TRANSCRIPT OF PROCEEDINGS

Neutral Citation Number: [2022] EWHC 1461 (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-

(1) EMILY BROCKLEBANK
(2) AMY PRITCHARD **(Defendants)**

MR SHEPHARD appeared on behalf of the Claimant
The Defendants appeared in person

Hearing date: 12th May 2022

APPROVED JUDGMENT

Transcribed from the official recording by eScribers
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HER HONOUR JUDGE EMMA KELLY:

1. Emily Brocklebank and Amy Pritchard each appear before the court in respect of admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting on 14 April 2022. The court has to determine the appropriate penalties for the admitted contempt.

2. Ms Pritchard and Ms Brocklebank were each given the opportunity of attending court in person when their cases were listed yesterday. Each is in custody and failed to attend yesterday having refused to get onto the prison transport. The court indulged them and listed their case again today by CVP link to give them a second opportunity to attend. Each has attended court this morning via CVP link. They each have solicitors on record and had a conference with instructed counsel, Mr Jones, in advance of the hearing. Mr Jones informed the court that each defendant has instructed that that they do not want an advocate for the purposes of today's hearing and wished to conduct their own advocacy. I have, therefore, heard from them both in person.

3. Ms Pritchard and Ms Brocklebank each admitted breaching the interim injunction on 26 April 2022, 28 April 2022 and 4 May 2022.

4. I have heard from Ms Brocklebank and Ms Pritchard in mitigation. Ms Pritchard had very little to say and wished to hand over to Ms Brocklebank as spokesperson. Ms Brocklebank was informed at the start of her mitigation that this was an opportunity for her to address the court as to any aggravating or mitigating factors that she wanted the court to take into account when determining the appropriate penalty. She was warned that it not an opportunity to make political statements or make statements in support of her cause. Ms Brocklebank would not desist from making political statements despite further warning, and then started singing over the CVP link. At that stage the CVP link was muted and the hearing proceeded with the defendants having the ability to see and hear the proceedings and the court being able to see but not hear the defendants in light of the disruption caused to the proceedings.

5. The claimant has provided particulars of each breach in writing and both defendants have admitted the three breaches. I am therefore satisfied, as I need to be, to the criminal standard of proof that the breaches have been established.

6. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Ms Pritchard but not Ms Brocklebank was a named 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.

7. 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."

8. 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…"

9. 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.

10. 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.

11. The two defendants before the court have admitted the following three breaches.

12. On 26 April 2022, just before 8am in the morning, Ms Pritchard and Ms Brocklebank were two of 16 individuals who gathered outside the main entrance to Kingsbury Oil Terminal on the grass verge to the private road. They were involved in a peaceful protest for approximately two hours, with signs and placards being held. Although the protest was peaceful, it was located within the 5-metre buffer zone and was therefore in breach of paragraph 1(a) of the injunction. The group did not move on when asked to do by the police. Shortly after 10 o'clock a number of individuals, of which Ms Brocklebank was one but Ms

Pritchard was not, spread out along the road, and sat down obstructing the access to and egress from the site. The defendants were arrested and produced in court on 27 April where they were bailed on condition that they comply with the terms of the injunction.

13. Notwithstanding the conditions of bail, on 28 April 2022 the defendants returned to Kingsbury Oil Terminal. At about 11.35 am in the morning they were part of a group of eight protesters again positioned along the external fencing to the site with placards and banners within the 5-metre buffer zone. It is accepted that it was a wholly peaceful protest, but nonetheless in breach of paragraph 1(a) of the injunction. The defendants were again arrested and produced before the court later in the day on 28 April. Mr Justice Sweeting bailed each again on condition that they comply with the terms of the injunction.

14. On 4 May 2022 both defendants were due to attend court to answer bail, as ordered on 28 April. Instead, they made a deliberate decision to attend the Kingsbury Oil Terminal to continue their protest, in breach of paragraph 1(a) of the injunction. At about 2 pm in the afternoon the defendants were part of a group of 11 individuals who were stood on the grass verge to the side of the site entrance with various placards and banners. A number of individuals walked across the road to the site, causing difficulties for tankers that were trying to use the terminal. The claimant's case is that Emily Brocklebank was one of those standing in the way of the tanker, causing it to brake suddenly. Notwithstanding her admission of breach, it was apparent from that which she said later in the hearing that she disputes that aspect of her involvement. I proceed in her favour on the basis that she did not cause the tanker to brake suddenly. In my judgment that factual dispute makes no difference to the overall penalty that I will impose in this case.

15. When the court considers the question of penalty for contempt of court, it must bear in mind the objectives of any penalty exercise in the civil jurisdiction. 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."

16. The Sentencing Council does not produce Definitive Guidelines for use in the civil courts. However, the Court of Appeal in *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817 found that the Definitive Guideline for breach of antisocial behaviour orders were equally relevant when dealing with breaches of antisocial behaviour in the civil courts.

17. When drawing any analogy with a criminal case, one has to bear in mind that the civil courts have lower sentencing powers: a two-year custodial maximum as opposed to five years. Furthermore, the civil courts do not have a wide variety of community orders available. I also take note of the fact that the interim injunction in this case was not an antisocial behaviour injunction in the true sense under the Anti-social Behaviour, Crime and Policing Act 2014. However, I do accept that the Definitive Guideline nonetheless provides a useful analogy for consideration of the appropriate penalty.

18. There have been references in other contempt cases within the substantive claim to the Civil Justice Council's draft guidelines for breach of antisocial behaviour injunctions. I am mindful that those guidelines are not in force. I therefore prefer to consider the Sentencing Council's Definitive Guidelines as endorsed by the Court of Appeal in *Amicus Horizon.*

19. Each defendant faces three breaches. The most serious of those breaches is the one on 4 May 2022 because it occurred whilst on bail for the first and second breaches and in circumstances where each defendant had failed to surrender to court that same day.

20. I consider each Defendant's cumulative culpability, taking the breach on 4 May 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." Each defendant's actions were persistent. By the date, there had been three breaches in the space of an eight-day period. As to the category of harm, notwithstanding the submissions made by the claimant that the breaches fall into category 2, I proceed on the basis that this is a category 3 harm case (defined as causing "little or no harm or distress.") That gives rise, in the criminal courts, to a starting point of 12 weeks' custody, with the range of a medium level community order to one year's custody.

21. I turn to consider any aggravating factors. The breach on 4 May was committed whilst on bail and having failed to attend the hearing that very day. I do not take account of the other breaches as an aggravating factor because the question of persistence has already been addressed when determining the level of culpability. Both defendants have a previous conviction for obstructing the highway.

22. There are limited mitigating factors in either case. It is apparent from that which has been said to me that neither shows any remorse at all. However, each has admitted the breach and is entitled to credit for those admissions pursuant to the Definitive Guideline for Reduction in Sentence for a Guilty Plea. The admissions are not made at the first opportunity. Each had an opportunity on 4 May to enter admissions in respect of the breaches on 26 and

28 April but failed to attend that hearing. Each had an opportunity on 11 May, yesterday, to enter an admission in relation to the breach on 4 May but failed to attend from custody. Each defendant has however now made admissions and they are entitled to 25 per cent credit for their admissions.

23. In my judgment, the breach on 4 May is so serious that, after a trial, the appropriate penalty would have been one of 28 days' imprisonment. That sentence reflects the cumulative culpability and persistent nature of the conduct. A discount of 25 per cent for the admission would reduce the penalty to one of 21 days. Given that the sentence on 4 May takes into account the cumulative culpability, no further order would have been necessary on the other breaches.

24. When a custodial penalty is fixed by the civil courts, the court has to take into account any time spent on remand. Unlike in criminal courts, the Prison Service cannot adjust the penalty to reflect time on remand. Each of these defendants has spent a total of 10 days on remand: the one day following arrest on 26 April; a second day following arrest on 28 April; and then a further period of eight days from their remand in custody on 4 May. That is the equivalent of a 20-day custodial sentence. In light of the time that has been spent on remand my conclusion is that it is not necessary to pass any further order. Each defendant is one day short of the 21-day sentence I would have considered appropriate but, bearing in mind they would only serve half of that, it is not appropriate to pass a one-day custodial sentence.

25. In those circumstances the order will simply record that each defendant has served the equivalent of a 20-day sentence and accordingly that the court will make no order on each breach.

26. If the defendants had not spent the time in custody, I would have had to consider whether it was appropriate to suspend any custodial sentence. I would not have been persuaded on the facts of these cases that it was appropriate to suspend. The Definitive Guideline on the Imposition of Community and Custodial Sentences provides guidance as to when it is appropriate to suspend. That include when there is a realistic prospect of rehabilitation, strong personal mitigation and a significant harmful impact to others. None of the factors apply in these cases. It is apparent that neither defendant shows any remorse or desire to change their behaviour going forwards.

27. The practical effect of the court's sentence is that each defendant will be released from custody today. The court nonetheless sends out a very clear message that it expects its orders to be complied with and treats any breaches as a grave matter. Those appearing before the

court today, and others that have appeared on similar breaches, are warned that if they return to court in breach of the injunction order they risk further periods in custody.

28. The claimant has made an application for its costs. Unlike in other similar contempt matters within this claim, the claimant has now provided a costs schedule albeit one which only deals with the costs of the hearings on 4 and 5 May 2022. Each of these defendants was due to attend court on 4 May and then did attend, from custody, on 5 May. I am informed that the costs have been divided equally between all 26 defendants that were arrested and dealt with at those hearings and the sum of £195 per defendant is sought. The general rule is that the unsuccessful party will pay the costs of the successful party. The claimant is clearly the successful party. There will therefore be an order that each of the defendants pays a sum of £195 to the claimant as a contribution to the costs. Neither defendant has provided any information about their means. The default position as to payment will apply, namely that the costs are due for payment within 14 days. Insofar as either defendant wishes to make an application for payment by instalments, they will have to make an application to this court, supported by documentary evidence as to their means.
