

Neutral Citation Number: [2022] EWHC 1485 (QB)

Case No: QB-2022-001236

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

Sitting at
Birmingham Magistrates' Court,
Victoria Law Courts, Corporation Street
Birmingham, B4 6QA

Date: 10/05/2022

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

**NORTH WARWICKSHIRE BOROUGH
COUNCIL**

Claimant

- and -

**MOLLY BERRY
VIVIENNE SHAH**

Defendants

MR SHEPHARD of Counsel appeared for the Claimant
MR JONES of Counsel appeared for the Defendants

NOTE OF JUDGMENT

**(No transcript is available as it appears the recording equipment failed.
This note of judgment has been prepared and approved by HHJ Emma Kelly)**

HER HONOUR JUDGE EMMA KELLY:

1. Molly Berry and Vivienne Shah each appear before the court to be dealt with in relation to one admitted breach of an interim injunction order granted by the Honourable Mr Justice Sweeting on 14 April 2022.
2. Both defendants are represented by Mr Jones of counsel.

3. The particulars of the breach have been provided to the defendants by the claimant in writing. Each defendant has admitted breaching the interim injunction on 26 April 2022. The court has to be satisfied of any breach to the criminal standard of proof, namely beyond reasonable doubt. In light of the admissions each has made, and having read the witness evidence from the police officers, I am so satisfied.

4. On 14 April 2022 Sweeting J granted a without notice interim injunction order against various named defendants. Neither of the defendants before the court today was a named defendant. The injunction was however 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. 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...”*

7. On 14 April 2022 the order was served 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 2022, at approximately 07.45hrs, the defendants were two of 16 individuals who gathered outside main entrance to Kingsbury Oil Terminal on the grass verge to a private road. A peaceful protest took place for approximately 2 hours with signs/placards being held. The location of the protest was within the buffer zone referred to within paragraph 1(a) of injunction. The defendants did not move when asked to do so by the police.

One of the group referred to the injunction and their knowledge that they were acting in breach of it. At approximately 10am, the defendants spread out and sat down across road obstructing site. The defendants were arrested 15-30 mins later and removed. Each defendant was produced in court on 27 April and bailed on condition to comply with terms of injunction.

9. When determining the penalty for contempt of court, the court has to consider the three objectives of the exercise as identified by the Court of Appeal in the case of *Willoughby v Solihull Metropolitan Borough Council* [2012] EWCA Civ 699. Pitchford LJ, at para. 20, held:

“The first objective is punishment for breach of an order of the court; the second is to secure future compliance with the court’s orders, if possible; and the third is rehabilitation, which is a natural companion to the second objective.”

10. Counsel have referred the court to the Sentencing Council Definitive Guidelines. The Sentencing Council do not produce 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 criminal Definitive Guideline for breach of antisocial behaviour orders was equally relevant when dealing with breaches of antisocial behaviour orders made in the civil courts. One does however have to bear in mind that the maximum sentence in the criminal courts for breach of an anti-social behaviour order is 5 years and thus greater than the 2-year maximum under s.14 of the Contempt of Court Act 1981. The criminal courts also have options such as community orders that are not available in the civil courts. I also take note of the fact that the injunction in this case was not an anti-social behaviour injunction in the true sense under the Anti-Social Behaviour, Crime and Policing Act 2014. I do however conclude that reference by analogy to the Definitive Guideline for breach of a criminal behaviour order does provide useful insight into the appropriate approach.

11. In their report of July 2020, the Civil Justice Council prepared draft guidance as to the appropriate penalties when dealing with contempt of civil orders. Those draft guidelines are not yet in force, and I am mindful that the Court of Appeal guidance remains that it is the criminal Definitive Guidelines that the court should have regard to.

12. In the case of each defendant, the breach was a deliberate breach which puts it into culpability B. I accept it is towards the lower end of B but within that category nonetheless. As to category of harm, each breach falls in category 3 having caused little or no harm or distress. A culpability B, category 3 harm case in the criminal courts would give rise to a

starting point sentence of a high level community order, with a category range of a low level community order to 26 weeks' custody.

13. I turn to consider any aggravating factors. The breach was committed only 12 days after the interim injunction was made. In Ms Shah's case, she has a single previous conviction for obstructing the highway dating to events in October 2019, which is now some time ago.

14. As to mitigation, Ms Berry is of previous good character. Each defendant feels very strongly about the environmental cause they support and that motivated their actions. The defendants admitted the breach at an early but not the earliest opportunity having had time to take legal advice. Unlike some of their co-defendants, they did not make admissions at the hearing on 4 May 2021 but have done so today. Each is entitled to a 25% discount on the penalty that would otherwise be imposed by analogy with the Definitive Guideline for Reduction in Sentence for a Guilty Plea.

15. In my judgment the appropriate penalty for the single breach is a fine. The court has the ability to impose an unlimited fine but the level of fine has to reflect the individual's means.

16. Each defendant has completed a statement of means and Mr Jones has made further submissions in that regard. Ms Berry is retired and has income of £1700 per month from her pension and a modest property she owns. She lives on a boat and has various outgoings including a mortgage plus rent and licence fees for the boat. Ms Shah is also retired with a pension income of around £1,000 per month. Her outgoings are said to match her means. Each has modest savings of between £3,000-£4,000. I treat each as being of limited but not very limited means.

17. For the breach on 26 April, each defendant will be ordered to pay a fine of £450. That figure already includes a 25% for the admission of breach at an early but not the earliest opportunity. Having taken into account each of the financial position of each defendant, each will pay the fine in full 1 June 2022.

18. The claimant has made an application for costs, which it has calculated at the rate of £299 per breach. The claimant has failed to file or serve a schedule of costs so it is impossible to understand how that figure has been calculated. The defendants are disadvantaged by that failure, as it the court. Although the general rule is that costs follow the event, in light of the failure to provide a costs schedule and the court therefore lacking the information to make an informed summary assessment, I propose to make no order as to costs.
