

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1516 (QB)

Ref. 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 7NR

Before HER HONOUR JUDGE EMMA KELLY

IN THE MATTER OF

NORTH WARWICKSHIRE BOROUGH COUNCIL (Claimant)

-v-

SARAH WEBB (Defendant)

**MR SHEPHARD appeared on behalf of the Claimant
The Defendant appeared in person**

Hearing date: 11th May 2022

APPROVED JUDGMENT

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HHJ EMMA KELLY:

1. Sarah Webb, you appear before the court today in respect of two admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022. You represent yourself. At the last hearing you had solicitors on record but did not want them to speak as your advocate in court. You told me earlier today that you wanted to speak to your legal representatives, but they were not present at court. Your case was put back for efforts to be made to contact your solicitor and the barrister who was instructed by your solicitors to represent other defendants in this case. The barrister had left court and is no longer available. You have been given the option of your case being adjourned to tomorrow for your solicitor can attend, or for you to speak to the duty solicitor by telephone today. You have told me that you do not wish to speak to the duty solicitor or for your case to be adjourned to tomorrow and wish to proceed acting in person today.

2. The claimant has provided particulars of the alleged breaches to you in writing. You have admitted two breaches of the interim injunction on 28 April 2022 and 4 May 2022. Bearing in mind your admissions and having read the witness evidence of the police officers, I am satisfied that the two breaches have been proved, as they need to be, to the criminal standard of proof.

3. Something needs to be said as to the background to why you find yourself in court today. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants, of which you were not one, but also 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 that order.

4. 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.”

5. 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...”

6. The interim order did not therefore prohibit all protest activity in the vicinity of the Kingsbury Oil Terminal. It did however prohibit protesting within the five-metre buffer zone or protesting in the general locality that engaged limb 1(b) of the order.

7. The order was served on 14 April 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. You appear before the court in respect of two breaches of the interim injunction.

9. On 26 April 2022 at approximately 7.45am you were one of 16 individuals who gathered outside the main entrance the Kingsbury Oil Terminal on a grass verge to the private road. You were involved in a peaceful protest for approximately two hours. There were various signs and placards. The claimant - and indeed this court - accept that the initial protest was wholly peaceful, but it was, nonetheless, within the buffer zone and therefore was in breach of paragraph 1(a) of the injunction. You and your co-defendants were asked to move by the police but refused. At approximately 10am you and others spread out and sat down across the road, obstructing access to and egress from the terminal site. You were arrested a short time later for obstructing the highway and later that day arrested for breach of the injunction. You were produced before the court on 27 April and bailed on condition that you comply with the terms of the injunction. You were ordered to return to court for a hearing on 4 May to progress the breach allegation from 26 April.

10. On 4 May 2022 you chose not to answer your bail and made a deliberate decision to attend the oil terminal to again continue your protest. At approximately 2pm you and around 10 others stood on the grass verge at the side of the entrance, again with placards and banners. The protest was peaceful but inside the buffer zone such you’re your actions were in breach of paragraph 1(a) of the interim injunction. You were one of two individuals who told police officers quite frankly that you were due to appear in court that day and had failed to do so. Individuals then walked across the road junction slowly, such that it hindered access by vehicles to the site. I accept that you were not one of the named individuals acting in a manner

that caused the police to intervene and pull individuals out of harm's way so as not to cause a health and safety incident.

11. When considering the appropriate penalty for these breaches, the court has to take into account the objectives of any penalty exercise. Those objectives were identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2013] EWCA Civ 699. Lord Justice Pitchford 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 court orders, if possible; the third is rehabilitation, which is a natural companion to the second objective.”

12. The claimant's barrister has referred to the Sentencing Council's definitive guidelines. 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. It is not, however, a complete analogy: the criminal court has a greater sentencing maximum of five years as opposed to the civil court's maximum of two years on any single occasion. The criminal courts also have a variety of community orders available that this court does not. I also take account of the fact that the injunction in this case is not an antisocial behaviour injunction in the true sense as it would be if granted under the Anti-social Behaviour, Crime, and Policing Act of 2014.

13. 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.

14. By reference to the Definitive Guideline for Breach of a Criminal Behaviour Order (also applicable to breach of an anti-social behaviour order), the first breach on 26 April was a deliberate breach and therefore would fall within culpability B. The claimant accepts, and I agree, that it however falls in the lowest category 3 of harm, causing little or no harm or distress. As to the second breach on 4 May 2022, albeit it occurred very shortly after the first breach, I conclude it remains within culpability category B and does not cross the threshold into culpability A which would require persistency.

15. Each breach therefore gives rise to a starting point of a high-level community order and a range of a low-level community order to 26 weeks in custody.

16. Against that starting point, I consider any aggravating factors. The breach on 26 April was committed only 12 days after the order was made. The breach on 4 May is further aggravated by the fact that it was committed only days after the first breach. It was also on bail and it was in circumstances where you had failed to attend a court hearing on the very same day. The deliberate flouting of both the injunction and the order of the court to attend the hearing undoubtedly aggravates that matter.

17. As to the question of mitigation, you have explained something to me of your personal circumstances and I have seen your statement of means. You are of good character. The most obvious mitigating factor in your case is your admission of the breaches. You are entitled to credit for your admissions. Your admission to the breach on 26 April was not entered at the first opportunity; that would have been at the hearing on 4 May that you failed to attend. Applying the Definitive Guideline for Reduction in Sentence for a Guilty Plea, your admission today in respect of 26 April entitles you to a 25 per cent discount. Your admission in relation to breach on 4 May was at the earliest opportunity, taking into account the need for you to seek advice. You will therefore receive a one-third discount on the penalty for that breach.

18. In applying the Definitive Guidelines, I bear in mind that this is a civil court with a lesser maximum sentence and without the availability of community order disposals. In my judgment the most appropriate penalty for someone in your position, who had not spent any time on remand in custody, would have been a financial penalty. The court has the ability to impose unlimited fines. It is apparent from your statement of means that you have only a modest income with outgoings that almost match that income. I would, therefore, have considered you as someone of very modest means. In relation to the breach on 26 April, a fine of £450 would have been appropriate based on a provisional sentence of £600 but reduced by 25 per cent to £450. In relation to the breach on 4 May, a fine of £600 would have been appropriate, with a starting point of £900 but discounted by one-third to reflect the admission. I give you those figures so that you have some idea of the financial penalty the court would have had in mind.

19. However, I need to be mindful of the time that you have spent in custody. You spent a day in custody following your arrest on 26 April. Since then, you have spent a further seven days in custody following your arrest on 4 May and subsequent remand in custody. Those eight days are the equivalent of a 16-day term of imprisonment. The practical effect is that the time that you have now spent on remand as a result of your failure to surrender on 4 May is more draconian than the financial penalty that the breaches warrant. It would be unjust to put you in a position whereby you were paying a fine having already spent time in custody. I therefore propose to make no further order on the breaches.

20. The court order will record the time you have spent in custody and it will also record what the financial penalty would have been if you had not spent that time in custody. The approach I take in no way condones your actions. The court treats disobedience with its orders very seriously, as you will have realised from your previous remand in custody.

21. I am not going to make any order that you pay the costs of the proceedings. The claimant has failed to provide a schedule of costs, as they should have done, to either the court and or to the defendants. You are disadvantaged in to responding to an application for costs. I therefore make no order as to costs, a position which mirrors that I have adopted with other defendants in a similar position.

22. In those circumstances you are free to go with the custodians who will discharge you from custody. A hard copy of the order from today will be sent out to you in due course by post. I am not going to order that the same be personally served.
