sentencing exercise, the first objective is to ensure future compliance with the order; secondly, punishment; and, thirdly, rehabilitation.
24. Both parties agree that the court should follow the guidance of the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 by analogy. That approach was endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355.
25. Mr Robinson invites the court to apply by analogy the Sentencing Council Guidelines for sentencing offenders with mental disorders, developmental disorders or neurological disorders. It is, of course, a guideline that was prepared in the context of use in criminal not civil proceedings. These are civil proceedings and, therefore, at its highest can only be applied analogy. There are principles within that guideline that are potentially relevant to the exercise before the court today.
26. Paragraph 9 of the guideline states that culpability may be reduced if an offender was at the time of the offence suffering from an impairment or disorder or combination of impairments or disorders such as those listed in annex A. The sentencer should make an initial assessment of culpability in accordance with any relevant offence-specific guideline and should then consider whether culpability was reduced by reason of the impairment or disorder. Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour.
27. The guideline continues:

“The sentencer must state clearly their assessment of whether the offender's culpability was reduced and, if it was, the reasons for and the extent of that reduction.”
28. That guideline is put before the court by Mr Robinson on the basis that Mr Gordon, it is submitted, has a number of conditions that put that guideline into play. The court has been told, although no formal medical evidence has been put before the court, that Mr Gordon has had past diagnoses of autism, ADHD, Asperger's, dyslexia and learning difficulties. The court has been told that he attended a special school from a young age, although he is now aged 33 years. Whilst Mr Dawson has a number of physical ailments, notably an oesophagus problem, it is not submitted that the guideline is engaged in respect of Mr Dawson.
29. The first aspect that the court must take into account is whether the offender's culpability has been reduced and, if it was, the reasons for and the extent of that reduction. I am not persuaded on the facts that are put before the court that Mr Gordon's culpability is reduced per se as a result of his conditions. In particular, he accepts that he knew it was wrong to be removing the cones on that occasion. The conditions that he suffers from are, however, relevant to matters of general mitigation when the court reaches that stage of the sentencing process.

30. As to the question of culpability, the court has to determine where in the *Lovett v Wigan Borough Council* guideline the matter falls. The claimant's submission is that this was a deliberate breach and falls to be categorised at the very least as category B and more accurately as falling between category A, high culpability, and B, being a deliberate breach. The defendants' position is that this falls to be categorised within category B.
31. I agree with the submission made on behalf of the defendants. This was a deliberate breach. I am not persuaded that it crosses the threshold to fall between categories A and B. It was a serious breach but I am not persuaded it properly falls to be a very serious breach. I do not reduce Mr Gordon's culpability further by reason of his various mental health conditions, but I will return to those matters when I consider mitigation.
32. As to the category of harm, the claimant contends that it falls in at least category 2, and probably between category 2 and category 1. Category 1 being breaches that causes very serious harm or distress. The claimant asks the court to take into account the very substantial risk of harm given the removal of safety features that had been put in place by the authorities to close one of the lanes of the carriageway. The defendants submit that this is a category 2 harm case, albeit acknowledging that it probably falls at the higher end of category 2. Again, I agree with the analysis put forward by the defendants. The court has to consider not only the actual harm caused but the risk of harm. There is no evidence of any actual harm on this occasion, save for the inconvenience to other road users who were, as is evident on the video footage, caught up in a delay because of the blockage of the road occasioned by the defendants' actions and the inconvenience to the police and the highway authority in having to replace the cones that had been moved. The risk of harm is however particularly concerning. There was clearly a reason why that lane had been cordoned off. The encouraging of racing at speed on a public road in a busy urban area creates a very obvious risk of serious harm, or worse, to both individuals travelling in or on such vehicles, to other road users, to spectators and, indeed, anyone else in the vicinity. There was also clear risk to property. The risk was described by the claimant's counsel, I thought, in very apt terms: what the defendants did made an already dangerous activity even more dangerous. In light of those risks, I categorise the harm as category 2, albeit at the upper end of that bracket.
33. A category 2 harm, culpability B matter gives rise to a starting point sentence of one month's imprisonment with a range of adjourned consideration to three months' imprisonment. I bear in mind that, although it is category 2 harm, it is at the higher end of that category. If it had been in category 1 harm, it would have increased the starting point to three months' imprisonment.
34. The court then has to take into account any aggravating or mitigating circumstances. There were no aggravating circumstances in respect of either defendant.
35. There are however a number of mitigating factors. The court proceeds on the basis that each defendant is of good character as the claimant has not put before the court any details as to any antecedents.
36. I also proceed on the basis that this is a first breach of the injunction. Further, both defendants have expressed their remorse and have indicated an intention to comply

with the injunction in the future. Both of those are mitigating factors.

37. Mr Dawson is now aged 29 years old, Mr Gordon is aged 33. I do not consider their age to be any significant mitigating factor. The reality is that both were old enough to know better and this is not a case where their behaviour can simply be put down to immaturity of youth.
38. In Mr Dawson's case, the court is told that he is a single man. He worked for a lengthy period of time as a healthcare worker but, unfortunately, then suffered from a serious medical condition relating to his oesophagus requiring surgery. Following surgery he now takes multiple types of medication and suffers from anxiety and depression. He is not in work, and is in receipt of Universal Credit in the sum of around £320 per month. He lives with his mother and provides her with a payment of £150 to £200 a month in housekeeping.
39. Mr Gordon is now aged 33. He is also single and, again, lives with his mother. He has a 14-year-old child. The court is told that he has a good relationship with his child and has contact on a fortnightly basis. I take into account as mitigating factors the various medical conditions that I mentioned earlier in this judgment. Those are matters that reduce the seriousness of the position Mr Gordon finds himself in. He is in receipt of a Personal Independence Payment of about £500 a month and Employment Support Allowance of some £400 a month. The fact that he is in receipt of those benefits demonstrates his genuine incapacity to work. He contributes a sum of around £600 a month to his mother and about £200 a month in maintenance for his child.
40. In my judgment, bearing in mind the identical basis of admissions and the very similar mitigation, albeit the differing medical conditions, I do not propose to draw any distinction between the two cases. It seems to me it would be wrong to do so when one stands back and views overall the culpability, harm and the mitigation.
41. Notwithstanding that each of the defendants has a number of matters of relevant mitigation, I none the less take the view that neither a deferred consideration nor a fine would be a sufficient penalty. Breaching the injunction by participating in a street-cruise in attempting to reopen a closed carriageway to allow street-cruising to take place is an extremely serious matter with associated very serious and significant risk. The contempt is such that the least penalty the court can pass is a custodial sentence. In each of the defendants' cases, the appropriate sentence before consideration of credit for their admissions is one of 35 days' imprisonment. Each defendant is entitled to full credit for their admission. The court accepts that admissions were made at the first opportunity after being served with the evidence and having had the opportunity to obtain legal advice. The sentences will, therefore, each be reduced by one third to 23 days' imprisonment, rounding down in favour of the defendants.
42. In common with the approach that has been taken in other sentences for breach of the interim version of this injunction, and mindful of the guidance of the Court of Appeal in *Lovett* as to suspension usually being the first way of attempting to secure compliance, each of the sentences will be suspended. The defendants' expression of an intention to comply in the future and their co-operation with these proceedings means that the court is confident that neither of these gentlemen will be back before the court for breach of the injunction.

43. The consequences of any future further finding of contempt would, of course, be extremely serious for Mr Gordon and Mr Dawson. Not only would they be sentenced for a further breach but it would be very likely that all or part of the suspended sentence would be activated. It is, therefore, imperative that the defendants comply with the terms of the injunction. Each of the sentences will be suspended for a period of 12 months on condition of compliance with the terms of the order of Knowles J of 27 February 2024 and any subsequent form of that order, should it be amended between now and the expiry of 12 months from today.
44. The claimant makes an application that each defendant pays its costs. A schedule of costs has been served. The solicitors' costs have been split equally between the defendants, as have the disbursements, and each defendant is asked to pay the court fee. The principle and the quantum of costs are not challenged by either defendant. In circumstances where the contempt applications have succeeded, it is clearly appropriate that the claimant be entitled to an order as to its costs.
45. I order that each defendant pays the claimant's costs to be summarily assessed. Having viewed the costs schedule that has been served, and noting that no objection is taken to the figures therein, I am satisfied that the sums claimed are reasonable and proportionate. I to summarily assess the costs as drawn in the sum of £2,024.30 per defendant.
46. The costs orders are enforceable. Although the defendants have the benefit of legal aid for the contempt proceedings, that does not provide costs protection in the same way that those in receipt of civil legal aid do. I am mindful however mindful that each gentleman is of limited means, Mr Dawson more so than Mr Gordon. I propose to make an order for payment by instalments. In Mr Gordon's case, he is in receipt of significantly more money than Mr Dawson. I propose to set the rate of instalments at a rate of £100 per month. In Mr Dawson's case, the instalments will be set at £50 per month. The first payments to be made by 4pm 21 days from today, unless Mr Robinson tells me that the date of receipt of benefits is such that it will cause an issue.

(Counsel conferred with their clients)

47. So it will be 28 days for the first payment of the instalments of costs.
48. The defendants have a right to appeal the suspended orders of committal. Any appeal lies to the Court of Appeal Civil Division and must be made within 21 days of today. I direct that a transcript be obtained of this judgment on an expedited basis at public expense and the copy of the approved transcript will be then published on the judiciary website.

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