

Neutral Citation Number: [2024] EWHC 568 (KB)

Case No: KB-2022-BHM-000221

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

The Priory Courts,
33 Bull Street,
Birmingham,
B4 6DS

Date: 20 February 2024
Start Time: 14.15 Finish Time: 14.38

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

MR ADHNAN MOHAMMED

Defendant

MS ARUCI of Counsel appeared for the **Claimant**
MR ROBINSON Solicitor appeared for the **Defendant**

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. The defendant, Mr Adhnan Mohammed, appears before this court in respect of a matter of contempt arising from events on 28 January 2024.
2. The claimant is represented at today's hearing by counsel. The defendant is represented by his solicitor.
3. The claimant's case is that the defendant breached the terms of an interim injunction granted by Hill J on 22 December 2022, as amended by order of Ritchie J on 19 May 2023 and as further amended by an order I made on 16 October 2023. The amendment on 16 October 2023 did not affect the substance of the terms of the interim order and simply added hitherto unidentified persons unknown as named defendants to the proceedings.

Background

4. On 22 December 2022 Hill J granted an interim injunction aimed at preventing street cruising occurring on the streets of Birmingham. The application followed concern by the claimant local authority that anti-social and unlawful behaviour in the form of car cruising or street cruising was occurring within its administrative boundary. The original defendants to the claim included seven named defendants and two defendants who were defined categories of persons unknown.
5. The interim order granted by Hill J was reviewed by Ritchie J at a hearing on 19 May 2023. The terms of the injunction were amended by Ritchie J so as to add a tenth defendant. The tenth defendant is defined in the following way:

“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.”

It is that category of persons unknown within which the defendant is said to fall.

6. On 16 October 2023 the substance of the injunction granted by Ritchie J remained unchanged but further named defendants were added to the proceedings as the eleventh to fourteenth defendants following their identities becoming known during the course of contempt proceedings.
7. The interim injunction, as amended, states at paragraph 1: “The defendants are prohibited from participating 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.” The plan attached to the order outlines the administrative area of Birmingham.
8. Paragraph 2 of the order defines the terms “street cruise” and “participating in a street cruise” by reference to meanings set out in schedule 2 to the order.
9. 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 driver, rider or passenger in or on a motor vehicle performs any of the activities set out in paragraph 2 below, so as to 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:

- i) “driving or riding at excessive speed or otherwise dangerously;
- ii) driving or riding in convoy;
- iii) racing against other vehicles;
- iv) performing stunts in or on motor vehicles;
- v) obstructing the highway or any private property.”

11. Paragraph 3 of schedule 2 defines “participating in a street cruise” as:

“[The defendants] participate in a street cruise if they are or any of them is the driver or rider of, or passenger in or on, a motor vehicle at a street cruise and performs or encourages any other driver, rider or passenger to perform any activity to which paragraphs 1 to 2 above apply, and the term ‘participating in a street cruise’ shall be interpreted accordingly.

12. By paragraph 3 of the interim injunction, as amended, a power of arrest was attached to paragraph 1 of the order.

13. The original order came into force on 24 December 2022 and was ordered to continue until the final hearing of the claim unless varied or discharged by further order. The final hearing of the matter has not yet taken place but is listed to be heard next week.

Service

14. The defendant accepts the service provisions have been complied with. The original injunction granted by Hill J and then when subsequently amended by Ritchie J dispensed with personal service of the order and power of arrest on the persons unknown defendants. Paragraph 13 of the case management order of Ritchie J of 19

May 2023 specified various steps that the claimant had to take to serve the injunction and power of arrest by alternative means on the persons unknown defendants. In earlier contempt proceedings in relation to different defendants this court has found that the claimant had complied with those requirements. At a case management hearing on 20 December 2023, I gave further directions as to the service of the case management order and the latest version of the interim injunction and power of arrest dated 16 October 2023. The claimant relies on the affidavit evidence of Michelle Lowbridge dated 6 February 2024 which details the multiple steps the claimant has again taken to serve the further version of the order.

The facts of the contempt

15. The defendant was arrested at around 2.43am on 28 January 2024 pursuant to the power of arrest attached to the interim injunction. He was produced before the court from custody on Monday, 29 January 2024. Because his arrest fell in the early hours of a Sunday, he spent in excess of 24 hours and closer to two days in custody. At the first hearing the defendant was represented but his solicitor was not yet in receipt of public funding. The defendant was bailed and directions given for the claimant to file and serve an N600 contempt application and evidence in support.
16. Contempt proceedings remain civil proceedings but the burden of proof rests on the claimant to establish the contempt to the criminal standard of proof, that is beyond reasonable doubt. On receipt of legal advice, the defendant made a written admission to the allegation of contempt and accepts breaching the terms of the interim injunction. I will turn to the detail of that admission in one moment but taking that, together with the claimant's written evidence from police officers Moore and White, from Michelle Lowbridge and having watched the police video footage, the court is satisfied that a contempt has been proved on the factual basis outlined in the written admission.
17. The written admission is short but cross refers to the written particulars of breach upon which the claimant relies. The admission is drafted in the following terms:

“The defendant admits breaching the injunction on 28 January 2024 as set out in the schedule of breach but does not accept that his speed was in the region of 90 miles an hour or that he weaved his vehicle between other road users.”

By his acceptance of the schedule of breach, he admits that he was engaged in racing with other vehicles. The court sought further clarification as to precisely what speed was being accepted by the defendant. The defendant accepts that he was driving at about 50 miles per hour, although he cannot give his exact speed. Whilst he does not accept that he was weaving in and out of traffic, he does accept that in the course of his driving he changed lanes.

18. It is not in dispute that this driving took place, initially on Heartlands Parkway which is a two-lane urban dual carriageway in Birmingham with a 40 mile per hour speed limit. The defendant drove along Heartlands Parkway towards the traffic island with Saltley Viaduct, and continued across the island into what becomes a 30 mile per hour part of the dual carriageway. He accelerated down that second stretch of dual

carriageway to a further island before doubling back on himself, at which point he was stopped by the police.

19. Earlier in the hearing today it became apparent that there was some ambiguity as to whether the speed limit on the second stretch of dual carriageway was 30 or 40 miles per hour. The claimant's case was that it was 30 miles per hour but the defendant initially believed that it was 40 miles per hour. To the defendant's credit, during the luncheon adjournment he drove to the location, checked the position and was frank in his acceptance that the speed limit did change to 30 miles per hour after the roundabout. The court takes into account his frankness when dealing with this matter.
20. The defendant was stopped by the police, who had been travelling in a hitherto unmarked police car, and arrested. He had two passengers in his vehicle at the time of his arrest. Despite the hour of the day, it is apparent from the police video evidence that the area was reasonably busy. There were some spectators watching events from a side road abutting Heartlands Parkway and the road itself could be seen to be relatively busy.

Approach to sentencing

21. In approaching the sentencing exercise, the court bears in mind the objectives when imposing penalties for civil contempt. They are as set out in paragraph 39 of the Court of Appeal's judgment in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 in the following order: to ensure further compliance with the order, punishment and rehabilitation.
22. The court has sentenced a number of individuals within these proceedings for similar matters of contempt. In common with the approach the court adopted in those earlier cases, I again adopt the approach to sentencing summarised by the Supreme Court in paragraph 44 of *Attorney General v Crosland* [2021] UKSC 15 and endorsed by the Court of Appeal in *Breen v Esso Petroleum Co Ltd* [2022] EWCA Civ 1405.
23. The Sentencing Council do not produce guidelines for breach of a civil injunction. The parties agree, as do I, that the court should follow the guidance set out by the Court of Appeal in *Lovett v Wigan Borough Council*. That requires consideration of the sentencing matrix contained in Annex 1 to the Civil Justice Council's July 2020 report in relation to contempt arising from orders made under the Anti-social Behaviour, Crime and Policing Act 2014. The use of that by analogy when sentencing for contempt cases outside the 2014 Act in cases that nonetheless involve some form of anti-social behaviour was endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355. *Birmingham City Council v Lloyd* concerned contempt proceedings arising from car cruising behaviour in relation to another defendant in this claim and therefore is a direct analogy.
24. I turn to the question of culpability. The claimant contends that this matter falls to be categorised as culpability A, being high culpability. That is defined as a very serious breach or persist serious breaches. The defendant contends it falls within category B, that being a deliberate breach falling between A and C. Category C being lower culpability and defined as a minor breach or breaches. In my judgment, this case falls within category B. It is a deliberate breach but it falls between A and C. Category A is reserved for a very serious breach or persistent serious breaches. This is a first

breach and I do not take the view that on the admitted facts it amounts to a very serious breach such that it falls within culpability A.

25. I turn to the question of harm. The claimant and defendant contend that this matter falls within category 2 harm. Category 2 covers cases that fall between category 1 and category 3. Category 1 are breaches are those which cause very serious harm or distress, category 3 being breaches which cause little or no harm or distress. When assessing the level of harm, the court has to take into account the harm that was actually caused but also that that was intended or at risk of being caused by the breach. Whilst limited actual harm was caused by this breach, there was a risk of very significant harm given the defendant's willingness to engage in racing on public roads at high speeds in what were busy urban areas. That creates a very obvious high risk of serious harm both to the drivers of those vehicles involved in the racing but also to passengers in the vehicles, including the two in the defendant's car, to any spectators watching the event and to other innocent road users and pedestrians and to property. The risk of harm from car cruising events is exemplified by fatalities that have occurred in a neighbouring local authority area in recent years. In my judgment, the harm falls to be categorised in the middle category 2, albeit I place it at the upper end of that bracket to reflect the risk of harm.
26. The starting point for a culpability B, category 2 harm case is a sentence of one month's imprisonment with a sentence range of adjourned consideration to three months' imprisonment. If the case had been in the higher category of harm, it would have had a starting point of three months' imprisonment with a range of adjourned consideration to six months. Although I do not classify the case within category 1 harm, those figures give an indication as to by how much the sentencing range increases with the higher classification.
27. The court takes into account any aggravating or mitigating circumstances. I proceed on the basis that there were no significant aggravating features. The defendant has a single previous conviction for no insurance dating back to last year for which he received eight points and a £276 financial penalty. The court is told that he is still discharging that fine at a rate of between £23 and £25 per month.
28. There are, however, a number of matters of relevant mitigation in the defendant's case. He has no other previous convictions or cautions. This is a first breach of the injunction. Through his solicitor, he has shown remorse for his actions and apologies to the court. He is still a relatively young man, aged 27. He has an otherwise entirely stable home life. The court is told he is married and has a 9 month old child. He has been in continuous employment since leaving school after his GCSEs and has worked in various driving roles, including for the last couple of years as a courier driver. It is extremely unfortunate that someone for whom driving is a livelihood finds himself before the court for breaching an injunction by virtue of the manner of his driving.
29. The defendant is in receipt of some £850 a month income. His wife is also in receipt of income but is currently on maternity leave and therefore her income is reduced to some £650 per month. The defendant believes the family unit receive child support, although his wife deals with that. The court has been told that the defendant is someone whose income is only just meeting the needs of himself and his immediate family.

30. All of that mitigation is taken into account. The court proceeds on the basis that the defendant is someone who is usually an entirely law-abiding citizen who makes meaningful contributions to society and his family. The fact that he was arrested and kept in custody throughout the entirety of Sunday and into Monday in itself would have been a sobering experience for someone who was otherwise unaccustomed to the criminal justice system.
31. Notwithstanding those matters of mitigation, in my judgment neither a deferred consideration or a fine would be a sufficient penalty to recognise this breach of the High Court injunction. Breach of the injunction by participation in a street cruise involving racing other cars at speed in the region of 50 miles per hour in what were 40 mile per hour and then 30 mile per hour areas is a serious matter with associated risks to society. The contempt is such that only a custodial penalty will suffice.
32. In my judgment, the appropriate sentence before consideration of credit for his admission and taking into account the time spent in custody is one of 33 days imprisonment. The defendant is entitled to credit for his admission. That admission was made at the first opportunity after being served with the evidence and having had the opportunity to obtain legal advice. The sentence will therefore be reduced by one third, reducing the term of imprisonment to 22 days.
33. The sentence will, however, be suspended. The Court of Appeal in *Lovett* observed at paragraph 45 that suspension is usually the first way of attempting to secure compliance with the underlying order. The defendant's previous good character, his expression of an intention to comply with the order in future and his remorse indicate that it is appropriate to suspend the sentence to give the defendant an opportunity to demonstrate that he can comply with the order going forward. The sentence will therefore be suspended for a period of twelve months from today on condition of compliance with the terms of the interim injunction in its current form or any subsequent version of the injunction as amended that is made within this claim.
34. The claimant makes an application that the defendant pay its costs of the contempt application. A costs schedule has been filed and served in a total sum of £2,234. The defendant concedes the principle as to costs but seeks time for payment given his financial circumstances. The general rule under CPR 44.2(2) is that the 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 established the contempt and there is no reason to depart from the general rule. The defendant will therefore pay the claimant's costs.
35. Those costs will be summarily assessed today. The solicitors' time costs are limited to £339.30, counsel's fee for the first hearing on 29 January was £570 plus VAT and counsel's fee for today was £650 plus VAT. There are disbursements of £275 which reflect the application fee payable to the court on issue and process server fees of £156. In my judgment, those costs are entirely reasonable and proportionate and reflect the costs involved in issuing a contempt application and pursuing the matter through two hearings to its conclusion today. I therefore propose to summarily assess the costs as drawn.
36. Whilst the defendant has the benefit of legal aid, although these are civil contempt proceedings the defendant is in receipt of criminal legal aid. The Court of Appeal

confirmed in *Secretary of State for Transport v Cuciurean* [2022] EWCA Civ 661 that the costs protection usually afforded to those in receipt in civil legal aid does not apply to those in receipt of criminal legal aid to defend contempt proceedings. That therefore means that the costs order will be enforceable. As to the payment of those costs, the defendant asks that payment be made in the region of £25 per month. He already has an outstanding fine in relation to his conviction for no insurance last year which he still has £80 to £90 to discharge.

37. I propose to do is make an order for payment at the rate of £50 per month. The sum of £2,234 needs to be discharged in a timely manner. I will however delay the first payment until two months hence. That will give the defendant the opportunity to discharge the outstanding £80 to £90 that he owes in relation to the fine within the next couple of months by making payments of £40 to £45 a month in that regard, and then start paying £50 per month in relation to the costs liability. The first date for payment will be by 20 April 2024 and thereafter £50 per month on the 20th of each month until the sum is discharged.
38. The defendant has a right to appeal the suspended order of committal. Any appeal lies to the Court of Appeal Civil Division and must be filed within 21 days of today. I direct that a transcript of this judgment be obtained on an expedited basis at public expense. A copy of the approved transcript will be published on the judiciary website in due course.

(Judgment ends)

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