

Neutral Citation Number: [2022] EWHC 1464 (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 7NR

Date: 18/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

**NORTH WARWICKSHIRE BOROUGH
COUNCIL**

Claimant

- and -

MICHELLE CHARLESWORTH

Defendant

MR SHEPHARD of Counsel appeared for the **Claimant**
MR JONES of Counsel appeared for the **Defendant**

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. Ms Charlesworth you appear before the court in respect of:
 - i) Two admitted breaches of an interim injunction granted by the Honourable Mr Justice Sweeting 14th April 2022. Those breaches occurred on 27th April 2022 and 4th May 2022.
 - ii) In addition, one admitted contempt in the face of court occurring on 5th May 2022.
2. You have the benefit of legal representation and I have heard from counsel, Mr Jones, on your behalf.
3. The claimant has provided you with written particulars of the two breaches of the interim injunction. The court has served you with a summons in form N601 in respect of a contempt in the face of court matter. The court has to be satisfied of any allegation of contempt to the criminal standard of proof, namely beyond reasonable doubt. In light of your admissions, and also having read the police witness evidence in respect of events on 27th April and 4th May, I am so satisfied.

Background

4. The background to your appearance today is as follows. Kingsbury Oil Terminal is a large inland oil terminal located near Tamworth in Warwickshire. Various protests at the terminal gave rise to serious health and safety concerns leading the claimant to apply for an interim injunction to protect the site. On 14th April 2022 Mr Justice Sweeting granted an interim without notice injunction against various named defendants, of which you were not so named, and “persons unknown.” The “persons unknown” were defined as those “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.” Pursuant to section 27 of the Police and Justice Act 2006, a power of arrest was attached to the interim injunction.

5. Paragraph 1(a) of the interim injunction stated:

“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 of the boundaries of which are edged in red on the map attached to this order at schedule 1, or within five metres of those boundaries (edged in red) (the ‘buffer zone’).

The paragraph went on to state:

“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 the protest held, or to be held, outside the buffer zone.”

6. Paragraph 1(b) of the interim injunction prohibited “in connection with any such protest anywhere in the locality of the Terminal” a number of defined acts.
7. Mr Justice Sweeting granted permission for the interim injunction to be served by alternative methods. On 14th April 2022 it was served by placing signage in prominent locations around the site and on the claimant’s website, Facebook and Twitter accounts.
8. You appear before the court in relation to two breaches of the interim injunction. On 27th April 2022, just after 4pm, you were one of ten individuals gathered on a grass verge to the side of the main entrance to Kingsbury Oil Terminal to protest against the use and/or production of fossil fuels. Your protest was inside the buffer zone referred to in paragraph 1(a) of the injunction and was thus in breach of its terms. The police advised your group to move away and indicated where you could continue to protest without being in breach of the injunction. You and your fellow protestors refused to move and were subsequently arrested. The claimant accepts, and the court agrees, that the protest was entirely peaceful albeit in breach of paragraph 1(a) of the injunction for being inside the buffer zone.

9. You were produced before the court on 28th April and bailed on condition that you comply with the terms of the injunction to attend the next hearing on 4th May 2022

10. On 4th May 2022 you failed to attend court to answer bail to deal with the breach of the allegation from the previous week and instead chose to attend Kingsbury Oil Terminal to continue your protest. At approximately 2pm you and ten others again stood on a grass verge to the side of the entrance to the site with placards and banners. Again, that protest was inside the buffer zone referred to in paragraph 1(a) of the injunction. Police officers approached your group and some of your fellow protestors told the police they were due to appear at court that day but had failed to do so. Your group then huddled together and held some form of discussion before walking across the road outside the Terminal entrance. It is said by the claimant that such behaviour impeded the route of oil tankers trying to enter the Terminal. I accept there is no evidence that your individual actions in walking across the road caused any tanker's route to be impeded. However, the protest both on the grass verge and on the road were inside the buffer zone and thus in breach of paragraph 1(a) of the injunction.

11. The police again exercised the power of arrest and you were taken to Nuneaton Police Station before being produced before this court on 5th May. You were represented by counsel at that hearing. In light of the large number of protestors that had been produced before the court that day, and the need for you to have time to take legal advice, your case was adjourned to 12th May. You were remanded in custody. At approximately 5pm, as you stood up to be taken down to the cells with the custodians, you glued yourself to the dock screen using solvent that you had secreted on your person.

12. Your actions in court on 5th May caused very significant disruption to the court process. The custodians could not remove you. The police had to be called who, in turn, had to call in specialist police officers with de-bonding expertise. At the time of your actions, the court still had six other defendants' cases to deal with. Another court room had to be convened but the court could not immediately recommence as there were insufficient custodians to bring

defendants from the cells into court as a result of the need of multiple officers to remain with you. It was approximately 8pm before the court concluded.

The legal framework

13. I turn to the question of penalty.
14. As to the contempt in the face of court, the High Court, as a superior court of record, has an inherent jurisdiction to deal with contempt affecting its own proceedings. It is not subject to the limitations imposed on inferior courts of record as to the length of sentence for contempt in the face of court. For example, section 12 of the Contempt of Court Act 1981 constrains the Magistrates' Court to a maximum period of committal of one month in respect of contempt relating to its proceedings. In the County Court, section 118 of the County Courts Act 1984 makes similar provision. The High Court is not so constrained. Section 14(1) of the Contempt of Court Act 1981 nonetheless applies, such that the term of any custodial sentence on any occasion shall not exceed two years in a case of committal by a superior court. By section 14(2) of the 1981 Act, the court has the power to impose a fine of unlimited amount or order sequestration of assets.
15. When imposing penalties for contempt of court, the Court of Appeal in *Willoughby v Solihull MBC* [2013] EWCA Civ 699 identified three objectives. Pitchford LJ at [20] held:

“the first is punishment for breach of an order of the court; the second is to secure future compliance with the court’s orders, if possible; the third is rehabilitation, which is a natural companion to the second objective.”
16. The Sentencing Council does not produce guidelines for contempt of court, whether that be breach of a civil injunction or contempt in the face of court. In *Amicus Horizon Ltd v Thorley* [2012] EWCA Civ 817, the Court of Appeal found that the definitive guidelines for breach of an anti-social behaviour order were equally relevant when dealing with breaches of anti-social behaviour orders in the civil courts. When that analogy was used by the first instance judge in *Cuadrilla Bowland v Persons Unknown* [2020] EWCA Civ

9, also a protestor case, the Court of Appeal endorsed reference to those guidelines. Leggatt LJ at [102] held as follows:

“In deciding what sanctions were appropriate, the judge approached the decision, correctly, by considering both the culpability of the appellants and the harm caused, intended or likely to be caused by their breaches of the injunction. I see no merit in the appellants’ argument that, in making this assessment, he misapplied the Sentencing Council guideline on sentencing for breach of a criminal behaviour order. In *Venables v News Group Newspapers [2019] EWCA Civ 534*, para 26, this court thought it appropriate to have regard to that guideline in deciding what penalty to impose for contempt of court in breaching an injunction. As the court noted, however, the guideline does not apply to proceedings for committal. There is therefore no obligation on a judge to follow the guideline in such proceedings and I do not consider that, if a judge does not have regard to it, this can be said to be an error of law. The criminal sentencing guideline provides, at most, a useful comparison.”

17. In their report of July 2020, the Civil Justice Council looked at appropriate penalties for contempt of court arising from injunctions made under the Anti-social Behaviour, Crime and Policing Act 2014. Those draft guidelines, similar in style to the Sentencing Council guidelines, were adapted to reflect the lower range of penalties in the civil courts. Those guidelines have never been brought into force. I note that the Sentencing Council Definitive Guidelines state in express terms that draft guidelines should not be taken into consideration.
18. I bear in mind that the matters of contempt before me today are not breaches of an anti-social behaviour injunction. However, page 56 of the Definitive Guideline for Breach Offences states:

“Where an offence is not covered by a sentencing guideline a court is also entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and statutory maxima.”

Against this background a breach of an injunction is clearly analogous to breach of a criminal behaviour order and that Definitive Guideline will be of considerable assistance in respect of the breaches of the injunction on 27th April and 4th May 2022.

19. However, the contempt in the face of court does not involve the breach of any specific order. It was a deliberate attempt to undermine the authority of the court and an attempt to interfere with the administration of justice. The most serious aspect of your behaviour is the contempt in the face of court on 5th May, so I propose to consider that first.
20. In circumstances where the Definitive Guideline for breach of a criminal behaviour order is only of limited analogy when dealing with contempt in the face of court, I propose to begin by considering your behaviour by reference to the Sentencing Council's General Guideline. That provides overarching principles for use where there is no guideline. The court must consider culpability and harm. The question of culpability "is assessed with reference to the offender's role, level of intention and/or premeditation and the extent and sophistication of planning." In terms of culpability, the contempt in the face of court on 5th May was a deliberate act with substantial planning. You had armed yourself with glue intent on using it for a contemptuous purpose, either by breaching the injunction and/or in the manner in which you eventually used it. You concealed the glue notwithstanding you had been arrested the previous day, spent the night in custody at Nuneaton Police Station and were thereafter handed over to GeoAmey custodians at the Magistrates' Court cells. You continued to conceal the glue when you came into the court room whilst in custody. Culpability is at a high level, albeit falling short of the highest level, as I accept your planning falls short of the most sophisticated of adventures.
21. In terms of harm, your actions caused considerable disruption to the administration of justice, a delay of several hours to other proceedings and the diversion of police, custodian and court staff resources. Furthermore, your conduct involved the risk of undermining the court's authority in the eyes of others. Balancing these factors, harm is at a significant level falling between the highest and lowest levels.
22. Notwithstanding my conclusion that the breach of the criminal behaviour order Definitive Guideline is of limited assistance, I propose to place it within the guideline as providing the closest analogy that can be found. Importing

my conclusions from the general guidelines, I conclude your behaviour would fall within culpability A, and category harm 2, giving a starting point in the criminal courts of one year's custody and a category range between a high level community order and two years' custody.

23. Before considering aggravating and mitigating factors, I will consider where the two breaches of the injunction fall within the Sentencing Council guideline. Both breaches were deliberate and planned, although you caused little or no harm or distress. As such, both breaches of the injunction would fall into culpability B and category harm 3 with a starting point of a high level community order and a range from a low level community order to 26 weeks' custody. The second breach was on bail, within days of the first breach, and in circumstances where you failed to attend court the same day. Those matters increase the seriousness of the breach on 4th May. However, even in combination, the two breaches of the injunction would not of themselves have justified a custodial sentence and therefore the court would have been limited to an appropriate fine dependent on your means.
24. The contempt in the face of court does, however, cross the custody threshold. By reference to the Sentencing Council totality guideline, I propose to pass no separate penalty on the earlier two breaches but treat them as aggravating features of the contempt in the face of court.
25. In my judgment, seen cumulatively, your conduct evidences a pattern of behaviour of escalating seriousness. There are limited other aggravating features. You have two criminal convictions for public nuisance arising from protest activity on 15th September 2021. You entered a guilty plea to those charges on 22nd April 2022 and are still awaiting sentence. It appears from your antecedent history that you were remanded on unconditional bail in relation to those matters and therefore the matters of contempt before this court were committed whilst on unconditional bail for the criminal matters.
26. I turn to consider any mitigating factors. Your counsel tells me that, as a result of your behaviour in court on 5th May, you were sanctioned in prison and subject to solitary confinement. The precise details of the sanction are unclear.

I am told that you were sentenced to two separate days in solitary confinement, but it may be that one of the days was referable to a separate incident of disorder in the prison. However, I propose to approach the ambiguity on the most generous basis to you and assume that both days in solitary confinement relate to the gluing incident in court on 5th May. That sanction represents an element of punishment already delivered in respect of your behaviour and I bear that in mind when determining the appropriate penalty. I also bear in mind that conditions in prison for all prisoners at present are onerous due to the continuing effects of the pandemic.

27. You put before the court through counsel significant personal mitigation. Having read your nine character references and heard from counsel, it is apparent that hitherto you have led a thoroughly worthwhile and law abiding life. Until you gave up employment in March 2022 to concentrate on your protest actions, you had responsible roles working with victims of domestic violence, the homeless and in environmental roles. To that extent, you have contributed in a very beneficial way to society. You have three adult children, albeit the youngest is still only 19 and at university and for whom you provide financial support. I take all your personal mitigation into account.
28. You have admitted the contempt in the face of the court at the earliest opportunity as today was the first hearing following the serving of the summons. However, I detect no element of remorse. After events on 5th May, you continued to defy the court process and, when your case was listed on 12th May, you refused leave prison to attend court.
29. Balancing those features, I conclude that the appropriate penalty for the contempt in the face of court, before consideration of credit for your admission, is one of 14 weeks' custody. You are entitled to a discount of one third to reflect your admission of breach at the earliest opportunity. That produces a penalty of 9 weeks or 63 days, rounding down the weeks in your favour.
30. The court has to consider whether it is appropriate to suspend any term of imprisonment. Your counsel, in support of his submission that any custodial

sentence should be suspended refers, quite properly, to the comments of the Court of Appeal in *Cuadrilla Bowland*. Leggatt LJ at held as follows:

“[95] Where, as in the present case, individuals not only resort to compulsion to hinder or try to stop lawful activities of others of which they disapprove, but do so in deliberate defiance of a court order, they have no reason to expect that their conscientious motives will insulate them from the sanction of imprisonment.

[96] On the other hand, courts are frequently reluctant to make orders for the immediate imprisonment of protestors who engage in deliberately disruptive but non-violent forms of direct action protest for conscientious reasons...”

The judge continued:

“[98] It seems to me that there are at least three reasons for showing greater clemency in response to such acts of civil disobedience than in dealing with other disobedience of the law. First, by adhering to the conditions mentioned, a person who engages in acts of civil disobedience establishes a moral difference between herself and ordinary law-breakers which it is right to take into account in determining what punishment is deserved. Second, by reason of that difference and the fact that such a protestor is generally – apart from their protest activity – a law-abiding citizen, there is reason to expect that less severe punishment is necessary to deter such a person from further law-breaking. Third, part of the purpose of imposing sanctions, whether for a criminal offence or for intentional breach of an injunction, is to engage in a dialogue with the defendant so that he or she appreciates the reasons why in a democratic society it is the duty of responsible citizens to obey the law and respect the rights of others, even where the law or other people’s lawful activities are contrary to the protestor’s own moral convictions. Such a dialogue is more likely to be effective where authorities (including judicial authorities) show restraint in anticipation that the defendant will respond by desisting from further breaches. This is part of what I believe Lord Burnett CJ meant in the Roberts case at para 34 (quoted above) when he referred to “bargain or mutual understanding operating in such cases.

[99] These considerations explain why, in a case where an act of civil disobedience constitutes a criminal offence or contempt of a court order which is so serious that it crosses the custody threshold, it will nonetheless very often be appropriate to suspend the operation of the sanction on

condition there is no further breach during a specified period of time. Of course, if the defendant does not comply with that condition, he or she must expect that the order for imprisonment will be implemented.”

31. I bear in mind that your actions, insofar as you breached the injunction on the two occasions, were borne out of protest activity and were acts of civil disobedience by somebody who is otherwise a law-abiding citizen. I have already indicated that in isolation the breaches of the injunction would not have warranted a custodial sentence. The contempt in the face of the court is however distinguishable from the behaviour seen in *Cuadrilla Bowland*. Your actions on 5th May went further than they type of civil disobedience seen in *Cuadrilla* and struck at the heart of the administration of justice and sought to undermine the rule of law.
32. I have referred myself to the Sentencing Council guidelines on the imposition of community and custodial sentences. In this respect, your conduct demonstrates a history of poor compliance with court orders and the appropriate punishment can only be achieved by an immediate custodial penalty. Furthermore, this is not a case in which it can be said there is a realistic prospect of rehabilitation. Balancing these features leads me to the conclusion it is not appropriate to suspend the penalty.
33. In terms of fixing the term of imprisonment, the court has to take into account the time you have already spent on remand. Unlike when sentences are imposed in the criminal courts, the prison service cannot adjust the penalty on a civil contempt to take into account the time spent on remand. You have already spent 15 days in custody: one day in custody following your arrest on 27th April and a further 14 days from your arrest on 4th May and subsequent further remands in custody. That is the equivalent of a 30-day sentence. I therefore deduct 30 days from the 63-day term. I pass a penalty of 33 days immediate imprisonment in respect of the contempt in the face of court on 5th May. There will be no order made on the contempt matters on 27th April and 4th May for the reasons I have given, namely that I have treated those as aggravating factors of the contempt in the face of court.

34. You have a right to appeal the order of committal. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today.
35. The claimant does not apply for costs and therefore I do not make an order that you pay the claimant's costs.
36. In dealing with these contempt of court matters, this court sends out a very clear message that it will not tolerate either breaches of its orders or, even more so, behaviour that interferes with the administration of justice. If you return to court in respect of further matters of contempt, you risk further periods in custody.
37. A transcript of this judgment will be ordered at public expense on an expedited basis.

(Judgment ends)