

TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1458 (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-

SIMON MILNER-EDWARDS (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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HER HONOUR JUDGE EMMA KELLY:

1. Mr Milner-Edwards, you appear before the court today in relation to three admitted breaches of an interim injunction that was granted by the Honourable Mr Justice Sweeting on 14 April 2022.

2. You appear as a litigant in person. You have been given the opportunity to obtain legal advice and representation but have told the court, now on a number of occasions, that you wish to represent yourself.

3. You face three matters of contempt: the first on 26 April 2022, the second on 28 April 2022 and the third on 4 May 2022. The claimant provided particulars to you in writing and you have admitted each matter today in accordance with those particulars. In light of your admissions, the court is satisfied that the allegations of contempt of court have been proved to the criminal standard, namely beyond reasonable doubt.

4. Turning to the relevant background. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. You were not named as a defendant. The injunction was 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 that order.

5. The injunction placed certain restrictions on what protest activity could take place in and around the oil terminal. 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...” The wording of the order did not therefore prohibit all protests but it did prevent protests within the five-metre buffer zone.

7. The order was served on 14 April 2022 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, shortly before 8 am, you were one of group of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on a grass verge to the private road. You engaged in a peaceful protest for about two hours, with signs and placards. The claimant and indeed the court accepts it was a wholly peaceful protest, but it was within the five-metre buffer zone and thus in breach of paragraph 1(a) of the injunction. The police asked you and your fellow protestors to move but you refused. At approximately 10 o’clock a number of individuals sat down across the across the road obstructing access to and egress from the site. You are not one of those individuals named in the police evidence as having sat down across the road. As a result of your engagement in the protest you were, however, arrested, produced before the court on 27 April. You were bailed on condition that you comply with the interim injunction.

9. On 28 April 2022 you returned to the site, that being the day after the court appearance. With seven others you 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. You were arrested and produced before the court later on 28 April and again bailed to attend court on 4 May 2022.

10. On 4 May 2022 you failed to attend court to answer your bail and made the deliberate decision to again attend Kingsbury Oil Terminal to protest. At approximately 2 pm on that day you and 10 others were on the grass verge to the side of the entrance to the site with placards and banners. The protest was within the buffer zone and thus in breach of paragraph 1(a) of the interim injunction. Some of your number told police officers that you were due appear in court that day and you failed to do so. Some protestors started to walk across the road junction so as to cause inconvenience to vehicles that were trying to enter the terminal. I accept that you are not named in the police evidence as causing any difficulty to vehicles.

10. In determining the appropriate penalty, the court has to bear in mind the objectives of the exercise of setting penalties for contempt of court. penalty exercise. Pitchford LJ in *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699 held as follows:

“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.”

11. This Sentencing Council does not produce Definitive 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 definitive guidelines for breach of an antisocial behaviour order were equally relevant when dealing with breaches of antisocial behaviour orders in the civil courts. It is not, however, a complete analogy because breach of an antisocial behaviour in the Crown Court gives rise to a maximum sentence of five years; breach of a civil order giving rise to a contempt of court has a two-year maximum. The criminal courts also have a far greater range of sentencing options open to them than the civil court does. In particular, the criminal courts have a range of community orders. This court does not. I also bear in mind that the injunction concerned was not one made under the Anti-social Behaviour Crime, and Policing Act 2014. Nonetheless, in my judgment the guidelines offer a useful starting point by way of broad-brush analogy. Whilst reference has been made to the Civil Justice Council’s draft guidelines for contempt arising from anti-social behaviour, I am mindful they are in draft form only and have not been implemented. I therefore prefer the criminal guidelines.

13. In my judgment the breach on 4 May 2022 is the most serious breach 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 breach on 4 May 2022 falls within culpability category A breach, defined as being a “very serious or persistent breach.” It was the third breach in short succession in circumstances where you were on bail at the time and had failed to surrender to the hearing on the same day. The breach does however fall into category 3 harm causing little or no harm or distress.

14. If this were in the criminal courts, the starting point would be a 12-week custodial sentence and with a category range of a medium level community order to one year’s custody.

15. The breaches occurring on 26 and 28 April would not on their own have been culpability category A. Those first and second breaches were deliberate and properly within

culpability category B. Again, those breaches caused little or no harm and would fall within category 3 harm.

16. I turn to consider any aggravating factors. Your antecedent history reveals two criminal convictions. One occurring on 2 September 2020 for failing to comply with conditions imposed on public assembly and a second occurring on 4 October 2021 for wilfully obstructing the free passage of the highway. You have explained to me that you were due to attend the Magistrates' court on 6 May 2022 in respect of the matter from 4 October 2021 but were in custody and not produced. You tell me that had you been given the opportunity to attend the Magistrates' Court, you would have entered a not guilty plea. You clearly need to take some legal advice as to that criminal matter, but for the purpose of today's hearing, I do not take the conviction in respect of 4 October into account. The contempt matters on 4 May is however aggravated by the fact that you were on bail at the time. I do not take into account the earlier breaches on 26 and 28 April as aggravating factors when considering the 4 May breach because the question of persistence is already addressed when determining it is a culpability A case.

17. I have considered whether there are any mitigating factors that the court properly should take into account. The most obvious mitigating factor in your case is your early admission of breach. In relation to the breaches on 26 April and 28 April, you did not make admissions on the first opportunity. That would have been the 4 May when you failed to attend. You did however make admissions in respect of those matters when produced on 5 May. On that date you made an admission at the earliest opportunity regarding events on 4 May. when you admitted the breach of 4 May at the earliest opportunity. Pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea, you are entitled to the maximum one-third discount from any penalty in respect of the 4 May contempt and a 25 per cent discount in respect of the 26 and 28 April breaches.

19. In my judgment, the breach of 4 May 2022 is so serious that, after a trial, the appropriate penalty would have been one of 28 days' imprisonment, given the by then persistent nature of the conduct. Your admission was entered at the first opportunity and therefore you are entitled to a one-third reduction. Rounding that down in your favour would reduce 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.

20. When a civil court fixes a custodial sentence, it must take into account time that you have already 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. You have already spent nine days in custody: one day when arrested on 26 April; a further day when arrested on 28 April; and seven days following your arrest on 4 May and subsequent remand in custody. You would only serve half of any custodial sentence before being released. As such, you have served the equivalent of an 18-day sentence. You have already served the necessary penalty and it is therefore appropriate to make no further order on the three breaches. The order will record that you have served the equivalent of an 18-day custodial sentence and what the penalty would have been but for the time you have already spent in custody.

22. If you had not already spent the time in custody, I would have had to consider whether it was appropriate to suspend any custodial sentence. 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 significant harmful impact to others. Given that your position is that you 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 been appropriate to suspend. That point is rendered academic in light of the time you have spent on remand.

24. 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. And everyone appearing before the court today for breaches needs to recognise that if they return to court on further breaches of the injunction order, they risk further periods in custody.

25. I am not going to make any order as to costs because the claimant has failed to file or serve a schedule of costs. Neither the court nor the defendant has thus had the opportunity of understanding what costs are sought. A schedule should have been provided if costs were going to be pursued.

26. Mr Milner-Edwards, you are thus eligible for immediate release. If you go back down to the cells with the custodians, they will be able to arrange for your discharge from custody.
