

Neutral Citation Number: [2023] EWHC 2359 (KB)

Case No: KB-2022-BHM-000221

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

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

Date: Monday 4th September 2023
Start Time: 14.25 Finish Time: 14.52

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

ZOE LLOYD

Defendant

MR MANNING for the Claimant
MR ROBINSON for the Defendant

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Ms Zoe Lloyd appears before the court in respect of an admitted contempt arising from her breach on 6th August 2023 of an interim injunction granted by the Honourable Mrs Justice Hill by order dated 22nd December 2022, as amended by the order of the Honourable Mr Justice Ritchie dated 19th May 2022. It falls for the court to determine the appropriate penalty for that contempt. The claimant has been represented at today's hearing by Mr Manning of counsel. Ms Lloyd is represented by her solicitor, Mr Robinson.
2. These are contempt proceedings and therefore the burden rests on the claimant to establish the contempt to the criminal standard, that is, beyond reasonable doubt. The contempt proceedings nonetheless remain civil proceedings.

Background

3. By Order dated 22nd December 2022, Hill J granted an interim injunction on an informal notice only basis aimed at prohibiting street cruising on the streets of Birmingham. A similar injunction was granted in separate but factually linked proceedings brought by the four Black Country local authorities. The application followed concern by the claimant that anti-social and often unlawful behaviour in the form of car cruising or street cruising was occurring within its area following the expiry of previous injunctions.
4. The original defendants to the claim included seven named defendants and two further defendants who were defined categories of persons unknown. The 8th defendant was defined as "Persons Unknown who participate or intend to participate in street cruises in Birmingham, as car drivers, motorcycle riders, passengers and/or spectators". The 9th defendant was defined as: "Persons unknown who, or who intend to, organise, promote or publicise street cruises in Birmingham".
5. The interim injunction was reconsidered at a hearing before Freeman J on 5th February 2023 but the terms remained unchanged. The matter was further considered at a hearing before Ritchie J on 19th May 2023. The terms of the injunction were amended to add a 10th defendant with the following definition: "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 10th defendant description to which Ms Lloyd finds herself bound.
6. By paragraph 1 of the injunction, as amended by Ritchie J: "The 1st to 7th (inclusive) and 10th defendants are forbidden 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". Schedule 1 is a map showing the Birmingham administrative boundary edged in red.
7. Paragraph 1 of schedule 2, as amended, 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 at paragraph 2 below, so as by any 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 car cruise.”

8. Paragraph 2 of schedule 2 states: “The activities referred to at paragraph 1, above, are:

- (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.”

9. Paragraph 3 of schedule 2, as amended, defines ‘participating in a street cruise’ as follows: “Any of the 1st to 7th (inclusive) or 10th defendants participates in a street cruise if he 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.”

10. By paragraph 3 of the interim injunction, as amended, a power of arrest was attached to paragraph 1 of the injunction. The order came into force on 24th December 2022 at 00.01 and continues until the hearing of the claim. The claim has not yet been heard.

11. Paragraph 9 of the case management order of Ritchie J dated 19th May 2023 dispensed the need for permission service of the amended interim injunction and power of arrest on the 10th defendant. Paragraph 13 of the same order set out in 8 sub-paragraphs the steps the court required the claimant to take to effect alternative service on the persons unknown comprising the 10th defendant. Service of the amended interim injunction and power of arrest is dealt with by the witness statement of Michelle Lowbridge of 23rd August 2023. In the course of that statement she addresses each of the requirements of paragraph 13.

Service

12. In the course of submissions, I discussed the service position with the legal representatives. On the face of the claimant’s evidence before me, as conceded by the defendant, subsections (1) to (8) of paragraph 13 have all been complied with, save as

to subsection (6). Subsection (6) is a requirement to ensure that “the web pages hosting the video previously uploaded to the video sharing website ‘YouTube’ and the claimant’s websites and social media pages (including Instagram, Twitter and Facebook), now states that this order has been made and the interim injunction and power of arrest continue in force.” The claimant was ordered to take those steps by 23:59 on 26th May 2023.

13. The claimant’s position is that it has not been possible to comply with paragraph 13, subsection (6) because it is not possible to retrospectively change a post that has been put on YouTube, Instagram, Twitter and Facebook. The court was told that, at best, the most the claimant could do is put a comment in the public comments box of the post. It was pointed out, and I agree, that such a step would have limited effect, because as soon as anybody else puts a comment in the public comments box, the claimant’s comment would then be subsumed within any number of comments that could be made. What the claimant has done, in complying with all of the other aspects of paragraph 13, is to ensure that the claimant’s website, including its landing page and the dedicated page to the street cruise application, and its social media platforms (Instagram, Twitter, now X, and Facebook) have all been updated with details of the amended order and power of arrest. In those circumstances, to the extent that the court needs to, I waive compliance with paragraph 13(6) of the order of Ritchie J on the basis that it is not a step that the claimant can comply with. I am therefore satisfied that the claimant has properly served the amended injunction and power of arrest so as to comply with the alternative service provisions. The defendant takes no point on service and accepts the amended injunction and power of arrest have been validly served.
14. Ms Lloyd was arrested shortly after midnight on 7th August 2023 when the police exercised the power of arrest attached to the interim injunction. She was produced before HHJ Rawlings later that day, who ordered the claimant to file and serve a formal contempt application with witness evidence in support by 4 pm on 18th August 2023. A certificate of service at page D1 of the bundle evidences service on 18th August 2023 of the N600 contempt application, witness statements from Police Officers Bostock and Styler, and various other documents. The claimant accepts that some additional evidence, including a viewable copy of the video footage, was not served on the defendant until after 25th August 2023. No issue is taken by Ms Lloyd as to the lateness of the service of some of that evidence. The court will take into account the late serving of the complete evidence when considering the timing of Ms Lloyd’s admission for the purposes of the appropriate credit to be applied.

Admitted particulars of contempt

15. The contempt application was listed for trial today. Earlier today, Ms Lloyd reduced to writing an admission she was prepared to make to the effect that she accepts breaching of the injunction in its amended form. The admission is made in the following terms: “The defendant, Zoe Lloyd, admits that on 6th August 2023 at about 23:35 hours when driving her blue Audi A4 motor vehicle, vehicle registration mark RX14 OXY, she breached the interim injunction granted by Hill J on 22nd December 2023, as amended by Ritchie J on 19th May 2023, on the following basis. She admits that when at the red traffic lights on Bromford island she positioned her vehicle next to a silver Ford Focus. Both vehicles were edging forward anticipating the change of red lights to green, and upon the lights changing both vehicles sped off. This amounts

to participating in a street cruise in breach of paragraph 1 of the injunction, as defined in schedule 2 paragraphs 2(3) and 3, in that she performed and/or encouraged another person to perform the activity of racing against another motor vehicle, causing danger and/or nuisance to other road users, schedule 2 paragraph 1(2) and paragraph (4).”

16. The admission relates to a small part of the factual case originally put forward by the claimant. The claimant is however prepared to accept the admission. Following the piece of driving referred to in the admission, PC Bostock followed Ms Lloyd’s vehicle, illuminated the lights on his otherwise unmarked police car and pulled her over. Ms Lloyd accepts that she gave a false name to the police initially. The explanation she gives for that is that she had previously had a bad experience when being pulled over by the police and was seeking to avoid that happening again.
17. Taking into account the admission made by Ms Lloyd in writing and having read the claimant’s evidence and viewed the video footage, both from the police car and from the police body-worn cameras, I am satisfied that Ms Lloyd’s admitted actions do amount to a breach of the terms of the interim injunction. I proceed to determine sentence on the basis of that limited admission.

Approach to sentencing

18. The court reminds itself of the objectives when imposing penalties for civil contempt. Those objectives were considered by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 at paragraph 39. Although the case of *Lovett* concerned breaches of orders made pursuant to the Anti-social Behaviour, Crime and Policing Act 2014, which this case is not, the objectives in sentencing for a civil contempt remain the same. They are in the following order: (1) ensuring future compliance with the order; (2) punishment; (3) rehabilitation.
19. The court has to consider the appropriate approach to sentencing. At paragraph 2.1 of the judgment in *Breen v Esso Petroleum Co Ltd* [2022] EWCA Civ 1405 the Court of Appeal endorsed the approach to assessing sanctions in contempt cases as summarised by the Supreme Court in *Attorney General v Crosland* [2021] UK SC 15. At paragraph 44 of *Crosland*:

“44. General guidance as to the approach to penalty is provided in the Court of Appeal decision in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] EWCA Civ 392... That was a case of criminal contempt consisting in the making of false statements of truth by expert witnesses. The recommended approach may be summarised as follows:

1. The court should adopt an approach analogous to that in criminal cases where the Sentencing Council’s Guidelines require the court to assess the seriousness of the conduct by reference to the offender’s culpability and the harm caused, intended or likely to be caused.
2. In light of its determination of seriousness the court must first consider whether a fine would be a sufficient penalty.

3. If the contempt is so serious that only a custodial penalty will suffice, the court must impose the shortest period of imprisonment which properly reflects the seriousness of the contempt.
 4. Due weight should be given to matters of mitigation, such as genuine remorse, previous positive character and similar matters.
 5. Due weight should also be given to the impact of committal on persons other than the contemnor, such as children of vulnerable adults in their care.
 6. There should be a reduction for an early admission of the contempt to be calculated consistently with the approach set out in the Sentencing Council's Guidelines on Reduction of Sentence for a Guilty Plea.
 7. Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension."
20. The Sentencing Council does not produce guidelines for breach of a civil injunction. Any approach to sentencing for contempt can only be by analogy to the concepts of culpability and harm. In *Lovett v Wigan Borough Council* the Court of Appeal endorsed use of the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report "Anti-social Behaviour in the Civil Courts". This court, however, has to bear in mind that the guidance in *Lovett* was limited to cases concerning breaches under the 2014 Act, which this case is not. Thus, whilst the concepts of culpability and harm remain useful, the court has to be careful not to place reliance on the Civil Justice Council matrix without further consideration.
21. Turning to the question of culpability, in my judgment, Ms Lloyd's actions on 6th August 2023 fall to be assessed as medium culpability. Her actions in joining with the Silver Ford Focus in edging forward at red lights and then accelerating hard away from the lights was clearly a deliberate act. To that extent I reject the submission made on the defendant's behalf that this was simply a minor breach.
22. Turning to the question of harm, in assessing the level of harm it is again submitted on behalf of the defendant that this falls in the lowest category of harm. However, the court is entitled to take into account not just the level of harm that was actually caused, but also that was intended, or was at risk of being caused by the breach. The expressing of a willingness to engage in racing risks acting as a catalyst to others to partake in similar behaviour. The fact that Ms Lloyd's actions took place in an urban area when there was a significant volume of other traffic using the traffic island and then involved the hard acceleration away from the lights in what was a 30 mile an hour speed restricted area gives rise to an obvious risk of serious harm to other road users and pedestrians. The fact that no harm was caused was more down to good luck rather than good judgment. I remind myself of the limited basis of the admission, but I nonetheless assess the level of harm as medium.

23. I consider whether there are any further aggravating or mitigating circumstances. The fact that Ms Lloyd gave a false name to the police when stopped is, in my judgment, an aggravating factor that the court should take into account, notwithstanding her explanation that it was based on previous experience when stopped by the police. I make it clear that I am not taking into account her previous poor driving that evening, as seen on the video footage, as that falls outside the limited admission she has made. I am told that her earlier driving will be the subject of criminal proceedings and I will leave those matters to be dealt with by the criminal courts. The extent to which the sentence of the facts constituting the contempt overlaps with any subsequent sentence for criminal matters will be a matter for the criminal court to take into account.
24. I have considered whether the defendant's admitted presence earlier that evening in Willenhall and Wolverhampton in circumstances where car cruising activity at those sites had been reported is something that should be treated as an aggravating factor. Those locations fall outside the geographical scope of this interim injunction albeit within the geographical scope of the similar injunction order granted in favour of the Black Country local authorities. There is no suggestion that the claimant was engaged in driving in a car cruise in those locations. Being a spectator of a car cruise would not in itself amount to a breach of either the injunction in this case nor the Black Country claim. I am not therefore going to treat her presence in those locations as an aggravating factor. The evidence could, if the contempt application had been contested, have been considered as evidence as to her propensity to associate with car cruises.
25. I turn to mitigation. Ms Lloyd is 21 years of age and lives with her mother. She is of positive good character with no previous criminal convictions or cautions and I take that into account. This is also her first breach of the injunction. The court is told that Ms Lloyd has a number of health-related issues, including ADHD, personality disorder, obsessive compulsive disorder, anxiety and depression. Those are all matters which the court can properly take into account in mitigation.
26. The court has been told that Ms Lloyd is looking for work and currently in receipt of Personal Independence Payments. She has a recent history of being in gainful employment. In January to May 2022 she was employed as a delivery driver for Asda and Ocado. It is extremely unfortunate that her admitted driving on 6th August was so poor, as one would imagine that type of driving puts in jeopardy the driving type of employment opportunity she has experience of. Ms Lloyd was until recently running a café in a joint venture business with her personal and professional partner. The court is told that shortly prior to 6th August, that relationship ended. She has some modest savings of £1,000 as a result of the division of the business assets and is looking for alternative work. The court also takes into account the remorse that is expressed by Ms Lloyd through her legal representative.
27. It is submitted on behalf of Ms Lloyd that the court could deal with this by way of deferred consideration. However, in my judgment, neither a deferred consideration nor a fine would be a sufficient penalty for this breach of the High Court injunction. Participation in a street cruise, albeit only for a very short period of time, as a driver in an urban area at night-time where other road users are around is so serious that only a custodial penalty will suffice.

28. The provisional sentence in this case, before consideration of credit for her admission and the question of whether the sentence can be suspended, is one of 21 days. I have taken into account the fact that Ms Lloyd has already spent one day in custody when arrested, which for a woman of good character will have been a salutary experience. Ms Lloyd is entitled to credit for her admission. I give her the maximum credit of one third, reducing the term to 14 days, on the basis that the admission was made at the first opportunity following the service of the complete evidence. Indeed, in the days before the hearing Ms Lloyd's solicitor had provided the claimant with the proposed basis of her admission.
29. The court has to consider whether suspension is appropriate. In my judgment it is. This is a first contempt in circumstances where I am persuaded there is a realistic prospect of rehabilitation. Ms Lloyd is looking for work and has a good work record behind her. The sentence of 14 days' imprisonment will be suspended for a period of 12 months from today on condition of compliance with the terms of the interim injunction of Hill J dated 22nd December 2022, as amended by Ritchie J's order of 19th May 2023, or any subsequent amended form of the injunction in this case.
30. Ms Lloyd has the right to appeal this suspended order of committal. Any appeal must be made to the Court of Appeal (Civil Division) and must be filed within 21 days of today.
31. The claimant applies for a contribution to the costs of the contempt application. The court has a discretion as to costs, but the general rule under CPR 44.2(2) is that an unsuccessful party will be ordered to pay the costs of the successful party, but the court may make a different order. The claimant seeks a contribution at the sum of £1,000, to include the issue fee of £255 and a contribution to costs of £745 to reflect the attendance by the claimant's legal representatives at two hearings. The court is told that the full costs are much higher.
32. Ms Lloyd does not resist the principle that she pay a contribution to the claimant's costs but asks that the amount be reduced to reflect her limited means. The defendant is in receipt of public funding for the purposes of this contempt application. However, as was clarified by the Court of Appeal in *Secretary of State for Transport v Cuicurean* [2022] EWCA Civ 661, costs protection afforded by section 26 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 to those in receipt of civil legal aid does not apply to those such as Ms Lloyd who are in receipt of criminal legal aid for contempt proceedings. I take into account Ms Lloyd's limited means. However, there is no good reason to depart from the general rule that the claimant, as the successful party, should receive their costs from Ms Lloyd. It is not appropriate for the requested contribution of £1,000 to be further reduced given that the contribution is less than what inevitably will be the far higher true costs that the claimant has incurred in dealing with the contempt. I therefore order that Ms Lloyd pay a contribution to the claimant's costs, summarily assessed in the sum of £1,000, to be paid by 4 pm on 28 days.