

Response to Request for Information

Reference FOI 000831
Date 30 January 2017

Injunction – Car Cruising

Request:

In respect of the injunction secured from the High Court in Birmingham on 1 December 2014, please can you disclose:

1. The document trail that led to the decision to invoke this injunction, including but not limited to emails, reports and minutes of meetings, and including in particular references to the consideration of section 59 of the Police Reform Act 2002 - Vehicles used in manner causing alarm, distress or annoyance
link:<http://www.legislation.gov.uk/ukpga/2002/30/section/59>
[In response to question 1 above, please see the document attached at the end of this request on page 3.](#)
2. What was the decision-making process which led to the decision to take out the injunction?
[In response to question 2 above, after careful consideration the Council is of the view that this would constitute the disclosure of information covered by a claim of Legal Professional Privilege and that Section 42 of the Freedom of Information Act \(FOIA\) 2000 is engaged.](#)

[The reasoning behind this is that in considering the public interest for and against disclosure in this case, the Council has considered that the public interest in disclosing details of legal advice received and allowing of scrutiny actions of public officials acting on that advice, is in this instance outweighed by the public interest in allowing a client's ability to speak openly to seek advice from its legal advisers in confidence without the fear of it being disclosed to the wider world \(which is how any disclosure under FOI must be considered\).](#)

[In addition, the following factors have also been considered for disclosure:](#)

- [Contributing to public understanding/debate of matters that affect peoples' lives](#)
- [Openness and transparency in decision making process](#)
- [Accountability of public money being spent](#)
- [Informing the public of any danger to their health or safety](#)

[On this basis the Council has decided to withhold this information.](#)

We are also applying Section 32 of the Freedom of Information Act (FOIA) 2000 – Court Records.

The reasoning behind this is that under this exemption, information is exempt if it is held only by virtue of being contained in:

- A) Any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- B) Any document served upon, or by a public authority for the purposes of proceedings in a particular cause or matter, or
- C) Any document created by-
 - i) a court,
or
 - ii) a member of the administrative staff of a court, for the purpose of proceedings in a particular cause or matter.

This exemption is absolute and the Council is not required to consider the public interest test for or against disclosure when applying it.

3. What was the cost to the Council of bringing about the injunction (including officer time, where recorded, and court fees)?
In response to question 3 above, I can confirm that City of Wolverhampton Council holds this information.

The information you have requested is exempt under Section 21 of the Freedom of Information Act (FOIA) 2000 – Information reasonably accessible to the applicant by other means.

The reason for this is that the information requested is accessible to you as it is already in the public domain as a response was issued to a previous Freedom of Information request on our website. Please see the link provided below:
<http://www.wolverhampton.gov.uk/CHttpHandler.ashx?id=12094&p=0>

4. The name and job title or position of the officer(s) and/or elected member(s) who made the decision to take out the injunction?
In response to question 4 above, after careful consideration the information you have requested is exempt under Section 32 of the Freedom of Information Act (FOIA) 2000 – Court Records.

Please see our response to this covered in the second part of our reply to question 2 above.

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

Claim No. A90BM228

Priory Courts
33 Bull Street
Birmingham
B4 6DS

Monday, 1st December 2014

Before:

HIS HONOUR JUDGE ROBERT OWEN QC
Sitting as a Judge of the High Court

Between:

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

Claimants

-v-

PERSONS UNKNOWN

Defendants

Counsel for the Claimants:

MR GIRET QC and MS NEWMAN

No appearance by the Defendants

APPROVED JUDGMENT

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Number of Folios: 60
Number of Words: 4,355

JUDGMENT

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1. THE JUDGE: This is an application pursuant to section 222 of the Local Government Act 1972 and section 130 of the Highways Act 1980, for an injunction, against persons unknown, to prohibit the unlawful activity of car cruising on the public highways within the geographical areas for which the claimants are responsible, pursuant to the statutory duties imposed or powers conferred upon them by those Acts. Pursuant to a formal agreement entered into between the claimants on 20th May 2014, made under section 101 of the 1972 Act, the claimants have joined forces jointly to seek this injunction, having formally resolved to do so as appears from the resolutions passed by them and exhibited in evidence before the court.

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2. The aim of their agreement was to secure the most efficient use of their limited funds and resources in tackling unlawful activity on the highway and which also creates a clear public nuisance and which directly affects or threatens to affect each of them and the local inhabitants within their geographical areas. Each Local Authority has had direct experience over recent years of car cruising events held illegally on public highways. Their concern is that without such mutual cooperation which embraces their composite geographical area the perpetrators of car cruising events which might be prohibited by injunction covering only one area would simply move on and continue the unlawful activity in a neighbouring area. Accordingly, anticipating that likely event, they have joined forces to ensure that the totality of their geographical area is covered by the injunction. This approach is to avoid multiplicity of proceedings, duplication of costs and waste of resources.

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3. On 22nd September 2014, the claimants, Wolverhampton City Council, Dudley Metropolitan Borough Council, Sandwell Metropolitan Borough Council and the Walsall Metropolitan Borough Council, commenced these proceedings by the issue of the claim form, accompanied by an application for an injunction together with the evidence relied upon, which was set out in an attached schedule of witness statements, then comprising no less than 104 separate witness statements. The application was listed before me for a one-hour hearing on 30th September 2014 (without prior notice or reading time). Mr Giret QC, with Ms Newman, presented the application. It appeared that the material was unmanageable and it was evident in any event that there was insufficient time to allow the proper consideration of the application.

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4. I indicated to Mr Giret that on the first reading of the papers I was concerned not so much with the existence of jurisdiction for the court to grant an injunction of the kind being sought but, rather, given the existence of the police's powers and duties to deal with such behaviour under the criminal law, whether an injunction was necessary and, in any event, whether the terms of the draft order were unnecessarily wide. In particular, I was concerned that the draft order, supported by a power of arrest, extended to mere bystanders or onlookers on the basis that it was considered by the claimants their mere presence served to aid, abet or promote the unlawful activity.

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5. My concern was whether any such order was necessary as opposed to being simply reasonable particularly having regard to the vagueness of the description of 'participant' (that is, an onlooker) and the nature of the onlooker's activities which would or might trigger enforcement proceedings. It seemed to me that there was a real risk, for example, that an onlooker may be unnecessarily arrested on the spot and that serious issues would inevitably arise as to whether mere attendance could reasonably

- A suggest the supporting and promoting the event and that an arrest might be sought to be justified on the ground that the onlooker had also engaged in a prohibited activity such as the dropping of litter. In general, litter, of course, may be a nuisance or social problem and where there is any substantial meeting of persons litter may be expected perhaps in an already littered area. The aim of the injunction was not the prevention of litter. An additional concern was whether the terms generally were also open to such criticism.
- B 6. I was also concerned whether the evidence was up-to-date as some of the witness statements suggested, albeit impliedly, that the problem of car cruising may have been an historical rather than a continuing problem. The initial hearing was thus adjourned to allow for further consideration.
- C 7. Following that hearing, the claimants helpfully provided in relation to each claimant an overarching statement which summarised the position from their perspective. They also filed updated witness statements in which it was clear that in at least two, if not three, of the geographical areas concerned, there was indeed continuing and recent evidence of car cruising. There was duplication of witness statements which could be avoided by ensuring that each witness dealt with each issue within his statement rather than filing several statements to deal with several issues. With that additional information Mr Giret presented the application on behalf of the claimants at the resumed hearing in accordance with the proposed draft order - which was the same draft order previously before the court.
- D 8. In the course of the presentation of the application, I reiterated my concerns as to the apparent ambit of the order and the definitions within the schedule to the draft order and in particular the definition of participation in car cruising. Leaving aside the difficulties posed to the layman by the terms or language used the definition, the proposed definition gave rise to the kinds of problem to which I had referred previously. The claimants' position was they would wish their draft order to remain in the terms proposed, that is:
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- F i) It is forbidden for anyone to participate in car cruising as defined in the schedule attached hereto anywhere within the Black Country area, being the area comprising the claimants' combined Local Authority areas as illustrated on the map attached hereto, marked annex A.
- G ii) It is also forbidden for anyone to promote, organise or publicise via email, the internet, or any publication or broadcast, any car cruising within the Black Country or the identified geographical area.
- H iii) Power of arrest pursuant to section 27 of the Police and Criminal Justice Act 2006 shall apply to clause i).
- iv) The order and power of arrest shall continue [Mr Giret clarified] from a period of three years, from the date of the coming into effect of the order.
- v) Personal service of this order is dispensed with pursuant to CPR 81.8. Service of this injunction and the accompanying power of arrest shall be effected by the completion or conclusion of each of the following steps from which date the injunction shall then come into force [see below].

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9. There then followed a series of seven steps which identified the manner in which the public would be informed of the terms of the proposed injunction and the power of arrest and that those steps must first be taken before the order would come into effect. So far as the schedule to that draft order is concerned, paragraph 1 reads:

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“Car cruising means two or more vehicles, including motorbikes, between the hours of 3pm and 7am on a highway or a publically accessible place within the Black Country area as defined on the map attached hereto, marked annex A, and which any such vehicle performs any of the prohibited activities listed in clause 3 below, which causes or is capable of causing any of the prohibited consequences set out in clause 4 below”.

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Paragraph 1 includes the driver and any occupant.

10. Paragraph 2 reads:

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“Participation means all those who will be liable for a breach of the terms of a prohibitory injunction against car cruising as defined in paragraph 1, above, as follows. Participation is to be given its wider and natural meaning in the sense of taking a part or share, whether directly or by association, in the nature of something, or in this case car cruising, as defined in paragraph 1 above. It is to be construed in accordance with the common law in the sense that a person already deemed to be participating in car cruising, if whether by virtue of that person’s voluntary and intentional presence at the event, or non-presence but by virtue of their contribution of the organisation of the event, they intend thereby to encourage and/or wilfully do encourage some or all of the participants. For the avoidance of doubt, the above definition includes aiding, abetting, counselling or procuring the commission by another person of the activity of car cruising within the relevant geographical area as defined on the map attached, marked annex A”.

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11. That is, the definition includes all persons present in the locality such as spectators, who might be considered to have been there by way of aiding, abetting or counselling the event. In the course of argument, Mr Giret sought to justify the width of this definition on the basis that experience showed that there was a range of persons who participate in organising, setting up, publicising the event and so on some more directly involved in the event than others, for example the person who may be stood on the highway itself, organising or directing various particular vehicular moves by the drivers concerned though not driving a vehicle performing the manoeuvres. I accept there may be such persons directly involved in arranging via social media for example, and also on the ground, marshalling the vehicles and so on. However, the latter would be witnessed by the police who would, presumably, be able to deal with those persons appropriately and in accordance with concurrent and other highway or public order powers. It did not appear to me to be a sufficient reason, in itself, for such a wide definition which would or might also catch passers by or onlookers whose presence could not justify, for example, summary arrest or enforcement. It is to be noted that whilst in other car cruising orders made by different courts previously bear a broad

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- A similarity to the draft this particular extension of ‘participation’ to include all onlookers or spectators is omitted.
- B 12. The third paragraph to the schedule identifies the prohibited activities referred to in clause 1 as being: a) speeding; b) driving in convoy; c) racing; d) performing stunts; e) sounding horns so as to cause a nuisance; f) playing music so as to cause a nuisance; g) dropping litter; h) using foul or abusive language; i) using threatening or intimidating behaviour towards another person; and j) causing obstruction to a public highway, whether moving or stationary. These prohibited activities do feature in virtually the same form in previous similar orders which the court has made and they appear to me to be proportionate to the aim involved, save that the threshold for intervention should be no less than the threshold required, for example, for an anti social behaviour injunction and power of arrest granted pursuant to statute and that the mere act of dropping litter, would be inappropriate to include as I do not consider it to be necessary for the aim and purpose of this order.
- C 13. As for paragraph 4 of the schedule, the prohibited consequences arising from a relevant activity referred to in clause 1 above are: a) excessive noise; b) danger of risk of injury to road users, including pedestrians; c) damage or risk of damage to property; d) littering; e) risk of harm including psychological harm; f) nuisance; and g) annoyance. The threshold referred to above should apply here and thus sub paragraph (d) [‘littering’] should be deleted as should the words “including psychological harm”. The concept of ‘risk of harm’ is well understood. It is set out within section 27 of the Act and does not require amplification.
- D 14. The problems arising from ‘car cruising’ came before His Honour Judge Oliver - Jones QC sitting as a Judge of the High Court in *Birmingham City Council v Persons Unknown*, 1st March 2010. The learned judge had before him a similar set of circumstances in which Birmingham City Council sought and the learned judge granted an injunction to restrain persons unknown ‘from participating in a car cruise’ anywhere within the local authority’s geographical area rather than being limited to known “hot spots”. The inhabitants of the whole area would benefit from the injunction. The learned judge observed that the draft order in fact limited the injunction to a specific locality but he was satisfied that such a restriction was unnecessary. The Particulars of Claim had asserted that to limit the geographical ambit of the injunction to a specific location would serve merely to cause the participants to move to a neighbouring location within the city. The learned judge was satisfied that the injunction sought was necessary and was likely to be effective in dealing with a known problem.
- E 15. As for ‘car cruising’ I gratefully adopt the learned judge’s description, which is on all fours with the description given by the many witnesses in evidence before this court, at paragraph 3 of his judgment as follows: “Car cruises are ... in essence... events [which] attract the drivers of cars, including what are colloquially known as ‘Boy Racers’ who show off to crowds of ‘car cruise’ supporters by racing their cars and performing driving stunts and timed trials. The vehicles that are used include high performance cars and cars which have been modified in terms of their power. The activities in which drivers engage are noisy, dangerous and illegal, obstructing highways and the premises bordering them, damaging property and putting spectators or other road users at risk of injury or worse. They attract those to whom such anti-social behaviour is an excuse, if they need one, for other types of anti-social behaviour,
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including the harassment and intimidation of law abiding citizens, the threatening and abuse of those who challenge them and the activities in which they are engaging, the use of foul language and the misuse of drugs. By its very nature, those attending car cruising events, whether as drivers, passengers or spectators, will vary from day-to-day and event-to-event. However, the total number of attendees will regularly run into several hundred people. They are attracted by advertising on the internet and in magazines as well as word of mouth”.

Paragraph 4:

“Car cruising occurs most commonly on Saturday and Sunday night but can occur on any day and at any time of the day or night. The noise of revving engines, car horns, racing cars and spectators will thus frequently disturb those local residents who are trying to sleep, as well as those conducting commercial businesses. The evidence which I have relates to one particular area... However, historically car cruising has taken place in other areas of the City”

Paragraph 5: “The problems created by car cruising are not new and have taxed the resources and tactics of those charged with the duties of policing, managing highways and tackling anti-social behaviour...

Paragraph 6: “Notwithstanding many initiatives and efforts to prevent car-cruising these have proved to be ineffective...

Paragraph 7: “One of the particular difficulties, and probably the most significant, is what I was told is the impossibility of identifying those participating in car cruises “in sufficient numbers or with sufficient particularity to take proceedings against named participants” under the criminal law generally or in respect of anti-social behaviour in particular.”

- 16. The same difficulties are identified and relied on in the present case. In each of the Local Authority areas in question there is clear evidence set out in the witness statements which describe the car cruising events and the problems caused by the drivers and supporters who attract also onlookers and create a public nuisance and local disorder in addition to the dangers created on the highway itself. Particular locations or ‘hot spots’ as Mr Giret described them, are identified within the claimants areas and examples are given of the movement from one hot spot to a different area in response to preventative or interventionist action having been taken by the police and by the Local Authority.
- 17. There is an abundance of evidence in the witness statements to which I have referred which identify within each of the Local Authority geographical areas the existence of a real problem of car cruising and in any event a real risk that in the absence of preventative action or an order in the terms sought the problem will simply be moved from one location to another neighbouring area within the area to be subject to the order sought. The court is familiar with the exercise of the jurisdiction which permits the granting of an injunction in anticipation of a threatened breach or interference with a legitimate right. Subject to being satisfied that the granting of such an order in the particular circumstances is within the relevant judicial guidance and that it is necessary

- A to do so there is sufficient evidence before this court to merit invoking the existing jurisdiction conferred upon the court to grant the order sought. Car cruising has taken place within the relevant area as recently 30th October 2014 and 16th November 2014.
- B 18. Whilst the witness statements are silent as to what action was taken by the police on those occasions though they were witnessed by the police, that absence of evidence is not sufficient in my judgment to require that the application be refused. The evidence in the present case was similar to the noted difficulties in prevention and apprehension and enforcement against suspected offenders in the Birmingham case.
- C 19. In the Birmingham case to which I have referred the learned judge dealt with the effect of the decision of the Court of Appeal in the case of *Birmingham City Council v Shafi* [2008] EWCA Civ 1186. The court confirmed the existence of the jurisdiction to grant an injunction under section 222 of the 1972 Act notwithstanding the fact that there existed, concurrently, alternative criminal procedures which might be used to address the mischief complained of provided that the circumstances of the case warranted the exercise of those powers under the Act. It is recognised that exceptional circumstances may justify the exercise of the power to grant the civil injunction sought. The learned judge in the Birmingham case distinguished the decision in *Birmingham City Council v Shafi* from his case by referring to paragraph 47 of the judgment of the Master of the D Rolls who observed that, having referred to the statutory framework which created the criminal ASBO, the critical features were that the defendant must have acted in an anti-social manner in the past and that an order must be necessary to protect the public from further anti-social acts in the future. Since those factors were present in that case there was no basis on which to exercise the discretion and grant the injunction.
- E 20. As the learned judge indicates at paragraph 15 of his judgment - and the same relevant facts apply to the present case -:
- F “There is a distinction on the facts. That is the essential feature of car cruising is the sheer volume of participants, whether drivers or spectators, and that given that car cruising occurs mainly at night it has proved impossible despite the best endeavours of a number of police forces to identify individuals who may attend car cruises on a regular basis or to distinguish any particular groups of individuals. In those circumstances, it has been impossible to show that any particular individual has acted in an anti-social manner in the past, as would be necessary for and would secure an ASBO”.
- G 21. That is the position in the present case. It appears to be impracticable if not impossible in many cases to identify and apprehend the principal participants or show that they have previously acted in an anti-social manner and thus make out a case for a criminal sanction. The reality, as it appears from the evidence adduced before me, is that it may well be impossible to show that the alleged participant or his conduct on the occasion in question is within the ambit of the ASBO legislation. Whilst the driver and his H passengers may well be at risk of being apprehended for (obvious) serious driving and public highway offences different potential problems are likely to arise, not least the risk of the police being drawn into pursuits at speed. I am satisfied there are pressing and sound operational reasons why the police and local authority wish to have available this additional and more flexible power in dealing with the problem of car cruising in their area. I accept Mr Giret’s submission that the order would have a

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substantial deterrent effect. I am satisfied that the present case is distinguishable from the facts in the case before the Court of Appeal. The present case is similar to the Birmingham case.

22. The question that arises in the present case is whether or not the claimants have identified a sufficiently sound factual basis to justify the exercise of the discretion available to grant the order sought and if so the terms of that order which must be proportionate and no wider than is shown to be necessary. At one stage I was concerned whether the use of this power was necessary in circumstances where the police could exercise their existing powers (indeed, duties in connection with public order and risk of significant harm to the public). I was also concerned whether the exercise of the power would serve a useful purpose in that if general police tactics could not deal with the problem a civil injunction would be no more effective.

23. However, I am satisfied by the evidence and Mr Giret’s submissions that such an order is necessary and that the measures contained in the final draft of the order are both necessary and proportionate to deal justly and effectively with the anti social behaviour known as car cruising within the claimants’ areas. The fact that the participants might simply move off to yet another neighbouring area is not, in all the circumstances, good reason to decline to exercise the power and grant the order sought. It is recognised that an important aspect of the order which will be extensively publicised prior to it coming into effect will be its intended deterrent effect.

24. As for the content or terms of the order, I am inclined to the view that the general terms of the order should follow those which have previously been approved by different judges in similar circumstances or cases on at least three occasions. For example, the claimants have provided to the court an order which was made on 17th October 2011 in favour of Warwickshire County Council, against persons unknown, which follows in general terms paragraph 1 of the draft order before me together with paragraph 1 of the schedule and also paragraphs 2 and 3 of that schedule (though I have required the specific inclusion of the requirement of significant harm as mentioned earlier). That order is also in similar terms to the order made in the Birmingham case.

25. I am persuaded that it is necessary and that it would be appropriate and just to make an order in the revised terms of the draft order, as approved by me, to which I have referred. A copy of the order should be appended to this judgment. It is unnecessary for the purposes of this judgment to recite the final order here. I shall direct that the order shall not come into force until the claimants’ solicitor lodges with the court written notice that the steps required to publicise and give reasonable notice, in straightforward terms, of the order to the local inhabitants of the relevant areas have been completed. I shall also direct that thereafter there shall be a review hearing in open court after twelve months at least at which the court may consider the progress and effect of the order and consider whether it is shown that it is necessary to continue, or modify or discharge the order.