

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

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

Date: 09/01/2024

Start Time: 11.10.05 am Finish Time: 11.32.55 am

Before:

HER HONOUR JUDGE EMMA KELLY

Between:

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

Claimants

- and -

MS REBECCA RICHOLD

Defendant

MR BAHADUR appeared for the **Claimant**
MR HARRINGTON appeared for the **Defendant**

APPROVED JUDGMENT

If this Transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Digital Transcription by Marten Walsh Cherer Ltd.,
2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

HER HONOUR JUDGE EMMA KELLY :

1. Ms Rebecca Richold appears before the court in respect of an admitted contempt arising from her breach on 2 September 2023 of an interim injunction granted by Hill J on 22 December 2022, as amended by order of Ritchie J on 19 May 2022. This judgment deals with the appropriate penalty for the contempt of court.
2. Both parties are represented today. Ms Richold has the benefit of representation by her solicitor, Mr Harrington. For the remainder of this judgment, I will refer to Ms Richold as the defendant for reasons of convenience.
3. These are contempt proceedings and therefore the burden rests on the claimants to establish the allegations of contempt to the criminal standard; that is beyond reasonable doubt. The proceedings nonetheless remain civil proceedings.

Background

4. In late 2022 the claimants issued an application for an interim injunction aimed at prohibiting street or car cruising on the streets of their respective administrative areas. The geographical area is collectively referred to as the Black Country and the claim as the Black Country claim.
5. On 22 December 2022, Hill J granted an interim injunction on an informal notice only basis prohibiting street cruising in the Black Country. As Hill J noted at para. 5 of her judgment ([2022] EWCA Civ 56 (KB)):

“There is no statutory definition of car cruising or street cruising as far as I am aware, but it involves, (to adopt the wording of the draft injunction in the Wolverhampton case) gatherings of two or more people where some of those present engage in motor racing, motor stunts, or other dangerous or obstructive driving. Street cruises attract participants who, whether or not they are taking part in driving or riding, support and encourage others to do so, play loud music, rev their engines, show off their cars and engage in other similar antisocial activities. These activities are highly dangerous, have caused serious injury and, in some cases, fatalities. The activities taking place at these cruises are frequently unlawful.”

6. The interim injunction was reconsidered by Freedman J at a hearing on 5 February 2023 when the terms remained unchanged. They were further considered at a hearing before Ritchie J on 19 May 2023 when he amended the terms. He granted permission for a fourth defendant to be added to the proceedings. That fourth defendant is the category of defendant within which the defendant falls. The fourth defendant is defined as:

“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.”

7. By paragraph 1 of an interim injunction, as amended by Ritchie J:

“It is forbidden for any of the fourth defendants from 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.”

8. The order defined what was meant by “motor stunt” as being “driving manoeuvres that are often undertaken at such gatherings, including but not limiting to,” four specific types of manoeuvre. It is not alleged that the defendant engaged in motor stunts and thus those provisions are not relevant to this contempt application. A power of arrest was attached to the amended order. The interim injunction was ordered to remain in force until the hearing of the claim unless varied or discharged by further order. The final hearing of the claim has not yet occurred and is listed to take place in February 2024.

Service

9. Paragraph 9 of the case management order Ritchie J made on 19 May dispensed with the need for personal service of the amended interim injunction order and the power of arrest on the persons unknown defendants. Paragraph 11 of that order set out various steps the claimants had to undertake to effect alternative service of the amended interim injunction. The affidavit of Paul Brown on behalf of Wolverhampton City Council of 29 June 2023 dealt with the steps the Claimant had taken to effect alternative service. His affidavit adopts and exhibits his two earlier witness statements addressing service. In particular, his statement of 16 June 2023 set out the steps that had been taken to comply with the alternative service provisions.
10. The defendant takes no issue with service. Paragraph 7 of my order of 4 October 2023 made in the context of a case management hearing in the substantive claim and, thus to the civil standard of proof, made a declaration as to valid service. Having considered Mr Brown’s evidence and noting the admission that is made, I am satisfied for the purpose of the contempt application that there has been appropriate service of the amended interim injunction order.

Events on 2 September 2023

11. The written evidence of PC Lewis dated 3 September 2023 sets out the background leading to the defendant’s arrest. At around half past ten on 2 September, he was on duty with a police colleague on Manor Way in Halesowen in an unmarked police car following a report of large amounts of vehicles gathering in that area. He saw a large number of vehicles parked either side of Manor Way and a number of spectators. On that occasion, he saw the defendant’s red car travelling in excess of 40 miles per hour in convoy with other vehicles heading onto the M5 northbound. Those events do not form part of the contempt allegation but they provide relevant factual background.
12. The police then started to receive calls from the public reporting street racing at Kenrick Way in West Bromwich. PC Lewis and his colleague attended Kenrick Way and at around 2254 hours saw the defendant’s vehicle travelling around the Spon Lane roundabout and accelerating down Kenrick Way towards the roundabout with Telford Way. The police officer described the defendant racing with other vehicles and the police following at 75 to 80 miles per hour. The police illuminated their blue

lights and stopped and arrested the defendant. The police produced video footage from body-worn cameras showing the driving both on Manor Way and later on Kenrick Way. The court has had the opportunity of watching that video evidence.

13. Following the defendant's arrest, she was produced before the court on the morning of Monday, 4 September. She was granted bail and the claimants were ordered to file and serve an N600 contempt application. They did so and the allegation against the defendant is drafted in the following terms:

“On 2 September 2023 around 10.54pm the defendant was driving a vehicle SEAT Ibiza VO68 SBF at speeds of approximately 75 to 80 miles per hour and was racing other vehicles on Kenrick Way, West Bromwich, West Midlands.”

14. The matter was listed for a hearing on 28 September 2023 when the defendant made a written admission to breaching the injunction but a material dispute remained between the parties as to the speed at which the defendant was driving. The matter was therefore listed for hearing today to hear oral evidence and determine that factual dispute.
15. However, on 2 January 2024, the defendant made a further written admission in the following terms: “she was driving a SEAT Ibiza FR registration VO68 SBF on Kenrick Way and engaged in a street cruise that included racing at that time in breach of the injunction dated 22 December 2022. She has maintained that her speed was slightly less than that of a pursuing police motor vehicle because that officer is shown on the police video closing the gap on her vehicle and overtaking her.”
16. The court has had the opportunity of watching the video evidence and, in particular, the second video clip of a series of three which shows the driving on Kenrick Way. It is apparent from that video that the defendant's vehicle accelerates very hard along Kenrick Way off the island at Spon Lane in the outside lane. Some distance down the road, she signals to the left and pulls into lane 1, at which point another vehicle overtakes her. The police also accelerate very hard after the defendant's vehicle and one of the police officers can be heard on the video footage to say they were travelling at 75 miles an hour at the point in time in which they are very close to the defendant's vehicle.
17. The video shows the police officers pass the defendant's vehicle some distance away from the roundabout with Telford Way in circumstances where the defendant is not yet having to slow her vehicle because of other traffic in front of her. Therefore, the defendant's case that her speed was slightly less than that of the pursuing police officer is one which, in my judgment, is borne out by the video evidence. While she was clearly travelling at a very significant speed and very significantly in excess of the 40 mile an hour speed limit, I can understand and accept why she did not make an admission that she was travelling at 75 to 80 miles per hour. In my judgment, and bearing in mind the criminal standard of proof, I assess her speed as being slightly less than that of the police officers who pass her to pursue another vehicle in front. It is not possible to say with any degree of accuracy precisely what that speed is but the observations I have just made will form the basis upon which I sentence. Taking into account the admission and having seen the video evidence and read the police evidence, I am satisfied that the contempt has been proved to the criminal standard in

so far as the defendant was racing with other vehicles within the prohibited area and time.

Approach to sentence

18. The court reminds itself that the objectives when imposing penalties for civil contempt are those as set out by the Court of Appeal in *Lovett v Wigan Borough Council* [2022] EWCA Civ 1631 at paragraph 39. They are, in the following order: ensuring future compliance; punishment and rehabilitation.
19. This court has sentenced a number of individuals within these proceedings for contempt. In each of those cases, I adopted the approach to assessing sanctions as summarised by the Supreme Court at para. 44 of the judgment in *Attorney-General v Crosland* [2021] UKSC 15 and endorsed by the Court of Appeal in *Breen v Esso Petroleum Company Limited* [2022] EWCA Civ 1405. For the sake of brevity in this judgment, I will not read out para. 44 but make it clear that I have taken that into account.
20. The Sentencing Council do not produce guidelines for sentencing breaches of a civil injunction. In *Lovett* the Court of Appeal endorsed the use of the sentencing matrix contained in Annex 1 of the Civil Justice Council's July 2020 report in the respect of contempt arising from orders made under the Anti-social Behaviour, Crime and Policing Act 2014. In the recent case of *Birmingham City Council v Lloyd* [2023] EWCA Civ 1355, the Court of Appeal endorsed the use of the *Lovett* guidance by analogy when sentencing contempt that involves anti-social type conduct. *Birmingham City Council v Lloyd* has direct parallels with the index case because it also concerned contempt proceedings arising from breach of a car cruising injunction granted in favour of the neighbouring local authority in a claim which is being case managed alongside the index proceedings. I therefore apply the *Lovett* matrix by analogy.
21. As to the level of culpability, the parties contend that it falls within culpability B. I agree. The defendant's actions in racing along Kenrick Way were clearly deliberate and not happenchance.
22. As to the category of harm, the court is entitled to take into account not just the level of harm that was actually caused but also that that was intended or at risk of being caused by the breach. Racing with other vehicles at high speed on a 40 mile per hour urban dual carriageway in busy conditions gives an obvious risk of high harm, more so given the volume of other vehicles on the road and the presence of pedestrian spectators. As this court has said in other similar contempt proceedings within this claim, it was luck rather than good judgment that no one was injured or property damaged. The claimants submit that the category of harm falls at the higher end of category 2 or at the bottom end of category 1. The defendant contents it is a category 2 harm case. In my judgment, it does properly fall within category 2, albeit towards the higher end of that category.
23. Applying that to the *Lovett* matrix, a category B2 case has a starting point of one month imprisonment with a category range of adjourned consideration to three months' imprisonment. To that one has to factor in my conclusion that the harm falls at the higher end of the category 2 range.

24. The court then has to consider any further aggravating or mitigating circumstances. In my judgment, there were two aggravating factors in this case. Firstly, the presence of the defendant with others earlier in the evening in Halesowen. Although that does not form part of the contempt matter before the court, it demonstrates her interest and willingness to participate with others in an anti-social behaviour manner earlier in that evening. Secondly, I take as an aggravating factor the willingness of the defendant to travel some distance from her home address in Worcester to attend the events in West Bromwich .
25. There are, however, very significant mitigating factors in favour of the defendant. She was aged 19 at the time and I take her relative youth into account as a mitigating factor. This is her first breach of this injunction. She has no previous criminal convictions or cautions and is someone who is of positive good character. She was cooperative with the police on arrest and through her legal representative has expressed remorse for her actions.
26. The defendant is a private in the British Army and the court has the benefit of a character reference provided by her commanding officer, Major Ben Kelly. That document was provided on 25 September 2023 in advance of the earlier hearing and speaks in the highest terms of the defendant's abilities, her work commitment, her ethics and her focus on teamwork. It is clear from the letter that the defendant is highly regarded in her work environment. She has been frank with her employer about these proceedings and is accompanied today by her staff sergeant. She is clearly a valuable member of the Army serving as a chef but also having driving qualifications. In February 2024 she is due to go on deployment to Poland. All of the mitigation is taken into account. ken into account.
27. However, in my judgment the breach of the High Court interim injunction by engaging in street racing in this busy urban area is so serious that only a custodial penalty will suffice. The provisional sentence before consideration of credit for her admission and before consideration of the question of suspension is one of 36 days. It also takes into account the fact that the defendant has already spent two nights in custody following her arrest on the Saturday morning before production on Monday before the court. That in itself will no doubt have been a salutary experience for someone of good character.
28. The defendant is entitled to credit for her admission. The first opportunity to admit the contempt following service of the evidence and receipt of legal advice would have been the hearing on 28 September. Admission at that stage would have attracted a one-third discount. At that hearing the defendant did make an admission but there was a material dispute of fact as to her speed, which she then estimated at around 55 miles an hour. In her later written admission on 2 January 2024 she revised her position on her speed upwards and avoided the need for any evidence to be called. In the criminal arena, credit for a guilty plea would usually be halved if a defendant was disbelieved at a Newton hearing. The defendant is not in that position as no contested hearing was required. Having read the police evidence, watched the video footage and considered the defendant's admission, I understand why the defendant was not prepared to accept she was travelling at 75-80mph given the police evidence as to their speed and that they overtook her. However, the defendant could have been franker at the hearing on 28 September and delayed until 2 January before making a fuller admission. In the

circumstances, I propose to give the defendant a credit of 25 percent from the provisional sentence. That reduces the provisional sentence from 36 days to 27 days.

29. The court has to consider the question of suspension. In my judgment, this is a case in which the sentence clearly should be suspended. It is a first contempt in circumstances where I am satisfied there is a very realistic prospect of mitigation. The defendant is in stable, responsible, employment in circumstances where she is excelling in her career. Furthermore, the court has been told that the defendant has already modified her behaviour and stopped attending any such car meets, now only static car meets that are lawfully organised. The fact that the defendant is frank enough to accept she still maintains an interest in vehicles is to her credit.
30. The sentence will be suspended for a period of twelve months from today on condition of compliance with the terms of the interim injunction as amended by Ritchie J's order of 19 May or any subsequent form of amended injunction order that remains in place in this case.
31. The defendant has a right to appeal the suspended committal order. Any appeal must be made to the Court of Appeal Civil Division and must be filed within 21 days of today.
32. The claimants make no application for costs and therefore there will simply be no order as to costs on the application, save for a public funding assessment of the defendant's costs. That is something of a windfall for the defendant as applications for costs are often made following successful applications for contempt and the nature of the legal aid in contempt proceedings is such that defendants do not have the usual costs protection afforded by civil legal aid.
33. Ms Richold, the court does not expect to see you before it again facing contempt proceedings. I am very confident in your case that you have learned your lesson and you will not be troubling these courts again.