



Case No. BL-2023-000713

**IN THE HIGH COURT OF JUSTICE**  
**THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**BUSINESS LIST (ChD)**

BL-2023-000713

**MR. JUSTICE MILES**

**11 October 2023**

**BETWEEN:**

**JOCKEY CLUB RACECOURSES LIMITED**

**Claimant / Applicant**

**-and-**

- (1) DANIEL FRANK PETER KIDBY**
- (2) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE “RACE TRACK” ON THE DAY OF A “RACING FIXTURE”, EXCEPT AT “CROSSING POINTS” WITH “AUTHORISATION”, AS DESCRIBED BELOW**
- (3) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY “CROSSING POINTS” WITHOUT “AUTHORISATION” ON THE DAY OF A “RACING FIXTURE”, AS DESCRIBED BELOW**
- (4) PERSONS UNKNOWN ENTERING THE AREA DESCRIBED BELOW AS THE “PARADE RING” WITHOUT “AUTHORISATION” ON THE DAY OF A “RACING FIXTURE”, AS DESCRIBED BELOW**
- (5) PERSONS UNKNOWN ENTERING AND/OR REMAINING ON ANY PART OF THE AREAS DESCRIBED BELOW AS THE “HORSES’ ROUTE TO THE PARADE RING” AND/OR THE “HORSES’ ROUTE TO THE RACE TRACK” WITHOUT “AUTHORISATION” ON THE DAY OF A “RACING FIXTURE”, AS DESCRIBED BELOW**
- (6) PERSONS UNKNOWN INTENTIONALLY OBSTRUCTING THE “HORSE RACES”, AS DESCRIBED BELOW**
- (7) PERSONS UNKNOWN INTENTIONALLY CAUSING ANY OBJECT TO ENTER ONTO AND/OR REMAIN ON THE “RACE TRACK” WITHOUT “AUTHORISATION” ON THE DAY OF A “RACING FIXTURE”, AS DESCRIBED BELOW**
- (8) PERSONS UNKNOWN INTENTIONALLY ENDANGERING ANY PERSON AT THE LOCATION DESCRIBED BELOW AS THE “EPSOM RACECOURSE” ON THE DAY OF A “RACING FIXTURE”, AS DESCRIBED BELOW**

**First to Eighth Defendants**

**(9) MR BEN NEWMAN**

**Ninth Defendant / Respondent**

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**ORDER**

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UPON hearing Counsel, Mr. Paul Higgins, for the Applicant, and Counsel, Mr. Tim James-Matthews, for the Repondent

AND UPON the following definitions applying below:

- (i) “Racecourse”: the buildings and land situated at and comprising any of the following: Aintree, Carlisle, Cheltenham, Exeter, Epsom Downs, Haydock Park, Huntingdon, Kempton Park, Markey Raisen, Newmarket, Nottingham, Sandown Park, Warwick and Wincanton racecourses;
- (ii) “Racetrack”: the land at a racecourse between the viewing rails along which horses run competitively at organised meets, save for any land over which lawful visitors to the racecourse may ordinarily cross from one side of the racetrack to another with authorisation given from time to time by a steward, police officer and/or agent of the Applicant and when such authorisation has been given at that time.
- (iii) “Horse Race”: an organised race between horses at any racecourse on any occasion when members of the public are routinely permitted to be present on the racecourse by the Applicant, whether for a fee or otherwise.

AND UPON the Respondent admitting that he is in breach of the injunction order made by Sir Anthony Mann on the 26<sup>th</sup> May 2023 by reason of him, on 3<sup>rd</sup> June 2023 (i) having entered the racetrack at Epsom racecourse during the running of the Derby, and (ii) intentionally obstructing the running of the Derby on that occasion

AND UPON the Applicant and Respondent agreeing the following:

1. The horses were approximately 1.4 miles away from the Respondent at the time he went onto the racetrack.
2. The horses were approximately 1.15 to 1.2 miles away from the Respondent at the time he was removed from the racetrack.
3. The horses were approximately 2 minutes 21 seconds to 2 minutes 24 seconds away from the Respondent when he entered the racetrack and approximately 1 minutes 58 seconds to 2 minutes 2 seconds away from him when he was removed from the racetrack.
4. In accordance with British Horseracing Authority (“BHA”) protocols, a specific procedure was in place to stop the race in the event of a major hazard. This procedure required that orange/yellow Stop Race flags be deployed and waved by pre-determined racecourse personal on the instruction of the Clerk of the Course. In addition, the person(s) deploying the flags were required to blow a Fox 40 whistle to ensure riders were aware of their presence. Further to the above, there

was live visual monitoring of the race from the Stewards Room and monitoring via visual technology provided by Racecourse Technical Services Limited (“RaceTech”). For the Derby 2023 the Jockey Club had in place a system of additional flag positions to that normally in place at Epsom, plus different flags to the standard orange/yellow in order to confuse potential protests. Jockeys were briefed accordingly.

5. The Respondent’s encroachment was handled swiftly, with the race in progress but at an early stage and it was not necessary to implement the procedure described above.
6. The procedure is as robust as any involving radio communications, appropriate human action as a result, plus comprehension and action by riders on horses travelling at speed, can be. It carries an element of risk in terms of its implementation and the speed and timeframe of flat races exacerbates this. The earlier the Clerk can make the decision the better, in that it potentially increases the number of flags that can be deployed.
7. In the event that it had proved necessary to do so, the race could have been stopped in time, had the system described above operated as it should have done.
8. The Applicant does not allege that any horse or jockey’s welfare was compromised by the Respondent’s actions during the running of the 2023 Derby.

AND UPON the Respondent undertaking to the Court that until 4.00 pm on the 11<sup>th</sup> April 2025 or until he is no longer bound by any injunction order made in these proceedings (whichever is the later) he will:

1. Comply with the injunction order of Sir Anthony Mann dated 26<sup>th</sup> May 2023 (and any successor injunction order made in these proceedings that applies to him);
2. Not engage in any of the following conduct (in each case, where that conduct would have the effect of damaging and/or delaying and/or hindering the Applicant by obstructing, impeding or interfering with the lawful activities undertaken by them):
  - a. Entering or being present on any Racetrack owned or managed by the Applicant;
  - b. Entering or being present on any other area of any Racecourse owned or managed by the Applicant without authorisation;
  - c. Intentionally obstructing or disrupting any Horse Race organised or hosted by the Applicant.

AND UPON the Respondent agreeing to pay a contribution to the Applicant’s costs in the sum £10,000.00

AND UPON the Court having read parts of the hearing bundle and the evidence contained therein as the parties have drawn to the Court's attention, the skeleton arguments of the parties, and such authorities and material contained within the agreed authorities bundle as the parties have drawn to the Court's attention

AND UPON the Court having viewed the video footage and listened to the audio footage exhibited to the affidavit of Nevin Truesdale

AND UPON the Court taking the view that the Respondent's breaches are sufficiently serious that only a custodial sentence would be appropriate

BUT UPON the Court having regard to (i) the Respondent's status as a conscientious protester, (ii) his fulsome apology to the Applicant as contained in his witness statement and repeated to the Court today, (iii) Articles 10 and 11 of the ECHR, (iv) the fact that the Respondent has already spent time in prison in consequence of his criminal prosecution, (v) his statements of remorse and (vi) the further mitigation prayed in his aid, and the Court determining that having regard to such matters a custodial sentence could appropriately be suspended on terms

IT IS ORDERED THAT:

1. The Respondent shall be committed to prison for a period of 2 months.
2. The operation of paragraph 1 shall be suspended provided that the Respondent:
  - a. does not enter on and is not present on any Racetrack owned by the Applicant save with the permission of Applicant; and
  - b. does not intentionally obstruct any Horse Race organised by the Applicant.
3. Paragraphs 1 and 2 shall automatically be revoked at 4pm on the 11<sup>th</sup> April 2025 unless the Respondent is in custody at that time by reason of the operation of paragraph 1 in which event the revocation of those paragraphs shall occur at the moment that the Respondent is subsequently lawfully released from custody.
4. The sum of £10,000 payable by way of a contribution to the Applicant's costs shall be paid by the Respondent as follows:
  - a. The Respondent is to pay £2,500 by 4 pm on the 25<sup>th</sup> October 2023; and
  - b. The Respondent is to pay £7,500 by 4 pm on the 31<sup>st</sup> December 2023.
5. Save as above, no order for costs.
6. A transcript of the judgment shall be prepared at the public expense.

## SERVICE

The court has provided a sealed copy of the order to the serving party; Pinsent Masons LLP of 30 Crown Place, Earl Street, London, EC2A 4ES.