

Neutral Citation Number: [2024] EWHC 569 (KB)

Case No: KB-2022-BHM-000221

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

The Priory Courts,
33 Bull Street,
Birmingham,
B4 6DS

Date: 26 February 2024
Start Time: **13:28** Finish Time: **13:55**

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

BIRMINGHAM CITY COUNCIL

Claimant

- and -

(1) MOHAMMED DAANYAAL
(2) BRADLEY HAYES

Defendants

MS ARUCI (Counsel) appeared for the **Claimant**
MR ROBINSON (Solicitor) appeared for the **Defendants**

APPROVED JUDGMENT

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HER HONOUR JUDGE EMMA KELLY:

1. The defendants, Mr Mohammed Daanyaal and Mr Bradley Hayes, appear before this court in relation to contempt matters. In Mr Daanyaal's case, the contempt arises from events on 31 January 2024; and in Mr Hayes' case, the contempt arises from events on 5 February 2024.
2. The claimant is represented today by counsel, Ms Aruci. The defendants are both represented by their solicitor, Mr Robinson.
3. The claimant alleges that the defendants have breached the terms of an interim injunction granted by Hill J on 22 December 2022, as amended by the order of Ritchie J on 19 May 2023, and further amended by an order I made on 16 October 2023. This judgment deals with the appropriate penalty for contempt in respect of each defendant.

Background

4. On 22 December 2022 Hill J granted an interim injunction aimed at preventing street cruising occurring on the streets of Birmingham. The application followed concern by the claimant local authority that anti-social and unlawful behaviour in the form of car cruising or street cruising was occurring within its administrative boundary. The original defendants to the claim included seven named defendants and two defendants who were defined categories of persons unknown.
5. The interim order granted by Hill J was reviewed by Ritchie J at a hearing on 19 May 2023. The terms of the injunction were amended by Ritchie J so as to add a tenth defendant. The tenth defendant is defined in the following way:

“Persons unknown who participate or intend to participate in street cruises in Birmingham, as car drivers, motorcycle riders, or passengers in motor cars or on motorcycles.”

It is that category of persons unknown within which the defendant is said to fall.

6. On 16 October 2023 the substance of the injunction granted by Ritchie J remained unchanged but further named defendants were added to the proceedings as the eleventh to fourteenth defendants following their identities becoming known during the course of contempt proceedings.
7. The interim injunction, as amended, states at paragraph 1: “The defendants are prohibited from participating in a street cruise within the claimant’s local government area (known as the City of Birmingham) the boundaries of which are delineated in red on a map attached to this order at schedule 1.” The plan attached to the order outlines the administrative area of Birmingham.
8. Paragraph 2 of the order defines the terms “street cruise” and “participating in a street cruise” by reference to meanings set out in schedule 2 to the order.
9. Paragraph 1 of schedule 2 defines “street cruise” in the following way.

“‘Street cruise’ means a congregation of the drivers of two or more motor vehicles, (including motorcycles,) on the public highway or at any place to which the public have access within the claimant’s local government area, (known as the City of Birmingham) as shown delineated in red on the map at schedule 1, at which any driver, rider or passenger in or on a motor vehicle performs any of the activities set out in paragraph 2 below, so as to by such conduct to cause any of the following:

- i) excessive noise;
- ii) danger to other road users, including pedestrians;
- iii) damage or the risk of damage to private property;
- iv) any nuisance to another person not participating in the street cruise.”

10. By paragraph 2 of schedule 2, the activities referred to in paragraph 1 above are:

- i) “driving or riding at excessive speed or otherwise dangerously;
- ii) driving or riding in convoy;
- iii) racing against other vehicles;
- iv) performing stunts in or on motor vehicles;
- v) obstructing the highway or any private property.”

11. Paragraph 3 of schedule 2 defines “participating in a street cruise” as:

“[The defendants] participate in a street cruise if they are or any of them is the driver or rider of, or passenger in or on, a motor vehicle at a street cruise and performs or encourages any other driver, rider or passenger to perform any activity to which paragraphs 1 to 2 above apply, and the term ‘participating in a street cruise’ shall be interpreted accordingly.

12. By paragraph 3 of the interim injunction, as amended, a power of arrest was attached to paragraph 1 of the order.

13. The original order came into force on 24 December 2022 and was ordered to continue until the final hearing of the claim unless varied or discharged by further order. The final hearing of the matter has not yet taken place but is listed to commence this week.

Service

14. Both defendants accept valid service of the interim injunction and power of arrest. The original interim order, as granted by Hill J and then subsequently amended by Ritchie J, understandably dispensed with personal service of the order and power of arrest on the persons unknown defendants. Paragraph 13 of the case management order of Ritchie J set out various steps that the claimant had to take to serve the interim injunction and power of arrest by alternative means on the persons unknown

defendants. That required a wide range of steps to be taken, including the placing of prominent signage across the administrative borough and an extensive media campaign. In earlier contempt proceedings in relation to different defendants, this court found that the claimant had complied with those requirements.

15. At a case management hearing on 20 December 2023 I gave further directions as to the service of the case management order and the latest version of the interim injunction which had been amended solely to add additional named defendants that had been identified in the course of contempt proceedings. Having considered the affidavit evidence of the claimant's Michelle Lowbridge, dated 6 February 2024, which details the multiple steps that the claimant has again taken to publish the further amended version of the order, I am satisfied as to service.

The facts of the contempt

16. In Mr Daanyaal's case, he was arrested around 10.00pm on 31 January 2024 pursuant to the power of arrest. He was produced at court the next day and bailed to allow time for him to obtain legal advice and for the claimant to serve an N600 contempt application. Mr Hayes was arrested just after midnight on 5 February 2024, again pursuant to the power of arrest, and a similar procedure followed whereby he was produced at court the next day and his case was then adjourned for similar reasons.
17. On receipt of legal advice, both defendants have made written admissions to the allegations of contempt, and each admit breaching the terms of the interim injunction. Contempt proceedings remain civil proceedings, although the burden of proof rests on the claimant to establish any contempt to the criminal standard; that is, beyond reasonable doubt. The defendants' admissions, taken together with the claimant's written evidence from the police officers and the court having had the opportunity of viewing the police video footage in this case, means that the court is satisfied that each defendant is in contempt of court by breaching the terms of the interim injunction.
18. In Mr Daanyaal's case his admission is made in the following terms. He admits breaching the injunction on 31 January 2024, as set out in the claimant's schedule of breach save that he does not accept reaching speeds in the region of 100 mph. He does admit that his speed reached approximately 80 mph. Mr Daanyaal was driving his Audi S3 motor vehicle on Fort Parkway in Birmingham. Fort Parkway is an urban dual carriageway with a 40 mph speed limit. It was dark at the time of the driving and the conditions, as can be seen from the video, were wet. By his admission Mr Daanyaal accepts engaging in racing with another driver at speeds of approximately 80 mph. He can be seen on footage being followed by an unmarked police vehicle. He drives the length of Fort Parkway, reaches a traffic island and then travels back in the opposite direction. When the police stopped his car, they noted that he was driving a vehicle with overly tinted front windows. Those windows were only transmitting 17% of light as opposed to the allowed limit of 70% of light.
19. In Mr Hayes' case, he was driving his Volkswagen Polo on the A47, Heartlands Parkway. Heartlands Parkway is again an urban dual carriageway, with a 40 mph speed limit. Mr Hayes accepts that he was part of a group of drivers that were racing on that carriageway. He can be seen exiting the traffic island at speed and then is followed by police officers in an unmarked car. The basis of his admission is that his

speed reached approximately 60 – 65 mph. Mr Hayes completed a number of undertake manoeuvres and there were some 100 spectators watching events.

Approach to sentencing

20. When the court determines the appropriate penalty for a civil contempt it has to bear in mind the objects of the exercise. Those are as set out by the Court of Appeal in the judgment of *Lovett v. Wigan* [2022] EWCA Civ 1631, namely ensuring further compliance with the order, punishment and rehabilitation. This court has sentenced a number of individuals within these proceedings for contempt. In common with the approach the court has adopted in those earlier cases, I again adopt the approach summarised by the Supreme Court in paragraph 44 of *Attorney General v. Crosland* [2021] UKSC 15 and endorsed by the Court of Appeal in *Breen v. Esso Petroleum* [2022] EWCA Civ 1405. For the sake of brevity, I do not read out those paragraphs from the judgment.
21. The parties agree, as do I, that the court should follow the guidance of the Court of Appeal in *Lovett v. Wigan* when approaching a sentencing exercise in this matter. That requires consideration of Annex 1 of the Civil Justice Council's report in relation to contempt arising from orders under the Anti-social Behaviour, Crime and Policing Act 2014. The use of that, by analogy, when sentencing in this case is appropriate following the guidance from the Court of Appeal in *Birmingham City Council v. Lloyd* [2023] EWCA Civ 1355. *Birmingham City Council v. Lloyd* is directly relevant because it arose from other contempt proceedings arising out of breach of this car cruising interim injunction.
22. Each defendant falls to be sentenced separately, although a number of similar considerations apply in each case. In each case the claimant contends that the culpability falls within category B. The defendant does not demur from that. I agree. In my judgment, both Mr Danyaal and Mr Hayes' cases fall properly categorised as category B, those being deliberate breaches but ones falling between the higher category A and the lowest category C.
23. As to the question of harm, again the parties are in agreement, as am I, that this falls to be categorised within category 2. In my judgment, however, it falls at the top end of category 2. When the court assesses the category of harm in a case such as this, it takes into account the harm that was actually caused, but also any harm that was intended or at risk of being caused by these breaches. It is very fortunate in both of these cases there was no actual harm caused. The risk of harm in both cases was significant. Both defendants were willing to engage in racing on public roads at very high speeds in what were busy urban areas. Racing on public highways creates a very obvious risk of serious harm, both to the drivers of the vehicles but also to any passengers in those vehicles; to other road users, regardless of whether those road users are engaged in racing; to any spectators that are watching; and to other innocent members of the public that are going about their business. The risk of harm in these cases is exemplified by fatalities that have happened in the relatively recent past in association with other car cruises in the West Midlands.
24. The starting point for a culpability B, category 2 harm case is a sentence of one month's imprisonment with a sentence range of adjourned consideration to three months' imprisonment. If the case had been in the higher category of harm, it would

have had a starting point of three months' imprisonment. Although I am not classifying this case in the higher category of harm, it gives some indication as to how much more serious the court views those cases that stray into category 1.

25. When determining the sentence, the court has to take into account any aggravating or mitigating circumstances. As to aggravating features, in Mr Daanyaal's case there is an aggravating feature; namely, the overly tinted front windows. Overly tinted front windows necessarily reduce the visibility through the front side windows, leaving the driver less able to respond in an emergency. The unsafe condition of the vehicle is therefore an aggravating feature. There are no aggravating features in Mr Hayes' case.
26. In relation to both defendants, there are a number of relevant mitigating factors that fall to be taken into account. Both Mr Daanyaal and Mr Hayes are of good character with no criminal convictions or cautions. Each of them appears before the court for the first time for breach of this injunction. Both are young men. Mr Daanyaal is 23. Mr Hayes is 22. Their relevant immaturity is a factor that the court takes into account. Both defendants through their solicitor have expressed remorse for their breach and have indicated an intention to comply with the injunction in the future. All of those are relevant matters that the court takes into account in mitigation.
27. Mr Danyaal is an otherwise upstanding member of the community. He lives with his partner and parents. His partner is five months' pregnant, and he is in stable work. He works as a car trader with an income of some £1,200 per month. He has recently received a summons for criminal offences arising out of the events of 31 January 2024. The criminal court will take into account any penalty imposed by this court if it has to pass sentence on those matters.
28. Mr Hayes is also otherwise upstanding member of the community. He is employed as an apprentice electrician and is due to qualify this summer. He will thereafter trade as a self-employed qualified electrician. He too has a stable family background. His parents and sister have attended court today to provide him with support. His net income is also some £1,200 per month. He is stable accommodating living with his mother and siblings. The court has been told that Mr Hayes has now sold the vehicle he was stopped in that evening, changing the Volkswagen car for a van which he will thereafter use for work.
29. The court takes into account that, for both of these young men of good character, the fact of being arrested and held in custody before being produced before this court will have been a very salutary experience.
30. Notwithstanding the mitigation in each gentleman's case, neither deferred consideration or a fine would be a sufficient penalty for breach of the High Court injunction. Breach of the injunction by participation in a street cruises at speed is an extremely serious matter with associated risks, both to the defendants themselves but also wider society. The contempt is such that only a custodial penalty will suffice.
31. In Mr Daanyaal's case the appropriate sentence, before consideration of credit for his admission, is one of 42 days' imprisonment. Mr Danyaal is entitled to one-third credit for his admission, the admission being made at the first opportunity after being served with the evidence and receiving legal advice. The sentence will thus be reduced to 28 days' imprisonment. The sentence will be suspended. The Court of Appeal in *Lovett*

observed that suspension is usually the first way of attempting to secure compliance with the underlying order. Mr Daanyaal's expression of his intention to comply with the order in the future and his remorse indicate that it is appropriate to suspend so that he can be given an opportunity to demonstrate that he will comply with the injunction going forward. The sentence will therefore be suspended for a period of 12 months from today on condition of compliance with the terms of the interim injunction in its current form or in any subsequent form of the amended injunction that is made in this case.

32. In Mr Hayes' case the appropriate sentence, again before consideration of credit for his admissions, is one of 35 days' imprisonment. I draw a distinction between the two cases. Mr Hayes' case is less serious than Mr Daanyaal's in that his case is not aggravated by the condition of his vehicle, his speed was lower and it was not wet. Mr Hayes is also entitled to maximum credit for his admissions for the same reasons as apply to Mr Daanyaal. The sentence is thus reduced by one-third to 23 days' imprisonment. That sentence will also be suspended for a period of 12 months on condition of compliance with the terms of the injunction in its current form or any subsequently amended form.
33. The claimant makes an application that each defendant pay its costs of the contempt application. Schedules of costs have been served. Through their solicitor, each defendant accepts the principle as to payment of costs and does not seek to challenge the quantum, but each seeks time to pay. That is a sensible concession. There is no reason to depart from the general rule that a successful party will be entitled to its costs from the unsuccessful party. The claimant is clearly the successful party having established contempt in each case. There is no reason to depart from that general rule and therefore each of the defendants will pay the claimant's costs, to be summarily assessed.
34. In Mr Daanyaal's case, the costs schedule totals £2,056.72. I am satisfied that figure is a reasonable and proportionate sum for dealing with an application of this nature including the two hearings that were required. I will therefore summarily assess the costs in Mr Daanyaal's case at £2,056.72.
35. In Mr Hayes' case the figure on the schedule of costs is slightly higher at £2,431.30. I sought clarification from the claimant as to why there is a difference between the two cases. In Mr Hayes' case, counsel attended the first hearing in person having been required by the court to do so, and the counsel attending was of slightly greater seniority. The reality of first hearings following an arrest is that the claimant has to identify an advocate at next to no notice. The court would ordinarily expect counsel to be in physical attendance rather than on a remote link, as occurred in Mr Daanyaal's case when counsel was unavailable to attend in person. To some extent it is the luck of the draw, as far as defendants are concerned, as to precisely which counsel is instructed and whether they appear in person or remotely. The sum of £750 for the first hearing in Mr Hayes' case is not in itself disproportionate and it would be wrong to deprive the claimant of recovering the full sum simply because that figure is higher than counsel's fee for the first hearing in Mr Daanyaal's case. I therefore summarily assess the costs in Mr Hayes' case at £2,431.30.
36. Each of the defendants seeks time for payment. I am prepared to make an order for payment of those costs by instalments. Both defendants earn identical amounts per

month and have similar commitments. I make an order for payment by instalments in the sum of £100 per month, the first payment to be made by 26 March 2024 and by the 26th of each month thereafter until the outstanding balance has been discharged. For the avoidance of doubt, these are costs order and thus payments are to be directed to the claimant and not to the court.

37. Those costs are enforceable by virtue of the Court of Appeal's clarification in *Secretary of State for Transport v. Cuciurean* [2022] EWCA Civ 661. The fact that the defendants are in receipt of criminal legal aid does not provide them with the protection that those in receipt of civil legal aid does in terms of enforceability of costs.
38. The court has made a suspended order for committal in each case. That means that, should the defendants breach the injunction in the future, they would risk the suspended sentence being activated in addition to any separate penalty for any future breach. It is therefore imperative that both defendants comply with the terms of the injunction. Having heard what Mr Robinson has said on behalf of both defendants, the court does not expect to see either defendant back in this court for breach of the injunction.
39. Both defendants have 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 at public expense and be published on the judiciary website in the usual way.

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