

Case No: J00SN478  
Neutral Citation Number: [2024] EWCC 25

**IN THE COUNTY COURT AT SWINDON**

The Law Courts  
Islington St  
Swindon  
SN1 2HG

Date of hearing: 1 November 2024

**Before:**

**HIS HONOUR JUDGE GLEN**

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**Between:**

**SWINDON BOROUGH COUNCIL**

**Appellant**

**- and -**

**ZACKERIAH GORDON**

**Respondent**

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**MR HASHMI** (in house Solicitor) appeared on behalf of the **Appellant**

**THE RESPONDENT** did not appear and was not represented

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**JUDGMENT**

**(extempore)**

**HIS HONOUR JUDGE GLEN**

1. This is an appeal brought by Swindon Borough Council against the decision of District Judge Bloom-Davis at Salisbury, made on 28 March 2023. The District Judge was concerned with proceedings following the arrest of the respondent to the appeal, Mr Gordon. He made no order in relation to a variety of breaches of an injunction which the Respondent had admitted on the grounds that the time limit provided for by CPR65.47(3)(a) had expired. The question on this appeal is whether he was right to do so.
2. The Appellant was represented at this hearing by Mr Hashmi, Solicitor, although for some unaccountable reason he appears to have absented himself from this judgment.

The Respondent was not present or represented, nor was it realistically expected that he would be.

### Background

3. The background to this matter is this. On 17 October 2022 a Deputy District Judge sitting at Swindon made an injunction pursuant to Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014, sometimes inaccurately referred to as an “anti-social behaviour injunction”. That injunction in summary prohibited the Respondent from driving recklessly or causing a nuisance or annoyance by virtue of his driving. It also prohibited him from being present in any public car park (with certain exceptions) or within a certain defined area in Swindon, and prohibited him being present at gatherings of three or more cars. A power of arrest was attached to the injunction. The purpose of the order was to restrain the Respondent from participating in vehicle-related nuisance involving the use of high-speed and noisy cars, often being driven in a dangerous way on various industrial estates and other places to which the public have access.
4. The Respondent breached that injunction. On 25 October 2022 a District Judge determined that he should be sentenced to a term of imprisonment of eight days, suspended for the remainder of the term of the injunction, which was to last until 17 October 2024 and has now expired.
5. On 30 October 2022, the Respondent was seen leaving a car meet on an industrial estate in Swindon involving approximately 40 vehicles, and also driving his vehicle without any lights. He was pulled over by the police and arrested for breaches of the prohibitions against reckless driving and being present at gatherings of more than three vehicles. He was produced before a District Judge at Swindon County Court on 31 October 2022 and remanded on bail until 8 November 2022 to enable him to obtain legal advice. There was a further remand on 8 November until 21 November.
6. On 21 November 2022, the Respondent admitted the breaches alleged and the matter was adjourned further for sentencing. When he is not driving a motor vehicle, the Respondent uses a wheelchair and in these circumstances the adjourned hearing was listed to take place at Salisbury County Court, being the only court locally which has suitable custody facilities for persons with a disability. That seems to have occasioned a very significant (and unacceptable) delay.
7. In the interim, the Respondent was arrested again on 26 February 2023 after being found in a car at a car meet involving numerous vehicles in a carpark to which the public had access. He was produced before a District Judge at Swindon on 27 February 2023 and remanded on bail until 7 March 2023. On 7 March, the Respondent admitted breaches of those paragraphs of the order prohibiting him from being present within a public carpark and at gatherings of more than three cars. Sentence was adjourned to 28 March, when the matter was also listed for him to be sentenced for the earlier two breaches and potentially for activation of the suspended sentence that had been imposed on 25 October 2022.
8. On 28 October 2023, District Judge Bloom-Davis sitting at Salisbury County Court determined that he did not have jurisdiction to impose a sentence of imprisonment. He held that because the period of 28 days provided for by Part 4 CPR 65.47 had

expired, the court no longer had jurisdiction to deal with the Respondent for the breaches that had been alleged. The only ‘remedy’ (although I am not sure that was how he put it) was for the Appellant to make an application to commit. Accordingly, he made no order in respect of any of the breaches and discharged the Respondent.

9. He was, however, persuaded to give permission to appeal. This was not, he said, because he believed that he was wrong, but on the basis that there had been a series of inconsistent decisions by other District Judges across the area. Due to these, as he put it, ‘differing interpretations’, there was ‘some other compelling reason’ for giving permission to appeal.

### Submissions

10. The appellant’s notice contains a single and broadly stated ground of appeal; that the District Judge was wrong to conclude that he lacked jurisdiction to deal with the Respondent. That single ground is amplified in a skeleton argument prepared by the then solicitor for the Appellant and adopted today by Mr Hashmi, albeit without much in the way of amplification.
11. In the skeleton argument, it is argued that it is necessary to determine the identity of “the matter” referred to in CPR 65.47. It is argued on behalf of the Appellant that “the matter” is the determination of the issue of whether a defendant is a contemnor. Once that has been done, “the matter” is properly regarded as having been dealt with. Sentencing is not a necessary component of “the matter”. Accordingly, it is not necessary for sentence to be dealt with within the period of 28 days.
12. In support of that assertion, Mr Bigwood in the skeleton and Mr Hashmi by adoption point to the court’s power to suspend or defer sentence. It is argued on behalf of the Appellant that a suspended sentence will mean that effectively the matter is not concluded, because sentence has been suspended or, alternatively, deferred. That cannot be consistent with the 28-day limit in CPR 65.47.
13. Alternatively it is argued, given that the Respondent had the right to purge his contempt, that the sentencing exercise is not complete until that application has been made. Again, that cannot be made to fit within the 28-day time limit. Finally, and consistently, it is argued that any contemnor has the right to appeal without the need to obtain permission. That right of appeal, again, cannot be fitted within the 28-day period.
14. Turning to the alternative course, which is provided for by the rules, of making an application to commit, it is submitted on behalf of the Appellant that it is difficult to see how that operates in circumstances where a contemnor has already admitted the contempt in the arrest proceedings. It would, it is suggested, be potentially abusive to then bring a separate Part 81 application for committal in those circumstances.
15. Finally, and I think by way of separate ground, it is argued that, even if the court had no power to impose a sentence for the contempts for which the Respondent had been arrested, it did have power to activate the terms of the suspended sentence.

### Law

16. The law as it applies to this matter is set out, as I have already said, in Part 1 of the Anti-social Behaviour, Crime and Policing Act of 2014. That Act permits courts to grant injunctions where a respondent has engaged in anti-social behaviour and it is just and convenient to make an order prohibiting that behaviour. Section 4 confers upon the court a power to attach a power of arrest, subject to certain requirements, including (as I imagine was relevant in this case) that there is a significant risk of harm to other persons. Section 9 confers on the Police power to arrest a person in breach of such an order without warrant and requires that person to be produced before a judge within a period of 24 hours from the arrest.
17. Section 9 contains an explicit power for that judge to remand the contemnor if he is not finally dealt with at that first hearing, as will rarely be the case. The question of remands is by virtue of section 11 further dealt with in schedule 1 to the Act. Paragraph 2 of schedule 1 allows the court to either remand someone in custody or on bail, with certain restrictions relating to persons under the age of 18. Paragraph 4 of the schedule limits the periods for which a person can be remanded in custody or on bail, unless the parties consent to a longer remand. Paragraph 5 of the schedule deals with remands for medical reports. It is of some relevance to the postscript to this judgment that remands for that purpose should not exceed three weeks. If a person is remanded on bail, an adjournment may be for not more than four weeks at a time.
18. It is in that context that one comes to the Rule. CPR 65.47 provides that:
- “(1) This rule applies where a person is arrested pursuant to –*
- (a) a power of arrest attached to a provision of an injunction*
- ....
- “(2) The judge before whom a person is brought following his arrest may –*
- (a) deal with the matter; or*
- (b) adjourn the proceedings.*
- “(3) If proceedings under ... section 9 or 10 of the 2014 Act are adjourned and the arrested person is released –*
- (a) the matter must be dealt with (whether by the same or another judge) within 28 days of the date on which the arrested person appears in court; and*
- (b) the arrested person must be given not less than 2 days’ notice of the hearing.”*
- “(4) A contempt application may be issued even if the arrested person is not dealt with within the period in sub-paragraph (3)(a).”*
19. I remind myself that Part 1 of the Civil Procedure Rules sets out the overriding objective. The overriding objective includes (CPR 1.1):
- “(2) Dealing with a case justly and at proportionate cost [which] includes, so far as is practicable –*
- [...]*
- (b) saving expense;*
- (c) dealing with the case in ways which are proportionate –*

[...]  
 (ii) to the importance of the case;  
 (iii) to the complexity of the issues; ...  
 (d) ensuring that it is dealt with expeditiously and fairly;  
 (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases;  
 [...]  
 (g) enforcing compliance with rules, practice directions and orders.”

CPR 1.2 provides that:

“The court must seek to give effect to the overriding objective when it

–  
 (a) exercises any power given to it by the Rules; or  
 (b) interprets any rule ....”

20. CPR 3 deals with the court's general powers of case management. CPR 3.1 provides that:

“(2) Except where these Rules provide otherwise, the court may –  
 (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired)  
 ....”

### Analysis

21. I turn then to consider the appeal and to address the issue which is put front of centre of it; what is “the matter” referred to in CPR 65.47? In my judgment, it is quite clear that “the matter” is the ‘proceedings following arrest’ referred to in the heading to the Rule. There is no basis upon which to limit the ambit of “the matter” to simply the finding of contempt. That is not what the Rule says and it is not a necessary implication from its wording.
22. In my judgment, ‘proceedings following arrest’ encompasses the production of the alleged contemnor before a judge, the admission to or proof of a breach of the relevant order and the imposition of an appropriate sanction or, as the case may be, a discharge of the contemnor without sanction. Once all of those steps have been completed, then, in my judgment, the matter has been dealt with. That, it seems to me, is reinforced by the power to adjourn and, even more so, by the saving provision in CPR65.47(4) that the applicant in the proceedings retains the right to pursue an application to commit for contempt of court.
23. I reject the submission that somehow the power of suspending a sentence extends the exercise of sentencing. It does not. When a suspended sentence is imposed, it is the imposition of a custodial sentence but the operation of that sentence is contingently postponed on certain terms. That does not extend the sentencing exercise. I recognise that where a judge adjourns, or perhaps -- in the more technical sense -- defers sentence, that presents a slightly greater difficulty. However, even where

sentence is deferred in its truest sense, it is the correct practice for the court to indicate the sentence that would have been imposed on that occasion had the judge decided to resolve the matter there and then. In my judgment, it is at that point that the matter is dealt with, even if there is in effect to be a further review at a later stage of the contemnor's conduct in the period pending that review. The right to purge contempt -- the right to come to court and apologise and ask for the court to revise its sentence -- cannot affect the fact that the sentencing exercise is complete. Similarly, the existence of a right of appeal is of no significance in this context.

24. In my judgment, standing back and looking at the Rule in the round, CPR 65.47 was intended to create a summary procedure to apply following arrest in straightforward cases only. Almost always, those cases are ones where the defendant admits breach and where the sentencing exercise is likely to be relatively straightforward. The saving provision of the right to apply for a committal is intended for cases which are likely to be more complex and will take longer than can be accommodated within the 28-day time limit.
25. In this case, that 28-day time limit appears to have been overlooked by some of the District Judges who dealt with this matter on earlier occasions, but it was not overlooked by District Judge Bloom-Davis. I question whether it is right to say technically that he lacked jurisdiction to sentence the Respondent, but certainly, in my judgment, he was right to say that the time limit under 65.47 had expired and that it was therefore no longer appropriate to do so. For those reasons, and because it seems to me that the question whether to activate a suspended sentence was an intrinsic part of the sentencing exercise which the District Judge could now no longer undertake because of the lapse of time, the District Judge was right, and this appeal will be dismissed.

#### Postscript

26. In Mr Bigwood's skeleton argument, he correctly identifies the fact that the 28-day time limit is a creature of the Civil Procedure Rules, but it is not a creature of statute. There is no reference to this time limit (in distinction to the 24-hour time limit) in the Act. Indeed, it might be said, when one reads schedule 1 to the Act (particularly when one is looking at questions of remand for medical reports) that the Act contemplates that there will be longer periods of remand and adjournment than can possibly be encompassed by that 28-day time limit.
27. A question therefore arises, albeit not in this appeal, as to whether the court has power under Part 3.1 of the Civil Procedure Rules to extend the time provided for by CPR 65.47. I say that it does not arise on this appeal as it is not a ground of appeal. No such extension of time was sought and none of the District Judges who dealt with this matter before District Judge Bloom Davis purported to exercise any such power they may have had to extend time.
28. CPR 3.1 applies except where the rules provide otherwise, but the use of the word "must" in CPR 65.47 is not, it seems to me, sufficient to amount to a provision otherwise (see, for example, *Totty v Snowden* [2001] EWCA Civ 1415). In principle therefore, and having regard to the application of the overriding objective (both in the exercise of discretion and in interpreting the Rules) it seems to me that a power may well exist to extend time beyond the 28-day period.

29. If that power exists, then, in my judgment, it is one that should only be exercised sparingly and only in unusual circumstances where it does not subvert the overall purpose of the Rule as I have interpreted it; to provide for a summary procedure for straightforward cases. Such circumstances might, in appropriate cases, include the need to remand for medical reports, or even possibly the circumstance that arose in this case -- the need to provide a suitable court to accommodate the Respondent's disability. That will however be a question of fact and discretion in every case for a Judge dealing with an arrest in the light of the circumstances of each case.

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