

Neutral Citation Number: [2022] EWHC 1517 (QB)

Case No: QB-2022-001236

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

Sitting at
Birmingham Crown Court,
1 Newton Street,
Birmingham, B4 7NA

Date: 11/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

**NORTH WARWICKSHIRE BOROUGH
COUNCIL**

Claimant

- and -

**DAVID NIXON
MARGARET REID**

Defendants

MR SHEPHARD of Counsel appeared for the Claimant
The Defendants appeared in person

NOTE OF JUDGMENT

(No transcript is available as the recording cannot be retrieved.)
This note of judgment has been prepared and approved by HHJ Emma Kelly)

HER HONOUR JUDGE EMMA KELLY:

1. David Nixon and Margaret Reid appear before the court to be dealt with in relation to three admitted breaches of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. Both defendants appear in person. They were informed by the court when first produced on each breach that they were entitled to legal advice and representation and asked again today whether they wanted representation. They have continued to inform the court that they do not wish to take legal advice and want to represent themselves.

3. The particulars of the breaches have been provided to the defendants by the claimant in writing. The court has to be satisfied of any breach to the criminal standard of proof, namely beyond reasonable doubt. In light of the defendants' admissions and having read the witness evidence from the police officers, I am so satisfied.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. The defendants were not named defendants. The injunction was however also granted against "*persons unknown who are organising, participating in or encouraging others to participate in protests against the production and/or use of fossil fuels in the locality of the site known as Kingsbury Oil Terminal, Tamworth B78 2HA.*" A power of arrest was attached to the order.

5. By paragraph 1(a) of the injunction:

"The Defendants SHALL NOT (whether by themselves or by instructing, encouraging or allowing any other person):

(a) organise or participate in (whether by themselves or with any other person), or encourage, invite or arrange for any other person to participate in any protest against the production or use of fossil fuels, at Kingsbury Oil Terminal (the "Terminal"), taking place within the areas the boundaries of which are edged in red on the Map attached to this Order at Schedule 1, or within 5 metres of those boundaries (edged in red) (the "buffer zone").

For the avoidance of doubt, this prohibition does not prevent the Defendants from using any public highway within the buffer zone for the purpose of travelling to or from a protest held, or to be held, outside the buffer zone."

6. Paragraph 1(b) of the order further prohibited "*in connection with any such protest anywhere in the locality of the Terminal*" a number of defined acts including at subsection (iii) "*obstructing any entrance to the Terminal...*"

7. On 14 April 2022 the order was served by alternative methods permitted by Sweeting J, including by placing signage in prominent locations around the site and on the claimant's website and social media accounts.

8. On 26 April 2022, at approximately 07.45hrs, the defendants were two of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on the grass

verge to a private road. A peaceful protest took place for approximately 2 hours with signs and placards being held. The location of the protest was within the buffer zone referred to within paragraph 1(a) of injunction. The defendants did not move when asked to do so by the police. Mr Nixon referred to the injunction and the defendants' knowledge that they were acting in breach of it. At approximately 10am, some defendants spread out and sat down across road obstructing the entrance to the site. The defendants were arrested 15-30 mins later and removed. Each defendant was produced in court on 27 April and bailed on condition to comply with terms of injunction.

9. On 28 April 2022, the day after the court hearing, the defendants returned to the site with six others. They again participated in a peaceful protest within the buffer zone along external fencing to the site, in breach of paragraph 1(a) of the order. The defendants were arrested and produced before the court later in the day on 28 April, and again bailed to attend court on 4 May 2022.

10. On 4 May 2022 the defendants failed to attend court and instead returned to the oil terminal to continue to protest. At approximately 2pm the defendants and nine others stood on the grass verge at the side of the entrance to the site, again with placards and banners. The protest was peaceful but inside the buffer zone such that it amounted to a further breach of paragraph 1(a) of the interim injunction. Some of the defendants then walked across the road junction slowly, such that it hindered vehicular access to the site.

11. When determining the penalty for contempt of court, the court has to consider the objectives of the exercise as identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699. Pitchford LJ, at para. 20, held:

“The first objective is punishment for breach of an order of the court; the second is to secure future compliance with the court's orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective.”

11. The Sentencing Council do not produce guidelines for breach of a civil injunction. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 found that the criminal Definitive Guideline for breach of antisocial behaviour orders was equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. One does however have to bear in mind that the maximum sentence in the criminal courts for breach of an anti-social behaviour order is 5 years and thus greater than the 2-year maximum under s.14 of the Contempt of Court Act 1981. The criminal courts also have

options such as community orders that are not available in the civil courts. I also take note of the fact that the injunction in this case was not an anti-social behaviour injunction in the true sense under the Anti-Social Behaviour, Crime and Policing Act 2014. I do however conclude that reference by analogy to the Definitive Guideline for breach of a criminal behaviour order provides useful insight into the appropriate approach.

12. In their report of July 2020, the Civil Justice Council prepared draft guidance as to the appropriate penalties when dealing with contempt of civil orders. Those draft guidelines are not yet in force, and I am mindful that the Court of Appeal guidance remains that it is the criminal Definitive Guidelines that the court should have regard to.

13. In my judgment, the breach on 4 May is the most serious and I take that as the lead matter. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the 4 May incident falls within culpability category A, as being a “very serious or persistent breach.” It was the third breach in short succession in circumstances where the defendants were on bail at the time and had failed to surrender to the hearing on the same day. The harm caused however falls into the lowest category 3 in that it caused little or no harm or distress. A culpability A, category 3 harm case in the criminal courts has a starting point of 12 weeks’ custody with a category range from a medium level community order to 1 year’s custody. That starting point and range necessarily have to be reduced to reflect the civil court’s lower maximum custodial term.

14. The breaches on 26 and 28 April fall into culpability B, being deliberate but not at that stage persistent. Again, category 3 harm applies. A culpability B, category 3 harm case has a starting point of high level community order and a range from a low level community order to 26 weeks’ custody.

15. I turn to consider any aggravating factors. The contempt matter on 4 May breach is aggravated by the fact that the defendants were on bail at the time. I do not take into account the earlier breaches on 26 and 28 April as aggravating factors because the question of persistence is already addressed when determining that the 4 May matter is a culpability A case.

16. Each defendant was motivated by strongly held convictions and each is of previous good character. Mr Nixon informs the court he is a full-time volunteer with a house and mortgage. Ms Reid explains she was a historian working in museums for around 30 years and lives with her partner. The defendants are entitled to credit for their admissions. The admissions in respect of 26 and 28 April were made at an early but not the earliest

opportunity; that would have been at the hearing the defendants failed to attend on 4 May. Pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea, the admissions in respect of 26 and 28 April attract a 25% discount. The admission in relation to the breach on 4 May was made at the earliest opportunity and attracts a one-third discount.

17. In my judgment, the breach of 4 May 2022 is so serious that, after a trial, the appropriate penalty after a trial would have been one of 28 days' imprisonment, given the persistent nature of the conduct. The admissions each defendant has made reduces that by one-third. Rounding down in favour of the defendants reduces the penalty to one of 18 days' imprisonment. The breaches of 26 April and 28 April on their own would not attract a custodial sentence.

18. When a civil court fixes a custodial sentence, it must deduct time spent in custody on remand. Unlike in criminal courts, where the Prison Service adjusts the penalty to take account of time spent on remand, that does not happen when the civil court passes a custodial penalty. Each defendant has spent nine days in custody: one day when arrested on 26 April; a further day when arrested on 28 April; and seven days following arrest on 4 May and subsequent remand in custody. The defendants have served the equivalent of an 18-day sentence. Each has therefore already served the necessary penalty. I therefore propose to make no further order on the three matters, but the order will record that each has served the equivalent of an 18-day custodial sentence and what the penalty would have been but for the time in custody.

19. If the defendants had not already spent the time in custody, I would have had to consider whether it was appropriate to suspend the term of imprisonment. The Definitive Guideline for the Imposition of Community and Custodial Sentences identifies factors that the court should take into account when determining whether to suspend a sentence of imprisonment. Factors indicating it may be appropriate to suspend include where there is a realistic prospect of rehabilitation, strong personal mitigation or a significant harmful impact to others. Given that the position of each defendant is that they do not agree with the injunction, do not recognise its legitimacy and the persistent nature of the breaches, I would not have been persuaded it would have appropriate to suspend. That point is rendered academic in light of the time spent on remand.

20. This court sends out a very clear message that it expects court orders to be complied with. It treats any breach of an order as a very serious matter. Those appearing before the court need recognise that if they return to court on further breaches of the injunction order, they risk further periods in custody.

21. The claimant has failed to provide a schedule of costs to either the court and or to the defendants. The defendants are disadvantaged by that failure, as it the court. Although the general rule is that costs follow the event, in light of the failure to provide a costs schedule and the court therefore lacking the information to make an informed summary assessment, there will be no order as to costs on the contempt.

22. The defendants are thus eligible for immediate release, once the custodians have processed the paperwork.
