

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

BETWEEN

SHEFFIELD CITY COUNCIL

Claimant

-and-

CALVIN PAYNE

Defendant

Sentencing remarks of Mr Justice Males

Calvin Payne, I have found you to be in contempt of court in three respects. The first is that on Thursday 28th September 2017, you entered or remained in a safety zone erected around a tree on Kenwood Road in Sheffield. The second is that on Friday 29th September you entered or remained in a safety zone erected around a tree on the same road. The third is that on Friday 6th October 2017 you encouraged others to enter safety zones to be erected around trees in a Facebook post which you posted on the Save Neverthorpe Trees Facebook page. Each of these acts was a deliberate breach of the injunction which I ordered following the trial which took place in July this year.

You had an opportunity to challenge the injunction by seeking permission to appeal from my decision, but chose not to do so.

The most serious penalty for contempt is committal to prison. Such a committal may serve two distinct purposes, namely the punishment of past contempt and securing compliance with the order of the court.

There are no formal sentencing guidelines, but it is well established that in general the court should bear in mind the desirability of keeping offenders, particularly those of previous good character, out of prison if possible. Imprisonment is in general reserved for cases where there is serious and contumacious flouting of an order of the court.

In deciding what sentence to pass it is necessary to take account of an offender's culpability, of the harm which his or her action has caused, and any personal mitigation which may be available.

It is clear in the present case that your conduct was deliberate, that you knew that it was a breach of the injunction and unlawful, that it was repeated, that you have expressed on social media an intention to continue to break the injunction, and that you have encouraged others to do so. This is serious and contumacious flouting of the court's order. You have made clear that you regard yourself as above the law.

It is equally clear that your conduct and that of others who have taken similar action has been harmful. I am not of course sentencing you for the conduct of others, but I can take notice of the fact that you are, and are seen to be, a prominent protester to whom others look, whose breaches of the injunction are likely to encourage others to join in, particularly if those breaches go unmarked. While there is no evidence that specific individuals have been encouraged by your conduct to commit breaches of the order themselves, it is inherently likely that this has occurred.

Your conduct in breaching the injunction was intended to and has prevented Sheffield City Council from carrying out work which has been held to be lawful. While that work is controversial, and I repeat that the court expresses no view one way or the other about the

merits of the council's policy, it is work which it has been held that the democratically elected council is entitled to carry out. Your conduct in frustrating this work is likely to have serious financial consequences. For this purpose, it makes no difference whether those consequences will ultimately fall on the council and thus on the people of Sheffield or on the contractor which the council has engaged. Public defiance of the order of the court such as that in which you have engaged is also damaging to the rule of law. Nothing in the injunction prevents legitimate campaigning and protest. But the order of the court must be obeyed.

So far as mitigation is concerned, you did not admit your breaches of the injunction and cannot therefore be given credit for doing so. But you are a man of good character and at the trial in July your evidence was that you were a man who had abided by the law and continued to do so.

I should mention one matter which has been argued on your behalf to amount to mitigation. That is the suggestion that the council is at fault by handing out inaccurate notices and making unjustified threats of committal for contempt in circumstances where there was no question of a breach of the injunction. I regard that as being of little or no relevance to your case. There is no reason to think that your decision to breach the injunction was in any way affected by these actions of the council. In any event, the court has its own interest in ensuring compliance with its order.

Taking all of these matters into account, you could have no complaint if I sentenced you now to a term of immediate imprisonment. I have thought hard about doing so. In the end, however, because you are a man of good character and essentially, I believe, a law-abiding and decent man, and because there has been no suggestion you have committed further breaches of the injunction since the application to commit was served upon you, I propose to give you one final chance.

Accordingly, for each of the contempts which has been proved against you, the sentence which I pass will be a suspended sentence of imprisonment. These will be concurrent. You should be

in no doubt, however, that this is your final chance. If you commit further breaches, you must expect that the sentence will be activated in addition to whatever sentence may be imposed for any further breaches.

Others who may be minded to breach the injunction must also be aware that, however reluctant the court always is to send someone to prison, repeated defiance of its orders is unacceptable. Lest anyone be under the impression that breaches of the injunction do not matter or will be treated lightly, let me make it clear that the time will come, and in my judgment has come, when deliberate and repeated breaches of the injunction must be punished.

Calvin Payne, the sentence I pass on you is one of three months imprisonment, suspended for one year. I urge you to think hard about what I have said. It is up to you now.

You must in addition pay the council's legal costs which I assess summarily in the sum of £16,000.

3rd November 2017