

Neutral Citation Number: [2024] EWHC 2228 (KB)

Case No: KB-2022-BHM-000188

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

Birmingham Civil and Family Justice Centre,  
Priory Court, 33 Bull Street, Birmingham B4 6DS

Date: 23<sup>rd</sup> May 2024

**Before:**

**HER HONOUR JUDGE EMMA KELLY**

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**Between:**

- (1) WOLVERHAMPTON CITY COUNCIL  
(2) DUDLEY METROPOLITAN BOROUGH  
COUNCIL  
(3) SANDWELL METROPOLITAN BOROUGH  
COUNCIL  
(4) WALSALL METROPOLITAN BOROUGH  
COUNCIL

**Claimants**

- and -

**SIKANDER HUSSAIN**

**Defendant**

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**MR BHADURA** solicitor of the Third Claimant's legal department for the **Third Claimant**  
**MR HARRINGTON** solicitor of **Harringtons Solicitors** for the **Defendant**

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**APPROVED JUDGMENT**

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2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)

**HER HONOUR JUDGE EMMA KELLY:**

1. The defendant, Mr Sikander Hussain, appears before the court having admitted his contempt by his actions on 11 May 2024 in breaching paragraph 4 of an injunction order granted by the Honourable Mr Justice Julian Knowles on 27 February 2024.
2. The third claimant is represented at today's hearing by its solicitor advocate, Mr Bhadura. The defendant, Mr Hussain, is also represented by his solicitor advocate, Mr Harrington. I am grateful to both advocates for the assistance they have given the court.

Background

3. The injunction was granted by Knowles J to prevent street cruising occurring on the streets of four local authorities which cover an area commonly referred to as the Black Country. That application followed concern by the claimant local authorities that anti-social behaviour was occurring on public highways in the form of car cruising or street cruising. Prior to the application being made, car cruising behaviour had led to a number of incidents of concern, including one in which two people were killed.
4. The injunction order made by Knowles J included a number of categories of 'persons unknown' defendants. Those included, in so far as it is material to Mr Hussain's case, a fourth defendant who was defined as follows:

“Persons unknown being drivers, riders or passengers in or on motor vehicles who participate between the hours of 3pm and 7am in a gathering of two or more persons within the Black Country area shown on plan A (attached) at which such defendants engage in motor racing or motor stunts or other dangerous or obstructive driving.”

5. Paragraph 4 of the final injunction states:

“It is also forbidden for any of the fourth defendants or any of the named defendants being a driver, rider, or passenger in or on a motor vehicle to participate between the hours of 3pm and 7am in a gathering of two or more persons within the Black Country area shown on plan A (attached) at which some of those present engage in motor racing or motor stunts or other dangerous or obstructive driving.”

6. The paragraph of the order goes on to define the word “stunts” as being driving manoeuvres which include, but are not limited to four different types of specific manoeuvre. They include, at paragraph 4(4), “undertaking”, being “passing a vehicle on its nearside so as to overtake in circumstances not permitted by the Highway Code”.
7. By paragraph 5 of the order, a power of arrest was attached to the injunction at paragraph 4. The order came into force immediately on the making and remains in force until 1 March 2027.

Service

8. The order made by Knowles J was accompanied by a series of directions that dealt with service. No issue is taken as to service by the defendant, but it is nonetheless appropriate that the court considers whether the injunction has been properly served. The issue has been considered in other contempt proceedings within this claim. The third claimant relies on affidavit evidence that has been produced by Paul Brown, the first claimant's Senior Communications Adviser. His affidavit of 26 April 2024 sets out the steps that the claimants have taken to comply with various requirements as to alternative service that Knowles J required by the order. The witness statement exhibited to his affidavit details each of the steps and the date of completion of each step. The final step was completed on 13 March 2024 when the second defendant updated its website page. The effect of Mr Brown's affidavit evidence is that the court is satisfied that the required steps as to alternative service were undertaken and thus that the injunction was deemed served on 13 March 2024, well in advance of the events before the court that occurred on 11 May.
9. The court also has before it affidavit evidence from a Mr Pardip Sandhu of 16 May 2024. He went to inspect the relevant area at Kenrick Way on 14 May 2024, namely three days after the incident, and noted that all of the signage referencing the injunction was still in place and there to be seen. Taking the evidence of Mr Brown and Mr Sandhu and noting the defendant's acceptance of service, I am satisfied that the injunction order has been served.

#### Events of 11 May 2024

10. The defendant was arrested shortly before midnight on Saturday 11 May in respect of his driving on Kenrick Way in West Bromwich. Kenrick Way is an urban dual carriageway with a 40mph speed limit and is within the geographical area covered by the injunction. It is a location which has been a particular hotspot for car cruising. This court has already dealt with a number of contempt proceedings that have arisen out of behaviour on Kenrick Way by other drivers.
11. Mr Hussain has admitted breaching the injunction. The admission has been reduced to writing and signed by Mr Hussain. He admits that at around 11.40pm on 11 May 2024 he was driving a BMW, registration PX67 TFU, and was racing other vehicles at speed on Kenrick Way, West Bromwich. He admits driving the vehicle dangerously at speeds of approximately 80 miles an hour whilst straddling and obstructing both lanes on Kenrick Way.
12. The contempt application included a further allegation of "drifting" around a roundabout on Kenrick Way. Mr Hussain does not accept that allegation and the third claimant does not seek to pursue it. The court therefore proceeds on the basis of the admission, namely, the racing of other vehicles at speed at the speed of approximately 80 miles an hour whilst straddling and obstructing the lanes on the carriageway.
13. The court has had the opportunity of viewing the police video footage from the evening which shows part of the driving in question and has read the police witness statements from PC Bishop and PC Suman, both of who observed the driving. These are contempt proceedings and therefore the standard of proof is on the third claimant to establish the contempt to the criminal standard, that is beyond reasonable doubt. Taking the admission of Mr Hussain, together with the video and written evidence, means that the court is satisfied that the contempt has been proved on the basis set out

in the admission. The actions of Mr Hussain on that evening amounted to him racing another vehicle, undertaking and driving at speed between the hours of 3pm and 7am in the relevant geographical area.

Approach to sentence

14. This court has sentenced a number of other defendants for breach of what was the interim version of the injunction. I adopt the same approach in this case. The court adopts the guidance in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 by analogy. That approach has been endorsed by the Court of Appeal in *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355.
15. The third claimant submits that this matter falls within culpability B, category 2 harm but with a number of aggravating features that increase the penalty. It is submitted on behalf of the defendant that this case should remain fairly and squarely within culpability B, harm 2.
16. As to the culpability, in my judgment the case falls within category B, being a deliberate breach falling between A and C. As to the category of harm, I take into account the harm that was actually caused but also that which was intended or at risk of being caused. The manner of driving by Mr Hussain that evening, in circumstances where there were spectators alongside the road, gave rise to a very high risk of very significant harm. As I indicated earlier in this judgment, car cruising activity in this geographical area has, in the relatively recent past, resulted in fatalities. Racing at speed on a public road gives rise to a very obvious risk of harm to the driver of the vehicle, spectators and drivers of other vehicles, whether those be individuals who are themselves participating in racing or wholly innocent members of the public.
17. The starting point for a culpability B, category 2 harm case is a sentence of one month's imprisonment with a range of adjourned consideration to three months' imprisonment. The court then has to take into account any aggravating or mitigating circumstances. There are a number of aggravating features in Mr Hussain's case. Firstly, he was the recipient of a letter from West Midlands Police on 3 August 2023, in which he was notified that he had been seen twice on 4 June 2023 at Saltley Gate in Birmingham at the location of a car cruise meeting. The police noted that they believed he had been a participant in the gathering and referred to him driving the same grey BMW that he was subsequently driving on 11 May 2024. He was warned that he would again come to the attention of the police if he were involved in that type of activity. The letter made it clear that West Midlands Police would take legal action against illegal street racing, highlighting that it is not a harmless activity and that street racing causes deaths and serious injuries. The defendant was therefore already on notice that the police had seen him participating in what they believed to be unlawful behaviour and effectively warned him about getting involved again.
18. A further aggravating feature in this case is that Mr Hussain was before the criminal courts on 2 April 2024, i.e. only a month before the index events took place, for an offence of driving a motor vehicle with excess alcohol. That offence occurred on 6 March 2024 and thus the defendant finds himself in a position of having twice come to the attention of the police for using his vehicle on a public road in an unlawful manner within a very short space of time. The conviction in April led to the defendant being disqualified from driving for 17 months. Only a month or so after sentence was

passed, the defendant was thus on the road in breach of the car cruising injunction in circumstances where he was disqualified from driving and, in consequence, had no insurance.

19. The third aggravating feature in this matter is that the defendant was not wholly cooperative on arrest. He gave a false name of Shaid Hussain rather than Sikander Hussain and a false date of birth to the police officers. He remedied the fabrication within a relatively short space of time at the police station, but it nonetheless demonstrates his initial lack of cooperation with the police.
20. There are, however, a number of mitigating features to take into account. The defendant is aged 36. He is beyond an age where immaturity of youth can sensibly be relied on in mitigation. It is very sad that he has come before both the criminal courts and now the High Court within a matter of months in 2024, prior to which he had no previous criminal convictions, albeit some older cautions. He is a married family man. He has two children, aged 8 and 12, who no doubt want their dad to be at home with them, not languishing in a police cell over the weekend having been arrested for breach of the injunction.
21. It is apparent from that which I have heard that Mr Hussain has a very supportive family. His wife and brother have attended court today and have expressed what I accept is a genuine intention to support the defendant going forward to ensure that he does not come back before the courts. The court has been told that Mr Hussain suffers from poor mental health, including depression; and has ADHD and Asperger's. No formal medical evidence has been put before the court but I proceed to sentence on the basis that the description of his health conditions is accurate. As a result of his health conditions he is in receipt of Personal Independence Payments. His family unit as a whole, namely the defendant, his wife and two children, are in receipt of State Benefits which total about £1,800 per month. He has in the past been in paid employment, working ironically as a driver for National Express and Ocado. It appears he has not worked for some time due to his mental health issues. Until recently, he was an entirely upstanding member of the community.
22. In my judgment, notwithstanding the matters in mitigation, neither a deferred consideration nor a fine would be a sufficient penalty for the breach of the injunction. The breach of the injunction by racing with other drivers at speeds of approximately 80 miles an hour whilst straddling the two lanes is such that it put both the defendant, other road users and spectators at significant risk of harm and is so serious that only a custodial sentence would suffice.
23. This case is distinguishable from others I have sentenced for driving at similar speeds on Kenrick Way in West Bromwich by virtue of the aggravating factors in this case. The appropriate sentence, before consideration of credit for any admission but taking into account the time that was spent in custody from the arrest at just shy of midnight on the Saturday 11 May until production before the court on Monday 13 May, is one of 56 days' imprisonment.
24. The defendant is entitled to credit for his admission. He has cooperated with these proceedings and entered an admission at the earliest opportunity on receipt of legal advice. The maximum credit will be applied of one third and, rounding down in the defendant's favour, results in a sentence of 37 days' imprisonment.

25. I have heard what has been said on the defendant's behalf and I am prepared to suspend the sentence for a period of 12 months on condition of compliance with the injunction. The Court of Appeal in *Lovett* observed that suspension is usually the first way of attempting to secure compliance with the underlying order. In this case, it is the first time that the defendant has appeared before this court in relation to breach of the injunction. There are some question marks over his ability to comply going forward given his evidenced non-compliance with his disqualification from driving that was only imposed in April 2024. However, I am prepared to give the defendant a chance to demonstrate his compliance, in circumstances where he has the support of his close family. The court has been told that Mr Hussain no longer has access to the vehicle and it was since been sold. It should be very clear to Mr Hussain that if he were to again breach this injunction, the likelihood is that the suspended sentence would be activated and he would have to serve the 37 days of imprisonment in addition to any sentence in relation to a further breach. It is, therefore, extremely important that he complies with the terms of this injunction if he wants to avoid a period in custody.
26. The court has been told that Mr Hussain is subject of criminal proceedings in relation to offences of driving whilst disqualified and no insurance arising from events on 11 May. If there are convictions in those matters, it is for the criminal court to take into account the sentence passed by this court to ensure there is no double counting.

Costs

27. The third claimant has made an application for its costs in the sum of £1,700.30. As to the principle of costs, the general rule is that the successful party is entitled to their costs but the court may make a different order. There is no reason to depart from the general rule in this case. The defendant will pay the third claimant's costs, which will be the subject of summary assessment. Mr Harrington, is there anything you want to say about the quantum of those costs?

MR HARRINGTON: I cannot argue about the quantum at all and the principle stands that the claimant should have their costs.

HER HONOUR JUDGE KELLY: Yes.

MR HARRINGTON: But he may need time to pay those costs.

HER HONOUR JUDGE KELLY: I understand that. I have seen the costs schedule. It is incredibly modest and does not appear to include any fees for the first appearance. The sum of £1,700 is proportionate and I assess the costs in that sum. I have heard some details as to the defendant's financial position. He is not going to be in a position to discharge the costs liability in a lump sum. He can however make payments by instalments in the sum of £100 per month, the first payment to be made by 23 June and then by the 23<sup>rd</sup> of each month thereafter. The costs order is enforceable because although the defendant is in receipt of criminal Legal Aid, he does not have the benefit of costs protection that is afforded by section 26 of the Legal Aid, Sentencing and Punishment of Offenders Act.

28. The defendant has a right to appeal the suspended order of committal. Any appeal lies to the Court of Appeal Civil Division and must be filed within 21 days of today. I

direct that a transcript of this judgment be obtained on an expedited basis at public expense and then a copy of the approved transcript will be published on the judiciary website in due course.

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2<sup>nd</sup> Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.  
Telephone No: 020 7067 2900. DX 410 LDE  
Email: [info@martenwalshcherer.com](mailto:info@martenwalshcherer.com)  
Web: [www.martenwalshcherer.com](http://www.martenwalshcherer.com)