

Neutral Citation Number: [2025] EWHC 518 (KB)

Case No: KB-2022-BHM-000221

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

Birmingham Civil and Family Justice Centre
Priory Courts
33 Bull Street
Birmingham
B4 6DS

Date: 27 January 2025
Start Time: 12.28 Finish Time: 12.56

Before:

HER HONOUR JUDGE EMMA KELLY
(Sitting as a High Court Judge)

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

(1) MOHAMMED KHALIL
(2) MARLON FARRELL

Defendants

MR SCANTLEBURY appeared for the **Claimant**
MR RICKETTS, solicitor, appeared for the **Defendants**

APPROVED JUDGMENT

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JUDGE KELLY:

1. The defendants, Mr Mohammed Khalil and Mr Marlon Farrell, appear before this court having admitted contempt by virtue of their driving on 14 and 15 December 2024 respectively. Each defendant admits by his conduct that his driving amounted to a breach of paragraph 1 of an injunction granted by Julian Knowles J on 27 February 2024.
2. The claimant has been represented at today's hearing by counsel. Both defendants are represented by their solicitor, Mr Ricketts.

Background

3. Julian Knowles J made the order to prevent car cruising or street cruising occurring on the streets of Birmingham. The claim followed concerns by the claimant local authority that antisocial and often unlawful behaviour known as car cruising or street cruising was occurring within its administrative boundary.
4. The defendants to the claim included a number of named defendants. Neither Mr Khalil nor Mr Farrell were named defendants. However, the injunction also covers a category of persons unknown defendant. The tenth defendant is a persons unknown defendant and is defined as:

“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.”

5. Paragraph 1 of the injunction states:

“The 1st and 4th to 20th 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.”

The plan referred to outlines in red the administrative area of Birmingham.

6. Paragraph 3 of the order defines the term “street cruise” and “participating in a street cruise” by reference to schedule 2 of the order. At paragraph 1 of schedule 2, “street cruise” is defined as:

“...a congregation of the drivers of two or more 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 of 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 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 street the cruise.”
7. Paragraph 2 of schedule 2 lists a number of activities referred to in paragraph 1 above. They include but are not limited to:
- “(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...”
8. Paragraph 3 of schedule 2 defines the term “participating in a street cruise” in the following way:
- “A person participates in a street cruise if he or she is
- (i) the driver 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 paragraphs 1 to 2 above apply; or
 - (ii) is a spectator at a street cruise.”
9. The Judge attached a power of arrest to paragraph 1 of the injunction in respect of any of the defendant who participates in a street cruise as a driver, rider, or passenger.
10. The order came into force on 27 February 2024 and remains in force for a period of three years with annual review hearings.

Service

11. Neither the defendant challenges service of the injunction. Paragraph 9 of the injunction permits service on the persons unknown defendant by alternative means. The alternative service requirements are set out in schedule 3 to the order, the deemed date of service being the date of completion of final of those steps.
12. The claimant relies, as it has done in earlier contempt applications against other defendants, on the affidavit of Michelle Lowbridge, dated 4 April 2024. Ms Lowbridge is the claimant’s community safety officer and her evidence addresses the steps taken to effect the service. She states that the final step of service was completed on 22 March 2024. In light of the claimant’s evidence of Ms Lowbridge, and noting that neither defendant challenges the validity of service, I proceed on the basis that the court is satisfied as to service of the injunction by alternative means.

Events of 14 and 15 December 2024.

13. In the late hours of the 14th and the early hours of the 15th December, the police were undertaking a patrol as part of Operation Hercules, which is the police tactical response to

car cruising within the West Midlands. Both defendants came to the police's attention as a result of the manner of their driving.

14. PC Styler arrested Mr Khalil in the late evening of Saturday the 14th and Mr Farrell in the early hours of Sunday the 15th, having exercised the power of arrest attached to the injunction. Each defendant was produced before the court on Monday 16 December when Mr Ricketts kindly attended as duty solicitor to assist them notwithstanding that legal aid had not yet been granted. The defendants were bailed to today. The claimant has since filed and served a contempt application against each defendant, together with evidence in support.
15. On receipt of legal advice, both the defendants made a written admission of contempt. Each of those admissions I treat as being made at the earliest opportunity following service of the evidence and on receipt of legal advice. The conduct of each defendant on that evening is not linked save for the fact that each were arrested within a short period of time of each other in a similar area. Their cases are dealt with together today for reasons of convenience.
16. I turn to the facts of Mr Khalil's case. He accepts in his written admission that on 14 December, at approximately 10.00 p.m., he was driving a BMW registration number Y13 MOB in the area covered by the injunction. He admits he breached the order by participating in a street cruise in that he drove at speeds in excess of 80 mph in a 40 mph area on the A47 Heartlands Parkway dual carriageway near the roundabout of Mainstream Way whilst taking part in a street race with a black VW Golf. He accepts he accelerated hard, reaching a speed of in excess of 80 mph. There is a roundabout at the end of the stretch of dual carriageway and he accepts he and the Golf circled the roundabout by 180 degrees to continue to race down the other side of the carriageway. On being arrested by the police, he was fully cooperative with them.
17. The court has had the opportunity of viewing the police video evidence of the driving of Mr Khalil. Mr Khalil's admission amounts to an acceptance of the claimant's case at its highest. One can see the driving from the video, including Mr Khalil putting his arm through the window to indicate to the Golf to draw level to start the race and the two vehicles then accelerating harshly along the carriageway.
18. I turn to Mr Farrell's case. His driving occurred several hours later at around 1.00 a.m. in the early hours of 15 December 2024. He accepts he was driving a white BMW, registration F22 MUG, also on the A47 Heartlands Parkway being an area covered by the injunction. Mr Farrell admits he drove at speeds in excess of 80 mph in a 40 mph zone along with a group of six other vehicles engaging in a street race. He accepts that he drove along Heartlands Parkway, circled the roundabout, and in a similar manner to Mr Khalil, continued to drive back along the opposite side of the carriageway. He admits that at one point, the gap between the front of his car and the rear of the car in front of him was very small and that could have encouraged the other car in front to drive faster. He too was stopped by the police and was fully cooperative on his arrest.
19. The court has had the opportunity of viewing the video evidence in respect of Mr Farrell's driving which confirms the manner of driving.
20. The video footage from the arrests of both defendants confirms their cooperation on being stopped and arrested.

21. I remind myself these are contempt proceedings and that the burden rests on the claimant to prove its case beyond reasonable doubt, i.e. to the criminal standard of proof. Having considered the defendants' admissions and having viewed the video evidence, I am satisfied that contempt has been established against each defendant. There is clear evidence of street cruising activity by each defendant by their driving with other vehicles at excessive speed or otherwise dangerously and racing on the public highway. That conduct causes a danger to other road users, a risk of damage to property, and a nuisance to individuals who are trying to go about their lawful business.

Approach to sentencing

22. This court has already sentenced a number of individuals for contempt arising from breach of this injunction and an interim version thereof. I adopt the same sentencing approach I have applied in previous cases and for the sake of proportionality, I do not propose to repeat that in detail here. The parties agree, as do I, that the court should follow the guidance in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 by analogy. Use of that guidance by analogy in street cruising cases has been endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355.
23. The sentence in each defendant's case requires separate consideration although there are certain common elements.
24. As to the question of culpability, it is contended by the claimant and not opposed by the defendant that each case falls within culpability category B, being a deliberate breach falling between categories A and C. I agree that this is a culpability B matter.
25. As to the question of harm, the claimant contends each falls within category 2 harm albeit at the higher end. The defendants took no issue with that proposition in their submissions. The court has to look at the harm that was actually caused, which, fortunately on the facts of these cases, was limited, but also the risk of harm. There was clearly a very high risk of harm associated with each defendant's driving on that evening. Racing on the public highway at high speeds gives rise to a self-evident very high risk of harm, including a risk of fatalities to those involved and in the vicinity, whether those others be spectators or law abiding road users and pedestrians trying to go about their business. The Black Country local authorities have a similar injunction in place covering their administrative areas. It is noted that their injunction was prompted by actual fatalities arising from street cruising behaviour. That serves as a reminder of the risk of harm associated with this type of behaviour on the public highway. I agree that these are category 2 harm cases albeit ones falling at the higher end.
26. Cases falling within culpability B, category 2 harm have a starting point sentence of one month's imprisonment with a range from adjourned consideration to 3 months' imprisonment. The court then has take account of any aggravating or mitigating circumstances.
27. In Mr Khalil's case, there are no aggravating factors. There however a number of mitigating factors to be taken into account.
- i) Mr Khalil is aged 26 years old. I treat him as someone of relative youth which brings with it some immaturity, which I have no doubt impacted on his poor decision-making that evening.

- ii) He is of positive good character with no convictions or cautions and a clean driving license.
 - iii) This is his first breach of the injunction.
 - iv) Through his solicitor, he expresses remorse and an intention to comply with the injunction in the future.
 - v) He has a stable home and professional life. He is employed in the food industry earning £400 a week. He lives with his married sister and her children. I am told he contributes £100-£200 per week to the household.
28. In Mr Farrell's case, there are also no aggravating factors. There was a potential issue as to whether his vehicle was insured. I am satisfied by the explanation provided through his solicitor today that he did have insurance on the day in question. His insurer accepts they mistakenly cancelled a policy of insurance without notifying either him or his partner but have since reinstated it and confirmed that a letter of indemnity exists for the liability cover over the relevant period.
29. Mr Farrell is now aged 33 years old. He is, quite frankly, of an age where he should have known better than to get involved in this kind of activity. There are however mitigating factors to take into account.
- i) I treat Mr Farrell as someone of good character. There is some suggestion he has some previous convictions but nothing since 2017. I have not been provided with any details and do not consider any old convictions material to this exercise.
 - ii) This also is his first breach of the injunction.
 - iii) He too has shown remorse and is adamant that he will not repeat the behaviour nor risk breaching the injunction again in the future.
 - iv) He lives an otherwise law abiding and stable life. He is employed by a water company earning around £600 per week. He pays maintenance for his children of some £240 a month, plus various additional sums as and when his children need extras for clothing, school trips, etc.
30. Each defendant, therefore, has very significant mitigation which I take into account. Notwithstanding the mitigation in each case, in my judgment, neither a deferred consideration or a fine are appropriate penalties for breaches of this injunction. Breach of the injunction by participating in a street cruise and racing on the public highway is an extremely serious matter with associated very significant risks. I take the view that the contempt is so serious that only a custodial penalty will suffice.
31. I take into account the mitigation and that each defendant spent a not inconsiderable time in custody between their arrest and production before the court on the Monday. The appropriate sentence for each defendant, before consideration of credit for their admissions, is one of 42 days' imprisonment. I draw no distinction between their cases. The manner of each defendant's driving was very similar, involving similar speeds and durations and each individual has significant amounts of relevant mitigation.
32. Each defendant's sentence will be reduced by one third, giving maximum credit for the admissions at the first opportunity. That reduces each sentence from 42 days to 28 days'

imprisonment. Each sentence will be suspended for a period of 12 months from today on condition of compliance with the terms of the injunction or any amended form thereof. The Court of Appeal in *Lovett* endorsed suspension as being the first way to attempt to secure compliance with the underlying order. The information the court has been provided about Mr Khalil and Mr Farrell means that there is every reason to be confident that neither defendant will breach the injunction again in the future and find themselves brought back before the court. They, of course, have every reason to now comply because any breach of the condition of suspension during the operative period would mean that the court would have to consider activating today's sentence, as well as sentencing for any new breach.

Costs

33. The claimant has made an application that each defendant pays the claimant's costs of the application. Schedules of costs have been prepared. The claimant seeks the sum of £3,630.32 against each defendant. Those sums are slightly lower than that stated in the schedules as the claimant accepts there is a typographical error in relation to the solicitors' costs in Mr Khalil's schedule, and in relation to the fee for the hearing on 16 December in each defendant's case.
34. The defendants do not oppose the principle or the quantum of those costs. Those are sensible concessions given that the general rule is that the successful party will be entitled to its costs from the unsuccessful party although the court may make a different order. There is no reason to depart from the general rule in this case. The claimant has brought applications for contempt and succeeded. It is therefore appropriate that each defendant pay the claimant's costs.
35. Having considered the sums that are sought by the claimant, they are relatively modest and proportionate to the work that was involved. The applications necessarily involved attending two hearings, the first on the activation of the power of arrest and the second today. There were then solicitor's costs in preparing the necessary documentation. I therefore assess the costs as sought in the sum of £3,630.32 for each defendant.
36. Whilst the defendants have legal aid, they are in receipt of criminal legal aid because these are contempt proceedings. They do not, therefore, have the benefit of the costs protection that attaches to those in receipt of civil legal aid under section 26 of the Legal Aid Sentencing and Punishment of Offenders Act 2012. The costs are therefore payable.
37. I am told that neither defendant has savings to discharge the costs as a lump sum. Each however offers monthly instalments of £200 per month. Taking into account their means, those are reasonable offers. The defendants will pay the costs by instalments of £200 per month with the first payment to be made by 27 February 2025 and by the 27th of each month thereafter.

Right of appeal

38. The court has made a suspended order of committal in each defendant's case. Each defendant has a right of appeal. Any appeal lies to the Court of Appeal Civil Division and has to be filed within 21 days of today.

39. I direct that a transcript of this judgment be obtained on an expedited basis at public expense and will be published on the judiciary website in due course in accordance with the requirements of CPR 81.

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